



Section 4

Complying with the Act

As someone involved in the screen sector you have obligations under the Health and Safety at Work Act 2015 (the Act). This section outlines the core obligations under the Act, categorised by the key groups of duty holders, namely, PCBUs, officers and workers. In addition, this section provides guidance on how some specific roles within the screen sector are affected by the Act, and what steps you can take to help keep yourself and others safe if you hold one of these roles.

Setting the stage: the context behind the new legislation

New Zealand's workplace health and safety regime has undergone a period of substantial reform with the introduction of the Act and associated regulations. The Act is effective from 4 April 2016 and replaces the Health and Safety in Employment Act 1992.

This overhaul of New Zealand's workplace health and safety system comes after years of review, including the Royal Commission on the Pike River Coal Mine Tragedy and the Independent Taskforce on Workplace Health and Safety. The Act also draws on the Australian Model Work Health and Safety Act 2011, with some modifications for the New Zealand context.

Along with the introduction of new legislation in this area, WorkSafe New Zealand (WorkSafe) has been established as the health and safety regulator. WorkSafe has signalled it will take a proactive approach to enforcement, with a strong emphasis on prevention and accountability. This new approach reflects the importance of maintaining a strong safety culture and robust health and safety practices in the workplace.

KEY CONCEPT: What is a workplace?



A workplace is a place where work is being carried out, or is customarily carried out, and includes any place where a worker goes, or is likely to be, while at work. Each project within the screen sector is likely to involve a number of different workplaces including the studio, set (including any location sets used as part of filming), art department workshop, production company offices, and post production facilities.



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What are my health and safety obligations under the Act?

The Act contains a range of different duty holders, including PCBUs, officers and workers, each with varying levels of obligations. All people working within the screen sector will have obligations under one or more of these categories. The nature of the duties you will have will depend on your role and responsibilities within the production process, including the level of control and influence you have as part of your role.

The obligations under the Act apply to you if you are working in New Zealand, regardless of how long you may be in the country for.

It is important that you are aware of your duties under the Act and take steps to comply with them, whatever your role may be.

Who is a PCBU?

A PCBU is a person conducting a business or undertaking, whether alone or with others, regardless of whether the business or undertaking is conducted for profit or gain. This concept replaces the duties placed upon by an employer, principal, self-employed person, person controlling a place of work and a supplier of plant under the previous Health and Safety in Employment Act 1992.

A PCBU will often be a business entity, such as a company (regardless of whether or not it is formally registered). However, an individual will be a PCBU if they are a self-employed sole trader.¹

PCBUs involved in the screen sector may include production companies, advertising agencies, self-employed contractors, such as directors and producers, and contractors supplying technical services.

Who is an Officer?

Every PCBU will have officers. Officers include the directors of a company, partners in a partnership and any person who “exercises significant influence over the management of the business or undertaking”, for example, a chief executive.² Self-employed individuals have duties both as a PCBU and as an officer of that PCBU due to the significant influence they have over their business.

Who is a Worker?

A worker is a person who carries out work for a PCBU. Workers include employees, contractors, sub-contractors, employees of contractors or subcontractors, outworkers, labour hire workers, volunteers, trainees and persons gaining work experience. The broad definition of a worker means that a self-employed contractor will have obligations as a worker in addition to those as a PCBU and an officer.

VOLUNTEERS

Even unpaid volunteers will be classified as workers unless they are merely assisting on a one off basis – in which case they are more likely to be described as ‘others in the workplace.’ Those classified as ‘others in the workplace’ are still required to take

1. S17(1)(a)(i), Health and Safety at Work Act 2015.

2. S18, Health and Safety at Work Act 2015.



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reasonable care for their own health and safety, comply with all instructions of the organisation that has engaged them and avoid doing anything that may affect the health and safety of others. In addition, the organisation that is being assisted by the volunteer has an obligation to ensure that the volunteer's health and safety is not put at risk by its work.

EXAMPLE: Identifying duty holders in the workplace



Safe & Sound Productions is a production company established to produce a new feature film. Safe & Sound has three directors – John, Sam and Kate.

Safe & Sound engages Lights On to provide lighting services for the film. Mike is the sole director of Lights On, and the company has two employees. Lights On contracts James a self-employed lighting technician, to help them with Safe & Sound's production.

What type of duty holders are each of these parties?

Safe & Sound:

- Safe & Sound is a PCBU conducting the business of making a feature film.
- John, Sam and Kate are officers of Safe & Sound.

Lights On:

- Lights On is a PCBU conducting the business of providing lighting services in the screen sector.
- Mike is an officer of Lights On.
- Lights On's employees are workers of Lights On.

James:

- James is a PCBU conducting his lighting business.
- James is an officer of his PCBU as he is self-employed.
- James is also a worker of Lights On because he is engaged by Lights On to provide technician services.

Who else has duties under the Act?

Others in the workplace, such as visitors to a set, have duties to take reasonable care for their own health and safety and to take reasonable care that their acts or omissions do not adversely affect the health and safety of others. This includes complying with reasonable instructions from PCBUs.



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How do I satisfy my health and safety obligations under the Act?

Satisfying your health and safety obligations as a PCBU

The screen sector involves a range of PCBUs working together to create a production, including the production company, self-employed individuals and contractors who own their own businesses with employees. This section provides an overview of the obligations placed upon these entities in their capacities as PCBUs.

