



MEMORANDUM OF UNDERSTANDING

between

WorkSafe New Zealand

and

The New Zealand Defence Force

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Proactive release

THIS MEMORANDUM OF UNDERSTANDING IS MADE ON THE 30th DAY OF MAY 2019

BETWEEN The Chief of Defence Force, New Zealand Defence Force (NZDF)

AND The Chief Executive, WorkSafe New Zealand (The Regulator)

BACKGROUND

1. This Memorandum of Understanding (MOU) acknowledges the need for cooperation between the New Zealand Defence Force (NZDF) and WorkSafe New Zealand (WorkSafe), collectively referred to as the 'Participants'. It establishes standardised procedures by which the Participants can work together and offer and provide support to each other in fulfilling their functions.
2. This MOU seeks to clarify the roles of each Participant and to set out ways for each Participant to work together toward achieving the Government's objectives. These include improved work related health and safety outcomes, and effective collaboration.
3. The NZDF is established and regulated under the Defence Act 1990, Armed Forces Discipline Act 1971 (AFDA) and Defence Regulations 1990. The NZDF is not currently a designated agency under section 191(3)(d) of the Health and Safety at Work Act 2015 (HSWA).
4. WorkSafe is established by the WorkSafe New Zealand Act 2013. WorkSafe is the primary work health and safety regulator. WorkSafe's main objective is to promote and contribute to a balanced framework for securing positive work health and safety outcomes.
5. WorkSafe has health and safety responsibilities under other statutes including the Hazardous Substances and New Organisms Act 1996, the Electricity Act 1992, and the Gas Act 1992 and other regulations made under HSWA, including the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016, the Health and Safety at Work (Hazardous Substances) Regulations 2017, the Health and Safety at Work (Major Hazard Facilities) Regulations 2016.
6. This MOU and accompanying Schedules detail how the Participants will work together to ensure NZDF can perform its defence and security function while meeting its responsibilities under HSWA. The NZDF also has a role as a person conducting a business or undertaking (PCBU). This MOU does not:
 - a. affect either Participant's responsibilities as a regulator or PCBU; or
 - b. require or permit any person to take any action that would be, or could reasonably be expected to be, prejudicial to New Zealand's defence or national security, or NZDF operational security.
7. This MOU revokes and replaces all previous MOU and any implementing arrangements or schedules between the Participants. This includes any prior MOU and operational schedules between the NZDF and the Department of Labour or the Ministry of Business Innovation and Employment regarding work health and safety enforcement.
8. This MOU does not create any legal rights, duties or binding obligations on the Participants.

COMMENCEMENT

9. This MOU is effective from the date of signing and will continue to be in effect until it is superseded or terminated.

SCOPE

10. Nothing in this MOU prevents either Participant from providing assistance, cooperation and support to each other outside of the terms of this MOU or its schedules, where there is agreement between the Participants.

11. This MOU does not apply to provisions of HSWA where the NZDF has an exemption provided by the Governor-General by Order in Council under section 213 of HSWA.

12. This MOU does not apply to worker participation in the Armed Forces in accordance with section 13 of HSWA.

13. This MOU will not apply in relation to operational activities. The Participants acknowledge that:

- a. HSWA does not apply to an 'operational activity' within the meaning defined in section 7(4) of HSWA.
- b. Under section 7(5) of HSWA, the Chief of Defence Force can declare any service or activity or class of service or activity to be an 'operational activity' for the purposes of section 7 of HSWA. Communication of this information is outlined in Schedule A.
- c. Under section 7(9) of HSWA and in commanding the NZDF, the Chief of Defence Force must take into account the need to promote the purpose of HSWA to the greatest extent practicable consistent with maintaining the defence of New Zealand.

PRINCIPLES

14. The Participants will collaborate, cooperate and coordinate their activities to the maximum extent possible in accordance with the following principles:

- a. Open communication – each Participant will communicate openly, collegially, and promptly to achieve the best overall regulatory outcomes.
- b. No surprises – each Participant will inform the other of any emergent situation in an area of common interest as soon as practicable.
- c. Collaboration – each Participant will work to seek mutually beneficial outcomes where feasible and to increase understanding of what those outcomes might be.
- d. Integrity – each Participant will actively cooperate in a manner that recognises the other Participant's functions, duties and powers in a way that fosters mutual respect and trust.

15. Any collaboration, cooperation and coordination of activities may be undertaken solely between the Participants, or, on agreement, may involve a third-party (such as another regulator).

COOPERATION AND CONSULTATION

16. The Participants agree, where practicable, to share information and expertise to support WorkSafe's regulatory role and the continuous improvement of work health and safety in the NZDF. This could include:

- a. discussing any identifiable trends and preventative measures;
- b. discussing developments in work health and safety practice; or
- c. advising of any impending amendments to legislation, or new regulations, that could impact how the NZDF conducts its business.

