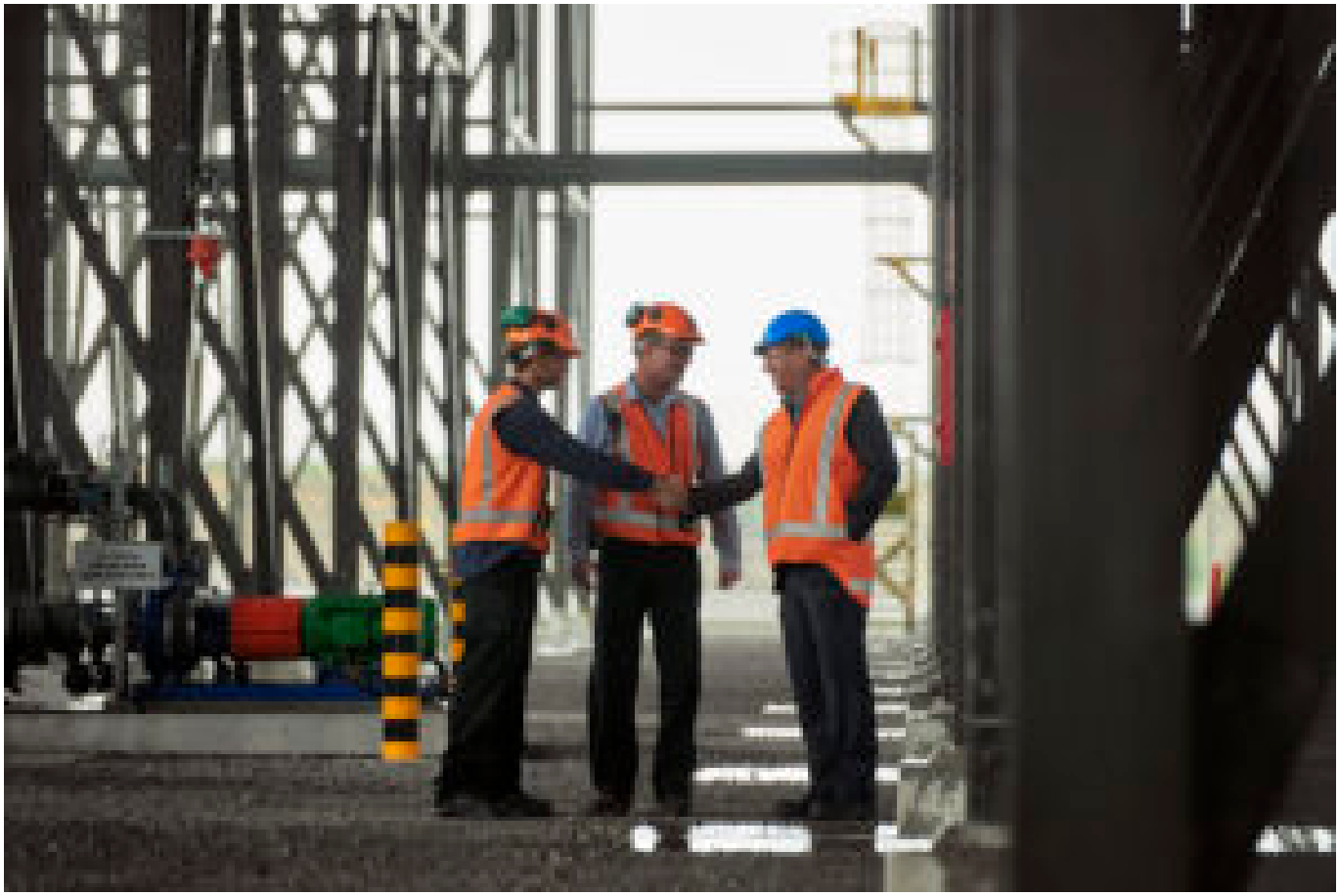


Health & Safety at Work Act 2015 and Incorporated Societies

Posted on: October 16, 2022

HSWA imposes obligations on persons conducting a business or undertaking or PCBUs and the PCBU's officers. Many of those obligations relate to the PCBU's workers and other persons in a workplace.

First let's look at how those key definitions apply to incorporated societies:

- PCBUs – the definition of PCBUs specifically excludes volunteer associations which are defined as a group of volunteers working together for a community purpose where none of the volunteers employs any person to carry out work for the association. So, if an association *does* employ people to carry out work for the association, the organisation is a PCBU.
- Officers – an officer under HSWA is a person who occupies a position comparable to a director of a company or who occupies a position that allows them to exercise significant influence over the management of the organisation. As a general rule of thumb, if your society has re-registered under the Incorporated Societies Act 2022 (2022 Act), the same individuals who are deemed officers under the 2022 Act will likely also be officers under HSWA.
- Workers – a worker of an incorporated society may be an employee, a contractor, subcontractor, apprentice or trainee, a person gaining work experience or a volunteer worker. A volunteer worker is someone who works with the knowledge and consent of the PCBU on an ongoing or regular basis and is an integral part of the business or undertaking. A volunteer who does not meet all those criteria is a not a worker under HSWA. There are also some specified exceptions listed in the Act including people who participate in fundraising activities, assist with sports and recreation for some societies and people caring for others in the volunteer's home.
- Other persons – people who are not workers are referred to in HSWA as "other persons". This includes volunteers who are not volunteer workers, clients and customers and visitors.
- Workplace – a workplace is any place work is being carried out, or is usually carried out, for the business or undertaking and includes any place a worker goes while at or likely to be at work.

Duties

PCBUs must ensure, as far as reasonably practicable, the health and safety of workers while those workers:

- are at work at the business or undertaking; or
- while the workers are influenced by the PCBU while carrying out the work; and
- must also ensure the health and safety of other persons is not put at risk from work carried out as part of the business or undertaking.

If the PCBU manages or controls a workplace they have additional obligations to ensure safe entry and exit from the workplace for anyone there lawfully.

If a PCBU has a duty under the Act, officers of the PCBU must exercise due diligence to ensure the PCBU complies with that duty. That means that an officer of a PCBU must exercise the care, diligence, and skill that a reasonable officer would exercise in the same circumstances, taking into account (without limitation) the nature of the business or undertaking, the position of the officer, and the nature of the responsibilities undertaken by the officer.

Due diligence includes taking reasonable steps to:

- have up to date knowledge of health and safety matters;
- have an understanding of the operations of the business or undertaking and the associated hazards and risks;

ensure the PCBU has:

- appropriate resource and processes to eliminate or minimise risks; and
- has processes for considering information about incidents, hazards and risks in a timely way and has processes for complying with its duties under HSWA.

The standard of care and diligence required of officers will depend on the nature of the business or undertaking and the position of the officer and their responsibilities.

Workers and other persons must take reasonable care of their own health and safety and must take care that their acts or omissions do not adversely affect others. They must comply as far as they are reasonably able with instructions given by PCBUs.

Liability and offences

HSWA contains both offences and some hefty penalties for people who fail their duties under the HSWA including terms of imprisonment and fines of up to $3 million in some circumstances.

However, if the duty holder is a volunteer, whether they are a volunteer officer, a volunteer worker or other person as described above, their potential offences are limited to failing the duty of workers and the duty of other persons at a workplace. An officer who is for-profit is not a volunteer so is subject to the same penalties as officers of for-profit entities.

If you require advice or assistance with any of these issues, contact Colleen Bain.