PCBUS HAVE A PRIMARY DUTY OF CARE TO WORKERS AND OTHERS

All PCBUs have a primary duty of care to provide and maintain a safe and healthy work environment. This requires PCBUs to ensure the health and safety of others, not just of workers, is not put at risk from the work carried out for the business or undertaking.³

As part of this obligation a PCBU must ensure that, so far as reasonably practicable, it provides and maintains a safe work environment and equipment, implements safe processes for the use of any equipment, provides the training necessary to allow people to follow these processes and ensures that all of its workplaces have adequate facilities for its workers (for example, toilet facilities).⁴

In addition, a PCBU managing or controlling a workplace, in whole or in part, must ensure so far as reasonably practicable that the workplace (including the entering, exiting, and anything arising from the workplace) is safe.⁵

KEY CONCEPT: What is “reasonably practicable”?



Reasonably practicable means the standard of behaviour required to ensure health and safety that would be expected of a reasonable person under similar circumstances.

To determine what is reasonably practicable to ensure health and safety, a PCBU must take into account and balance:

- the likelihood of a hazard or risk occurring;
- the degree of harm that might result from that hazard or risk;
- what the PCBU knows or ought reasonably to know about the hazard or risk; and
- how to eliminate or minimise the risk.

Only after thinking about the extent of the risk and the available ways of eliminating or minimising it, should cost be considered and whether such cost is grossly disproportionate to that risk.

When deciding what is reasonably practicable, consideration should be given to the prevailing industry standards and the hazards and risks known at the time.

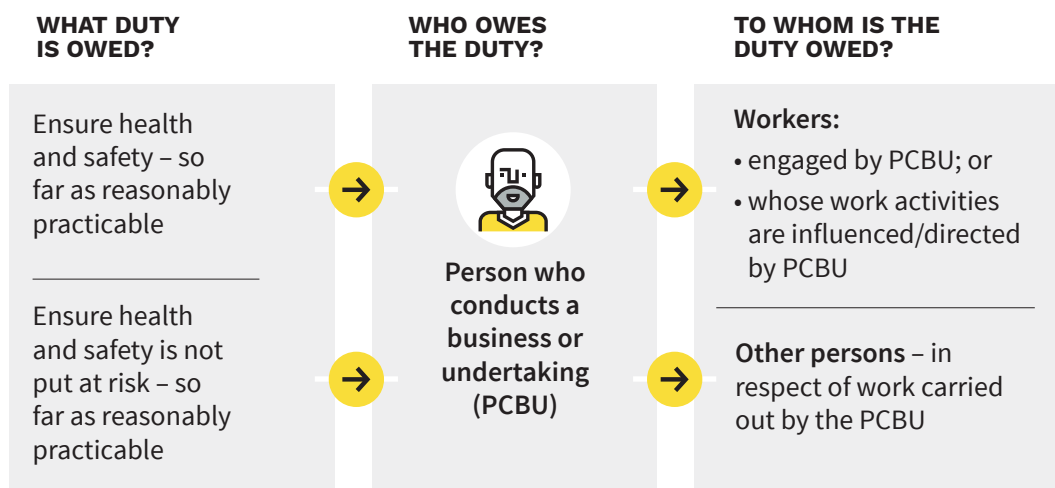
3. S36, Health and Safety at Work Act 2015.

4. See Health and Safety at Work (General Risk and Workplace Management) Regulations 2016.

5. S37, Health and Safety at Work Act 2015.



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EXAMPLE: Identifying who duties are owed to



Safe & Sound Productions is a production company established to produce a new feature film. Safe & Sound engages Lights On to provide lighting services for the film. Lights On has two employees and a contractor, James, who Lights On engages to provide extra assistance.

Who do Safe & Sound and Lights On owe duties to?

Safe & Sound:

- Lights On's workers (the two employees and contractor) are carrying out work on Safe & Sound's production set. Their work is influenced by others on set, including Safe & Sound.
- As a PCBU, Safe & Sound has an obligation to ensure the health and safety of Lights On's workers as it is influencing or directing their work. While Safe & Sound is likely not expected to directly oversee the safety of the lighting work, it is reasonable for Safe & Sound to engage Lights On as a qualified lighting services company and expect Lights On to apply their training and experience to ensure a safe lighting practice, and to consult, coordinate and cooperate with Lights On.
- Safe & Sound also has a duty to ensure the health and safety of any others on set that it may influence or direct.

Lights On:

- As a PCBU, Lights On has an obligation to ensure the health and safety of its workers while they are working.
- Lights On also has a duty to ensure the health and safety of any others on set that may it influence or direct.



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PCBUs have an obligation to consult, cooperate and coordinate

In a workplace where there is only one PCBU, the scope of the duty will be clear. However, where a number of PCBUs are present and have overlapping duties, it is not always clear who is managing and controlling the workplace. On a shared worksite it may be necessary to confirm which PCBU has general worksite management or control to ensure that others on site are clear of their obligations.

On a production set, where many of the individuals are self-employed with responsibilities as PCBUs, there will be a variety of situations where their duties overlap with those of other PCBUs. In those situations, all PCBUs involved in the production, including the production company, must consult, cooperate, and coordinate in order to manage health and safety on the set.