17. The Participants will inform and consult with each other when developing policy in areas where the Participants' interests overlap.

18. The Participants will meet as needed to discuss:

- a. each Participant's work priorities in areas of common interest; and
- b. where the Participants can increase collaboration and cooperation.

19. A third party (such as another regulator) may be invited where it is considered a multi-agency involvement would improve effective and efficient work health and safety.

ACCESS TO DEFENCE AREAS

20. Under the Defence Regulations 1990 the NZDF may, for the purpose of maintaining security, prohibit or restrict access to defence areas, which includes ships and aircraft, and take certain other measures that may be necessary or expedient for the control and security of such areas or places.

21. HSWA provides that inspectors and health and safety medical practitioners may only enter and inspect a defence area in accordance with a written agreement between WorkSafe and the Chief of Defence Force.

22. For the purposes of sections 168(3) and 183(3) of HSWA, WorkSafe and the Chief of Defence Force agree that if an inspector or health and safety medical practitioner wants to enter a defence area:

- a. WorkSafe will first notify the NZDF that access is required, including immediate access and access required for a follow-up inspection; and
- b. the officer in charge of the defence area will make a decision regarding authorising such access to the particular defence area and may grant or refuse access, or place limits on such access

in accordance with Schedule D.

23. The points of contact for accessing Defence Areas are set out in [Schedule A](#).

TRAINING

24. The Participants will collaborate in identifying training of common interest to each other and, where practicable, will coordinate training programmes for inspectors and other staff.

DISCLOSURE OF INFORMATION

25. The Participants will consider developing and implementing strategies to share information, including classified information, subject to legislative requirements (such as the Privacy Act 1993, Official Information Act 1982 and Criminal Disclosure Act 2008) and government policies (such as the Protective Security Requirements 2014), to improve cooperation on all matters of mutual interest.

26. The Participants acknowledge that:

- a. certain information may be withheld by the NZDF under the Armed Forces Discipline Act 1971; and
- b. WorkSafe staff, within security constraints, may have access to information, including classified information, which is otherwise not to be disclosed without written authority from the Chief of Defence Force.

27. If either Participant receives a Privacy Act or Official Information Act request in respect of this MOU or any activity undertaken pursuant to it, they will consult with the other Participant as to the appropriate response. The receiving Participant will give due consideration to the law and the other Participant's views in making this decision.

NOTIFICATIONS

28. Subject to exclusions under section 7 of HSWA, in the event of a notifiable event, notifiable incident or notifiable injury, illness or death, the NZDF agrees to notify WorkSafe. After initial notification, the designated staff members listed in a schedule become the points of contact. NZDF will share as much information as possible without being prejudicial to the defence or national security of New Zealand, or NZDF operational security.

29. The expected level of notifications of work health and safety matters to WorkSafe by the NZDF are outlined in a schedule.

INVESTIGATIONS

30. The NZDF may conduct a court of inquiry under section 200 of AFDA; while WorkSafe may conduct an investigation under HSWA.

31. The Participants will likely require access to the same information for different purposes. Where possible, WorkSafe and the NZDF will work cooperatively, recognising the evidential requirements of WorkSafe and the provisions of the AFDA.

32. The Participants' agreement regarding the management of investigations is confirmed in a schedule.

SCHEDULES

33. The Participants may develop schedules relating to specific activities which may be undertaken under this MOU. All schedules are attached to this MOU.

34. Additional schedules may be developed pursuant to this MOU at any time, and may be signed by the Participants' Representatives.

35. The Chief of Defence Force authorises the NZDF Director of Safety to sign the schedules in relation to this MOU on behalf of the Chief of Defence Force.

RESOURCING

36. The provision of any support, cooperation or assistance under this MOU and its associated schedules is subject to the availability of resources. Such support, cooperation or assistance may be limited, adjusted or terminated as deemed necessary by either Participant to meet operational commitments.

COSTS

37. Costs incurred in response to a request for support by the other Participant will be met by the requesting Participant. All other costs incurred pursuant to this MOU, including costs associated with training, will be met by the Participant incurring the cost, unless the Participants' representatives mutually agree otherwise in writing. Cost attributions are specified in a schedule.

VARIATION, REVIEW, AND TERMINATION

38. This MOU and any schedules may be amended in writing at any time by mutual consent of the Participants. Any amendments to the MOU will be signed by the Chief of Defence and the Chief Executive of WorkSafe. Any amendments to the schedules will be signed by the Participants' representatives on their behalf.

39. This MOU and schedules can be terminated by mutual consent of the Participants. The MOU and schedule can also be terminated by either Participant by giving one month's written notice to the other Participant.

40. If this MOU is terminated all schedules will be terminated. However, termination of a particular schedule will only affect that Schedule.

RESOLVING DIFFERENCES

41. All differences between the Participants about the interpretation or application of this MOU, including any of its appendices or any specific schedule, will first be attempted to be resolved at the earliest opportunity by the Participants' representatives.