In practice, this means that the production company, as the organisation bringing the PCBUs together, should take a leading role in ensuring coordination across the set or designating someone to take that role on a day-to-day basis. Moreover, the heads of department may apply their specialist knowledge of a particular area to provide guidance for all aspects of the production involving that particular area. If the heads of department take on this role, other duty holders should act in accordance with this guidance on set.

PCBUs may wish to document decisions as to the management of certain aspects of a production or who has day-to-day responsibility for a particular area. Some of these assignments may be set out in contractual arrangements or decided once the PCBUs are jointly engaged in the pre-production stage. All PCBUs should have access to any register or document setting out agreed responsibilities.

Additionally, if one PCBU takes control of a particular aspect of health and safety, it does not eliminate the responsibility of other PCBUs for that matter. All PCBUs involved in the workplace retain responsibility for the risks created by the work they undertake.

KEY CONCEPT: You cannot contractually avoid your duties or insure against penalties



As a duty holder you cannot limit your liability or obligations under the Act through contracts or agreements, nor can you insure against penalties that you may receive under the Act.

Note, however, that an individual or organisation may still obtain an insurance policy to cover costs related to a health and safety investigation or prosecution.



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In the context of screen advertising, cooperation and consultation should occur between the PCBUs involved in the creation of the project – the client, the advertising agency and the production company – and on set. These PCBUs each have obligations and should understand how health and safety is to be managed at each stage of the production process.

KEY CONCEPT: What does having “overlapping duties” mean?



A PCBU’s duties may overlap with those of another PCBU. This is because a PCBU has an obligation both to individuals that it engages directly and to others that are affected by its work. Many workplaces will have multiple duty holders with overlapping duties under the Act. **PCBUs must discharge their overlapping duties to the extent they have the ability to influence and control matters.**

Overlapping duties do not require PCBUs to duplicate efforts. Instead, PCBUs will need to consult, cooperate and coordinate activities to meet their shared responsibilities. The measures a PCBU should take in relation to its own workers are likely to be different from the measures that it should take in relation to another PCBU’s workers, as it will have less influence and control over those workers.

The duty to consult, cooperate and coordinate means PCBUs should also monitor each other to ensure everyone is doing what they have agreed to do.

Working with other PCBUs does not limit the obligations of any particular PCBU.

Engagement with workers

PCBUs are required by the Act to engage with workers regarding their health and safety and provide workers with reasonable opportunities to participate in health and safety related matters. This requirement helps to give workers a greater voice in relation to health and safety matters and reinforces that everyone has a role to play in health and safety.

What is required for effective worker participation will vary between PCBUs depending on their size and the nature of their activities. In certain circumstances, a PCBU must put formal worker participation arrangements in place. These include that:

- a health and safety representative must be elected if requested by a worker and the PCBU has more than 20 workers or is in a high risk industry; and
- a health and safety committee must be established if requested by the health and safety representative, or by 5 or more workers of a PCBU with more than 20 workers in a high risk industry. The PCBU may choose not to establish a committee if it has existing systems for worker engagement.



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In the screen sector, a production company may choose to put either of these worker participation arrangements in place on its own initiative or following a request to do so. If a health and safety representative or committee is established for a production, the details should be shared with everyone involved with the production so they know who to discuss any health and safety concerns with. However, smaller PCBUs in the screen sector are unlikely to be required to have formal worker participation arrangements. PCBUs that do not put formal arrangements in place should still engage with workers about health and safety in a more informal manner to ensure everyone's voices are heard.

Satisfying your health and safety obligations as an Officer

Officers are those who hold very senior positions within a PCBU and “exercise significant influence over the management of the business.” This includes company directors, partners in a partnership and chief executives. Under the Act, an officer has a duty of due diligence to ensure that the PCBU complies with its duties.

KEY CONCEPT: What is “due diligence”?



Due diligence includes taking reasonable steps to:

- acquire and update knowledge of health and safety matters;
- understand the operations of the PCBU in which they are employed, and the hazards and risks associated with those operations;
- ensure the PCBU has appropriate resources and processes to eliminate or minimise risks to health and safety arising from work being done;
- ensure the PCBU has appropriate processes to receive and respond promptly to information about incidents, hazards and risks;
- ensure there are processes for complying with any duty under the Act; and
- verify that all of these resources and process are in place and are being used.

Whether an officer has acted with due diligence depends on whether or not he or she has taken all reasonable steps in the circumstances. What is reasonable will depend on the nature of the business, the position of the officer and the nature of the officer's responsibilities.

An officer should maintain a written record of all steps they have taken to fulfil their due diligence obligations. This will enable the officer to prove compliance in the event that it becomes necessary to do so.



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Satisfying your health and safety obligations as a Worker

Anyone working in the screen sector has a duty as a worker. You will be a worker if you are an employee, contractor, apprentice/trainee, a person gaining work experience or a volunteer worker.

As a worker, you must take reasonable care for your own health and safety and take reasonable care to ensure your acts or omissions do not adversely affect the health and safety of others.

You must also comply with a PCBU's reasonable instructions, policies or procedures aimed at ensuring compliance with health and safety duties. This includes the reasonable instructions, policies or procedures of the PCBU that you are engaged by and of any other PCBUs that are working on the same area of production. As part of the safety briefing, you should be informed of who has responsibility for each area of the production process or who is taking a leading role for health and safety on set.

Your duties as a worker are in addition to any obligations you may have as a PCBU (if you are self-employed) or as an officer. Complying with your duties under the other categories does not automatically satisfy your obligations as a worker.

Know your duties: what does health and safety look like for roles in the screen sector?

It is important for everyone involved at every stage of the production process to know what health and safety duties they have and how they can fulfil them. In this section we outline how the Act may be applied to various roles in the screen sector.

The flexible nature of the roles within the screen sector and variations from production to production mean that there is no one-size-fits-all approach to health and safety for any given role. In light of this, the below guidance is generalised and individuals involved in the production process should ensure they understand their specific responsibilities for the project they are involved with. It is important for the production company to ensure that every person involved in the production is made aware of their health and safety responsibilities from the outset of the project.

Funders

The primary responsibility for ensuring compliance with health and safety obligations is likely to fall on production companies, rather than on funders. As with most health and safety obligations, the extent of the duties placed upon a funder will depend on the level of control and influence that they have. If a funder's role is limited to simply providing funding, it is unlikely that a funder would be liable under health and safety legislation for events that occur as part of the production process because the funder has a limited amount of influence and control over the production process.

However, if a funder plays a more active role in the production process, for example, by requesting specific locations for filming, directing the ways in which filming should occur, or assisting the activities of workers during the production process; that increased level





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of involvement may give rise to a duty to ensure the health and safety of those workers whose activities they are influencing or directing.

If a funder thinks that it may have health and safety obligations in respect of a production because it is influencing or directing some aspects of the production process, the funder should seek to consult, cooperate and coordinate activities with the production company (which is likely to have responsibility for the health and safety of the production). In this situation, in order to comply with its duties, the funder may require the production company to comply with all relevant health and safety legislation and regulations as part of the funding agreement.

In the context of screen advertising, the clients engaging the advertising agency to create an advertisement are the funders. While the client approves the concept and budget created by the advertising agency, it has limited oversight over the practical aspects of production. Given the client's low level of practical control, one way it can ensure health and safety is by seeking assurances from its advertising agency that the production is compliant with health and safety.

An individual or organisation providing equipment or other materials at no cost or a discounted cost to a production is also a funder. Such funders must ensure, as far as reasonably practicable, that the equipment or materials they provide are without risk to the health and safety of other people when these are used in the intended manner.

Production companies

The production company will normally be the PCBU with primary responsibility for ensuring compliance with health and safety obligations on set because it has overarching control over the workplace and those that work within it. Although the production company may have primary responsibility in relation to the workplace, it must work with other PCBUs in order to maintain a safe work environment. This is particularly important when dealing with technical or specialist areas where other PCBUs may have more knowledge regarding safe work practices. The production company should work with others throughout the production process to ensure it has the most relevant technical knowledge.

In addition to having responsibility for the workplace itself, the production company has responsibility for ensuring the health and safety of its workers and people whose activities are influenced or directed by it. The production company is also required to ensure that other people, such as members of the public and visitors, are not put at risk by the activities that it undertakes as part of the production process.

Below is a summary of suggested steps that a production company can take at different stages of the production process to meet its obligations under the Act.





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PRE-PRODUCTION

The pre-production phase is critically important for health and safety planning because it is the point at which the production company decides on the systems that it will put in place for the duration of the production. Although this is not the most risky stage of production, the production company should be aware of and address any specific risks that may arise during pre-production and affect later stages of the production process.

Steps that the production company should take during the pre-production phase include:

- identifying and recording in a hazard register the risks to health and safety at various stages of the production process, and how these are to be managed;
- allowing adequate time and allocating sufficient financial resources to health and safety. For example, the filming schedule must address risks during the filming process. These risks may be addressed by ensuring sufficient time is provided for dangerous activities such as stunts and construction of sets. Scheduling should try to avoid creating issues such as fatigue;
- selecting and appointing competent production crew. The production company may make enquiries into the health and safety record of crew members and include clauses relating to health and safety in crew members contracts;
- appointing an individual to have responsibility for the production company's health and safety obligations. This role could be allocated to a member of the production company's staff that is appropriately trained, or the production company could contract a specialist health and safety officer to manage its health and safety obligations. If the production company contracts with an external provider it should review the contractor's experience, qualifications, and health and safety specific proposed approach to ensure that the contractor has comprehensive understanding of the role;
- allocating responsibilities for health and safety at key stages of the production to individuals who have technical knowledge and a strong health and safety record. Individual's health and safety responsibilities should be included in their job descriptions, or reflected in their contract terms;
- clearly identifying who has control of the various premises or locations that will be used throughout the production process;
- establishing a system for engaging with workers on health and safety issues; and
- communicating to all workers at an early stage in the production process what the production company's expectations and processes are for addressing health and safety.

Production companies with existing systems to support health and safety in place, as is often the case in the screen advertising industry, should ensure during the pre-production stage that no new or extra systems are required and that all involved have an understanding of its systems.



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PRODUCTION

Some practical considerations for a production company during production include:

- involving workers in workplace health and safety matters;
- communicating relevant risks to workers throughout the production process and providing updates as necessary if risks change, or new risks arise. This may be done at a daily briefing, a toolbox talk or as part of a daily update to ensure workers are fully briefed;
- ensuring that work only begins once adequate preparations have been made, including a full assessment of the risks and implementation of any processes to manage those risks;
- consulting, cooperating and coordinating with other PCBUs, including those that own or manage location sets;
- monitoring health and safety compliance throughout the production process;
- reporting all incidents and near misses in accordance with the health and safety policy;
- investigating any health and safety incidents, near misses or concerns that are escalated to the production company by those on set; and
- ensuring working hours are managed effectively throughout the production process.