42. If any such differences cannot be resolved between the Participants' representatives within 28 days of a Participant raising the difference, then the matter will be referred, in writing, to the Chief of Defence and the Chief Executive of WorkSafe for final resolution.

43. The Participants will resolve any disputes arising under the MOU by discussion and co-operation and will not refer any difference to any third party.

PARTICIPANTS' REPRESENTATIVES

44. The Participants' representatives for the purposes of this MOU are:

NEW ZEALAND DEFENCE FORCE Director of Safety

Address: Headquarters New Zealand Defence Force
Freyberg Building
20 Aitken Street
Wellington 6011

Private Bag 39997

Wellington Mail Centre

Lower Hutt 5045

WORKSAFE NEW ZEALAND

General Manager Better Regulation and Legal

Address: 86 Customhouse Quay
Wellington 6011

PO Box 165
Wellington 6140

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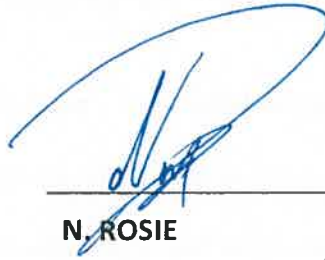
SIGNED at Wellington for and on behalf of the NZDF and WorkSafe



K. R. SHORT

Air Marshal

Chief of Defence Force



N. ROSIE

Chief Executive

WorkSafe New Zealand

Dated this 30th day of MAY 2019

Dated this 30 day of MAY 2019

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DEFINITIONS

45. The following definitions apply to this MOU and any appendices and schedules to this MOU:

Adventure activity has the same meaning as section 4 of the Health and Safety at Work (Adventure Activities) Regulations 2011.

Areas of common interest mean those matters where each Participant contributes to a shared outcome or has a shared role or interest. These include the administration by each Participant of applicable legislation to ensure a whole of government approach to regulation in each Participant's respective sectors, such as:

- a. sharing information relating to work health and safety;
- b. consulting when developing policy in areas where the Participants' interests overlap;
- c. sharing technical expertise when developing guidance information, codes of practice, and other regulatory instruments;
- d. entry to defence areas by WorkSafe inspectors and health and safety medical practitioners; and
- e. how the Participants will work together in light of legislative exceptions that apply to hazardous substances controlled by the Minister of Defence.

Armed forces has the same meaning as section 2(1) of the Defence Act 1990.

Contact persons means the positions identified in the schedule to this MOU as the best point of contact. Either Participant will provide names of new contact persons in the event of personnel changes.

Defence area has the same meaning as section 2(1) of the Defence Act 1990.

Hazard has the same meaning as section 16 of HSWA.

Hazardous substances in relation to the HSNO Act, has the same meaning as section 2(1) of the HSNO Act 1996, and in relation to the Health and Safety at Work (Hazardous Substances) Regulations 2017, has the same meaning as regulation 4 of those Regulations.

HSWA means the Health and Safety at Work Act 2015. Application of HSWA in the context of this MOU is covered in a schedule.

Inspector has the same meaning as section 16 of HSWA.

Major hazard facility has the same meaning as section 4 (1) of the Health and Safety at Work (Major Hazard Facilities) Regulations 2015 and includes any subsequent amendments to, and any regulations made under, the Act.

Member of the defence force has the same meaning as section 2(1) of the Defence Act 1990 and includes any member of any foreign armed force attached to the NZDF pursuant to section 23A of that Act.

Military aircraft means any aircraft, as defined in section 2(1) of the Defence Act 1990, owned by or operated by the NZDF.

Naval ship has the same meaning as section 2(1) of the Defence Act 1990.

Notifiable event has the same meaning as section 16 of HSWA.

Notifiable incident has the same meaning as section 16 of HSWA.

Notifiable injury or illness has the same meaning as section 16 of HSWA.

Notification has the same meaning as section 16 of HSWA.

Officer has the same meaning as section 18 of HSWA.

Officer in charge of a defence area means:

- a. the officer commanding the area; or
- b. if there is no officer commanding the area, the officer commanding the major unit occupying the area; or
- c. any other person declared by the Chief of Defence Force to be the officer in charge.

Officer in charge of a defence activity means the senior person responsible for a defence activity undertaken in a defence area.

Operational activity has the same meaning as section 7(4) of HSWA.

Regulatory agency has the same meaning as section 16 of HSWA.

Restricted place has the same meaning as Regulation 2 of the Defence Regulations 1990.

Risk is the likelihood and potential consequence of harm from a hazard.

Security clearance means a clearance issued by a chief executive, after having consulted with the New Zealand Security Intelligence Service on the suitability of the subject of the clearance to access official information. The level of information accessed must correspond to the level of the security clearance issued.

Worker has the same meaning as section 16 of HSWA.

Workplace has the same meaning as section 16 of HSWA.

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