POST-PRODUCTION

The risks and people involved in the post-production process are often different from those of the earlier stages of production. However, the steps that should be taken are similar to those in previous stages of production and include:

- updating the hazard registers to reflect risks that specific to the post-production phase;
- ensuring that all workers are briefed on health and safety issues, including risks and how these are being managed;
- continuing to engage with workers on health and safety matters;
- working with any other PCBUs involved in the post-production process; and
- continuing to monitor health and safety, including any incidents.



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Directors

Many directors will be self-employed contractors that are engaged by a production company to direct a particular project. In the context of screen advertising, directors are usually contractors, despite having ongoing relationships with a particular production company. Accordingly, directors will have a range of health and safety obligations:

- A self-employed director will be a PCBU. As a PCBU, a director must:
 - ensure, so far as is reasonably practicable, the health and safety of any person he or she engages or whose work they direct or influence;
 - consult, cooperate and coordinate with the other PCBUs in the workplace. This is likely to include the production company, producers, heads of department and assistant directors among others; and
 - make sure his or her decisions during the planning or filming stages do not put others at risk.
- A self-employed director will also have due diligence obligations as an officer of their business. A director can meet his or her due diligence obligations by understanding the health and safety risks of their business and the controls put in place to manage those risks. Information regarding health and safety should be recorded in writing to demonstrate the director understands the health and safety issues.
- Directors are also workers in respect of the production company. As a worker, a director must:
 - not act in a way that could put others' safety at risk; and
 - comply with the production company's reasonable instructions (which may come via other PCBUs that have specialist or technical knowledge).

A director should ensure the production company has provided him or her with information regarding its health and safety policy and identified who is responsible for health and safety issues that may arise during the production. This may occur as part of a general induction and if it has not been done, the director should seek further information from the production company.

Producers

As with directors, many producers (including executive, assistant, co-producers and assistant producers) are self-employed. In the film industry, producers may also have a key role in establishing the entity which is producing a particular project. A producer will have a range of health and safety obligations in any given project.

- A self-employed producer will be a PCBU. As a PCBU, a producer has obligations, including:
 - ensuring, so far as is reasonably practicable, the health and safety of any person he or she engages or whose work they influence or direct;
 - consulting, cooperating and coordinating with the other PCBUs in the workplace. This is likely to include the production company, director, heads of department and assistant directors among others; and





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- making sure that his or her decisions during the planning or production stages do not put others at risk.
- A self-employed producer will also have due diligence obligations as an officer of their business. A producer can meet his or her due diligence obligations by understanding the health and safety risks of their business and the controls put in place to manage those risks. Information regarding health and safety should be recorded in writing to demonstrate the producer understands the health and safety issues.
- A producer will also be a worker of the production company. As a worker, a producer must:
 - not act in a way that could put others' safety at risk; and
 - comply with the production company's reasonable instructions (which may come via other PCBUs that have specialist or technical knowledge).

A producer should ensure that the production company has provided him or her with information regarding its health and safety policy and identified who is responsible for health and safety that may arise during the production. If this information has not been provided, a producer should request it from the production company.

In addition to producers' specific duties under the Act, a producer may have health and safety duties as part of his or her role within the production company. A production company may allocate health and safety tasks to a producer because the producer's oversight over the entire production process enables the producer to help to set the health and safety culture for the entire production. Tasks allocated to a producer on behalf of the production company may include:

- overseeing the development and implementation of the health and safety policy;
- reviewing the health and safety records of contractors prior to engaging them;
- delegating health and safety responsibilities to workers involved in the production;
- ensuring that workers, particularly those in senior roles – for example, heads of department – are provided with the necessary training and resources to implement the health and safety policy;
- reviewing the performance of workers with health and safety responsibilities to ensure that they are carrying out their roles;
- ensuring compliance with relevant regulations and health and safety laws;
- discussing health and safety issues with workers and addressing any concerns raised;
- maintaining open communication channels with other PCBUs involved in the production;
- escalating concerns or conflicts about health and safety issues to the production company if required;
- ensuring a full risk assessment is carried out at all stages of the production;
- overseeing the implementation of controls to manage the risks identified in the risk assessment;



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- ensuring appropriate systems are put in place to alert workers and others in the workplace to risks;
- reporting all incidents or near misses to the production company. The producer may have responsibility on behalf of the production company for ensuring incidents are reported to the regulator, if required; and
- overseeing risk management and injury management in consultation with workers.

In carrying out these tasks, the producer is assisting the production company to comply with its obligations. Any health and safety related aspects of the producer's role should be clearly set out in the producer's contract so all parties are aware of their obligations.

Line producers

Many line producers are self-employed contractors that are engaged by a production company to assist with a specific project. As with the roles discussed above, this means they will have a range of health and safety obligations.

- Self-employed line producers will be PCBU's. As a PCBU, a line producer must:
 - ensure, so far as is reasonably practicable, the health and safety of any person he or she engages or whose work they influence or direct;
 - consult, cooperate and coordinate with the other PCBU's in the workplace. This is likely to include the production company, producer, director, heads of department and assistant directors among others; and
 - ensure that his or her decisions during the planning or production stages do not put others at risk.
- A self-employed line producer will also have due diligence obligations as an officer of their business. A line producer can meet his or her due diligence obligations by understanding the health and safety risks of their business and the controls put in place to manage those risks. Information regarding health and safety should be recorded in writing to demonstrate the line producer understands the health and safety issues.
- Line producers will also be workers because they are contracted to the production company. As a worker, a line producer must:
 - not act in a way that could put others' safety at risk; and
 - comply with the production company's reasonable instructions (which may come via other PCBU's that have specialist or technical knowledge).

Line producers, along with the production manager, have practical oversight of the entire production process. This means line producers may have health and safety responsibilities as part of their role including:

- creating a production schedule that provides adequate time for the work to be undertaken in conjunction with other parties;
- monitoring ongoing health and safety performance;
- ensuring training is provided to those that require it; and
- reporting any incidents or near misses to the relevant person, for example the assistant director or safety officer.





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Production managers

Production managers have an oversight role on set and often play a vital role in the production company's health and safety team. In addition to the practical aspects of their role focusing on health and safety, production managers also have obligations under the Act.

- Self-employed production managers will be PCBUs. As a PCBU, a production manager must:
 - ensure, so far as is reasonably practicable, the health and safety of any person he or she engages or whose work they influence or direct;
 - consult, cooperate and coordinate with the other PCBUs in the workplace. This is likely to include the production company, producer, line producer, director and heads of department among others; and
 - ensure that his or her decisions during the planning or production stages do not put others at risk.
- Self-employed production managers will also have due diligence obligations as an officer of their business. A production manager can meet his or her due diligence obligations by understanding the health and safety risks of their business and the controls put in place to manage those risks. Information regarding health and safety should be recorded in writing to demonstrate the production manager understands the health and safety issues.
- Production managers will also be workers because they are contracted to the production company. As a worker a production manager must:
 - not act in a way that may put others' safety at risk; and
 - comply with the production company's reasonable instructions (which may come via other PCBUs that have specialist or technical knowledge).

Production managers' oversight of the production means they are likely to be tasked with a range of practical, day-to-day health and safety responsibilities by the production company. These responsibilities may include:

- ensuring the cast, crew and others follow safe work practices;
- providing information about the risks on set and the measures in place to minimise those risks to cast and crew;
- putting safety information on daily call-sheets to inform those on set about any risks;
- notifying those on set of health and safety risks during daily briefings;
- ensuring sets and locations are inspected for potential hazards and that potential hazards are eliminated or minimised;
- ensuring personal protective clothing and equipment is provided to and used by workers when required. Decisions relating to when protective equipment may be required may be made in conjunction with other PCBUs on set that have specialist technical knowledge;





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- ensuring emergency and first aid procedures are in place and communicated to the cast and crew;
- ensuring a proper process for the reporting and investigation of incidents and events is in place and followed;
- assisting with investigating incidents or near misses if required; and
- reporting any incidents or near misses to the relevant person, for example the assistant director or safety officer.

Some of these responsibilities may be shared with a health and safety officer, if one has been appointed for the particular project.

Heads of department

Heads of department are often self-employed, either working on their own or with a small number of employees that have skills in their specialist area. As both a PCBU and a contractor to the production company, a head of department has multiple duties under the Act.

- A self-employed head of department will be PCBU. As a PCBU, a head of department must:
 - ensure as far as reasonably practicable, the health and safety of any person he or she engages or whose work they influence or direct;
 - consult, cooperate and coordinate with other PCBUs in the workplace, including the production company, director, producer, assistant director and other heads of department; and
 - make sure his or her decisions during the planning or production stages do not put other at risk.
- A self-employed head of department will also have due diligence obligations as an officer of their business. A head of department can meet his or her due diligence obligations by understanding the health and safety risks of their business and the controls put in place to manage those risks. Information regarding health and safety should be recorded in writing to demonstrate the head of department understands the health and safety issues.
- A head of department will also be a worker because he or she has been contracted to the production company. As a worker, a head of department must:
 - not act in a way that could put others' safety at risk; and
 - comply with the production company's reasonable instructions (which may come via other PCBUs that have specialist or technical knowledge).

A head of department may also have a range of practical responsibilities throughout the production process. Many of these responsibilities are assigned to a head of department by the production company because of the head of department's high level of knowledge of a particular aspect of the production. Such responsibilities may include:

- ensuring the health and safety of crew members within the department by ensuring that information about the risks is provided to everyone;





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- conducting risk assessments for specific departmental activities in consultation with the workers involved in the particular department;
- ensuring departmental staff are competent to undertake the required work functions;
- ensuring all equipment, plant and machinery within the department is safe to use;
- holding safety meetings for workers in the department to discuss health and safety concerns and ensuring that these are documented;
- assisting with investigating incidents or near misses within the department, if required;
- reporting all incidents or near misses within the department to the relevant person, for example the assistant director or safety officer; and
- working with the assistant director and production company to ensure workers' concerns about health and safety are addressed.

Assistant directors

Assistant directors (including 1st, 2nd, 3rd and additional assistant directors) act as planners, coordinators and set managers by providing a conduit of information between the production office, producers, creatives, the crew and director, in addition to having a practical managerial role on the set. Assistant directors are likely to have a range of obligations under the Act, as both PCBUs and workers.

- Self-employed assistant directors will be PCBUs. As a PCBU, an assistant director must:
 - ensure, so far as is reasonably practicable, the health and safety of any person he or she engages or whose work they influence or direct;
 - consult, cooperate and coordinate with the other PCBUs in the workplace. This is likely to include the production company, producers, health and safety officer, director and heads of department among others; and
 - make sure his or her decisions during the planning or production stages do not put others at risk.
- Self-employed assistant directors will also have due diligence obligations as an officer of their business. An assistant director can meet his or her due diligence obligations by understanding the health and safety risks of their business and the controls put in place to manage those risks. Information regarding health and safety should be recorded in writing to demonstrate the assistant director understands the health and safety issues.
- The assistant director will also be a worker because the assistant director is contracted to the production company. As a worker, the assistant director must:
 - not act in a way that could put others' safety at risk; and
 - comply with the production company's reasonable instructions (which may come via other PCBUs that have specialist or technical knowledge).





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The assistant director's relationship with the cast and crew puts the assistant director in a position to ensure that health and safety practices are being followed throughout the set. The assistant director can do this by:

- ensuring cast, crew and others follow safe work procedures and report incidents where safe work practices are not followed;
- ensuring sets and locations are inspected for potential hazards and that hazards are eliminated or minimised;
- ensuring personal protective clothing and equipment is provided and used by workers where required;
- ensuring emergency and first aid procedures are followed;
- reporting and investigating incidents/accidents and near misses;
- making the health and safety of the cast and crew a priority when planning and filming scenes;
- supporting other assistant directors in their occupational health and safety responsibilities;
- reviewing daily call sheet to ensure risks are recorded;
- notifying those on set of new risks at daily briefings;
- working with heads of department and the production company to ensure workers' health and safety concerns are addressed or escalated as appropriate;
- reporting any incidents or near misses to the relevant person, for example the safety officer, if the assistant director is not collating these reports;
- escalating reports about incidents or near misses to the production company;
- conducting safety consultations with cast, crew and others whenever filming has moved to a new location or where potential hazards are presented; and
- assist with investigating incidents or near misses.



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Safety officers

As part of the production company's obligations as a PCBU they may choose to engage a safety officer to oversee the health and safety aspects of the production process. This person may join the production at an early stage, or only be present during the filming.

In most situations the safety officer is likely to be an employee of a contractor engaged by the production company. In these circumstances, the safety officer only has obligations as a worker under the Act. As a worker, the safety officer must:

- not act in a way that could put others' safety at risk; and
- comply with the production company's reasonable instructions (which may come via other PCBUs that have specialist or technical knowledge).

In situations where a safety officer is contracting with the production company directly, the safety officer's business will be a PCBU, and the safety officer is likely to be an officer of that business with due diligence obligations.

In a practical sense a safety officer is likely to have one of the broadest health and safety roles within the production, particularly if they are engaged at an early stage. Many of the tasks allocated to a safety officer will depend on the safety officer's level of skills and experience. A safety officer's role may range from simply providing first aid support on set to taking responsibility for all health and safety related tasks from early in the production process. It is up to the production company to determine the approach and to make the role clear as part of the safety officer's job description.

Given the variation among the possible roles that safety officers may undertake, potential responsibilities of a safety officer may include:

- assisting with the preparation of risk assessments in conjunction with heads of department and other members of the production team;
- assisting in developing and updating the health and safety information provided to the cast and crew as part of the induction process;
- conducting health and safety inductions for new members of the cast and crew working on the production to ensure everyone is aware of the relevant protocols and responsibilities;
- providing completed risk assessments to everyone on set so they are aware of the risks;
- recording and reporting any health and safety incident or near misses;
- assisting with investigating incidents or near misses;
- escalating information about incidents or near misses to the production company;
- addressing health and safety concerns of workers and escalating these to others on set if required;
- assisting with ensuring that any safety or protective equipment is on set when required;
- managing and applying first aid, including ensuring an adequate supply of first aid equipment; and
- liaising with back-up medical facilities to ensure sufficient support is able to be provided if required.





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Crew

Due to the specialised nature of the screen sector, most crew members will be employees of contractors or engaged by the production company or independent contractors who are directly engaged by the production company.

- Under the Act, self-employed crew will be PCBUs. However, a crew member need only discharge those duties to the extent he or she has the ability to influence and control any particular matter. Thus, to the extent a crew member has the ability to influence or control a matter, the crew member must:
 - ensure, so far as reasonably practicable, the health and safety of any individuals whose work he or she influences or directs; and
 - consult, cooperate and coordinate as necessary with other PCBUs in the workplace. This may include the head of department and assistant director.
- Self-employed crew will also have due diligence obligations as an officer of their business. This due diligence obligation means that the crew member should understand the health and safety risks within their influence and control, and how these are managed.
- All crew members will be workers on set. Often, crew members may have limited influence or control – for example, if engaged as a general or low level labourer – and their primary responsibilities under the Act will be as workers. As a worker, a crew member must:
 - not do anything that may put others health and safety at risk;
 - comply with the reasonable instructions of the PCBUs employing or engaging them;
 - report all hazards, near misses and incidents to the relevant head of department; and
 - raise any concerns about health and safety matters with the relevant person, for example the relevant head of department, safety officer or assistant director. Crew members should be informed as part of the induction process how to do this.





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Cast

The structure of the screen sector means that members of the cast are usually independent contractors, be engaged by the production company, cast members will usually:

- Self-employed cast members will be PCBUs. However, a cast member need only discharge those duties to the extent he or she has the ability to influence and control any particular matter. Thus, to the extent a cast member has the ability to influence or control a matter, the cast member must:
 - ensure, so far as reasonably practicable, the health and safety of any person whose activities he or she influences or directs;
 - consult, cooperate and coordinate with other PCBUs in the workplace including the producer and director.
- Self-employed cast members will also have due diligence obligations as an officer of their business. This due diligence obligation means that the cast member should understand the health and safety risks within their influence and control, and how these are managed.
- All members of a cast will be workers. As workers, cast members must:
 - not do anything that may put others health and safety at risk;
 - comply with the reasonable instructions of the production company;
 - report all hazards, near misses and incidents as required by the production company's policies;
 - raise concerns about health and safety matters in accordance with the production company's policies.



WHAT IF CHILDREN ARE INVOLVED IN THE PRODUCTION?

There will often be children and young persons involved in a production – particularly during filming. When dealing with health and safety regulations, a child is defined as being under 15 years old. The involvement of children brings with it a range of additional health and safety concerns that everyone involved in the production process must bear in mind.

Generally, a child will have been engaged by the production company to appear in an onscreen role and will have the same responsibilities as other cast members outlined above. However, the production company and other PCBUs on set that may direct or influence a child's work have additional obligations to ensure the child is kept safe.

There are a range of regulations which provide further guidance as to the types of work that children can be engaged in, and the practical things that those in the screen sector need to think about when working with children.⁶

Most notably the regulations require that children:

- do not work in any area where construction work is being carried out, or in any area where work is being carried out that it is likely to cause harm to the child's health and safety;⁷
- do not lift weights or perform any task that is likely to be injurious to their health; and⁸
- do not operate machinery, including tractors and other self-propelled plant.⁹

6. Health and Safety in Employment Regulations 1995.

7. cl 54 and 58B, Health and Safety in Employment Regulations 1995.

8. cl 55 and 58C, Health and Safety in Employment Regulations 1995.

9. cl 56 and 58D, Health and Safety in Employment Regulations 1995.



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Additionally, children under the age of 16 years should not work between the hours of 10pm and 6am. However, if required, work may be undertaken during these hours if agreed with the child's parent or guardian and if the child's safety is provided for.

PRACTICAL CONSIDERATIONS

When working with a child on a film set, the child's age and maturity, as well as the nature of the work that they are being asked to undertake, will determine the health and safety measures required. There is currently no guidance from the New Zealand regulator on the health and safety considerations of engaging children. However, current industry practice may suggest some factors to consider when engaging a child, including:¹⁰

- the hours the child will reasonably be able to work. This will depend on their age, but suggested hours (including travel time) are:

Up to an including 8 year olds	Industry practice differs, but generally hours are limited to a maximum of either 4 or 6 hours per day
8 to 11 year olds	Maximum of 8 hours per day
12 to 16 years olds	Maximum of 10 hours per day

- ensuring the child has an appropriate chaperone at all times while on set. This may be the child's parent or guardian (particularly with babies and young children), or another suitably qualified adult. If the chaperone is not the child's parent or guardian, the chaperone must have undergone appropriate police checks;
- providing the child with sufficient rest breaks – what breaks are sufficient will depend on the child's age and circumstances;
- supplying the child with adequate rest facilities which provide quiet and shelter from the elements;
- providing breaks to complete school work if the child is working on a longer project – the amount of time required will depend on the age of the child and the nature of the schooling being undertaken;
- having appropriate food on set;
- ensuring any make-up used is non-irritating;
- ensuring children are kept a safe distance from dangerous materials, for example, pyrotechnics and weapons; and
- ensuring the child is not exposed to harsh light.

When engaging a child for a project you should ensure that you are aware of any applicable health and safety regulations and any specific requirements imposed by the contract for service.

10. A Guide for Safe Working Practices in the New Zealand Theatre and Entertainment Industry, March 2007, 89-90.



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What are the consequences of not satisfying my health and safety obligations?

The Act provides a tiered liability regime. The penalties under the Act have significantly increased from those in the Health and Safety in Employment Act 1992. This increase in penalties is to provide a stronger sanction and to deter duty holders from breaching their workplace health and safety duties. These aims are reinforced by the fact that it is unlawful to insure against fines under the Act.

The tiered liability regime is also intended to provide the Courts with guidance as to the appropriate level of the penalty.

The penalties under the Act are set out in the table below:

TRIGGERING EVENTS	INDIVIDUAL	OFFICER	COMPANY
Breach with reckless exposure to risk of serious injury/death	Up to \$300,000 and/or five years prison	Up to \$600,000 and/or five years prison	Up to \$3,000,000
Breach with exposure to risk of serious injury or death	Up to \$150,000	Up to \$300,000	Up to \$1,500,000
Breach of duty	Up to \$50,000	Up to \$100,000	Up to \$500,000

In addition to the penalties under the Act, the associated regulations contain a range of other penalties. These include a \$300 fine for an individual or a \$1,500 fine for an entity for failing to record a notifiable incident. Workers who fail to wear personal protective equipment may be fined \$500.