Module 3: Governing overlapping duties

Workbook

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Workbook

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Introduction from the Institute of Directors

The Institute of Directors (IoD) promotes excellence in corporate governance, represents directors' interests and facilitates their professional development through education and training. The IoD is a membership organisation of over 9,000 individuals on the pulse of governance in every industry.

Connecting, equipping and inspiring

The IoD connects, equips and inspires directors through thought leadership and our extensive network, professional governance courses, events and resources.

Continuous professional development

It is critical that today's directors are informed, connected and armed to meet the modern challenges of directorship. As we face disruption, organisations must operate at a new pace, constantly reinventing and looking for opportunities in a dynamic environment. Good directors know the value of continuous professional development, the essence of enabling them to keep pace with change.

The IoD offers a suite of governance training to equip you with the tools to perform in your role at each stage of your development as a director. These courses balance technical content with real-life experience stories from facilitators who are subject matter experts and also experienced directors.

For more information about the Institute of Directors – go to iod.org.nz

Code of Practice for directors

This Code provides guidance to directors to assist them in carrying out their duties and responsibilities in accordance with the highest professional standards.

For a copy of the code – go to
iod.org.nz/About-us/Founding-documents

The Chatham House Rule

Courses held by the Institute of Directors are conducted under the Chatham House Rule.

The Rule reads as follows:

> *When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed (Royal Institute of International Affairs, 2014).*

Historical background

The Chatham House Rule originated at the Royal Institute of International Affairs (IIA) in the United Kingdom. The IIA is a policy-based entity dedicated to research and public promotion of international affairs. According to the IIA, the Chatham House Rule was created in 1927.

The Institute is situated in Chatham House, a building in the heart of London, which was a British prime ministerial residence in the 18th century. The name of the house is attributed to its first resident, William Pitt the Elder, Earl of Chatham.

What is the Chatham House Rule?

The Chatham House Rule is a convention used to promote open and informed dialogue in meetings. When meetings are held pursuant to the Chatham House Rule, the discussion is strictly private.

Participation in a Chatham House discussion is kept confidential and the names of attendees may not be published. However, should an individual wish to repeat their own contribution to a Chatham House discussion they are permitted to do so.

For more information go to
chathamhouse.org/about-us/chatham-house-rule

1.

Welcome

Welcome to **Module Three: Overlapping duties**, the third in a series of face to face courses, as part of the Officer Development Programme: Health and Safety Governance in the Public Service.

In this module we discuss the complex issue of overlapping duties and identify ways in which to map and manage PCBU relationships.

Government agencies have multiple, complex relationships with other PCBUs and undertake a significant amount of procurement of goods and services, giving them the ability (and obligation) to influence the lives of New Zealanders by protecting them from harm.

We will explore the interconnectedness of overlapping duties in the public sector, including the roles of agencies as clients, standard setters, regulators, funders and policy makers. We will consider how procurement strategies and non-price attributes, can help deliver safer outcomes and explore the importance of clarifying expectations of partners in order to create an environment of mutual accountability.

Using interactive case studies and exercises to demonstrate the challenges and opportunities agencies face in exercising influence and control, we will give you key takeaways to governing overlapping duties.

1. Pre-workshop online learning (15 minutes)
2. Face to face learning with facilitator
3. Post-workshop online learning (15 minutes)

The learning outcomes for this module are:

- compare, analyse and assess the complexity of the overlapping duty requirement in the public services
- evaluate ways to map and manage overlapping duties between multiple PCBU's
- analyse the critical role of procurement in creating inherently safer relationships
- define different roles and responsibilities of PCBUs, based on influence and control, to hold each other to account
- identify and implement ways in which governance can be used to monitor effectiveness of the systems and processes.

2.
Presentation slides

1.

Module 3: Governing overlapping duties

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NEW ZEALAND
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2.

Learning objectives

- Compare, analyse and assess the complexity of the overlapping duty requirement in the public services

- Evaluate ways to map and manage overlapping duties between multiple PCBU's

- Analyse the critical role of procurement in creating inherently safer relationships

- Define different roles and responsibilities of PCBUs, based on influence and control, to hold each other to account

- Identify and implement ways in which governance can be used to monitor effectiveness of the systems and processes.

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3.

Welcome

Exercise 1 - Clarity and commitments

Take 1-2 minutes, per person, to discuss the following.

a. Reflect on one key takeaway, that is top of mind, from the programme so far.

b. What have you changed or committed to as a result of this programme?

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4.

The Four Pillars of Governance

The governance responsibility is:
- determining purpose
- an effective governance culture
- holding to account
- effective compliance/risk management

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The Four Pillars of Governance Best Practice for New Zealand Directors

5.

Context
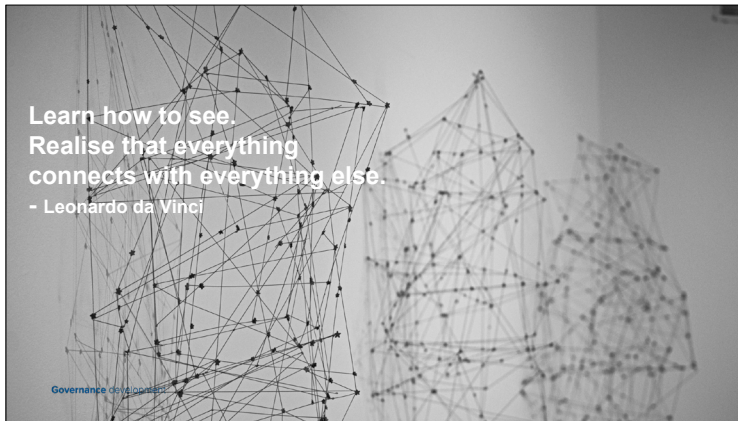- Changing world of work
  - Outsourcing
  - Contractorisation
  - Gig economy
- How workers are paid is less important than where influence and control is exerted
- Few PCBUs operate in isolation
- Responsibilities for delivering safe and healthy work are shared, but constantly changing
- Safety in design provides the greatest opportunity to reduce downstream risk.

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6.

Learn how to see.
Realise that everything
connects with everything else.
- Leonardo da Vinci

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7.

**Upstream,
downstream
and horizontal
duties**

Upstream
• Design
• Supply
• Procurement
• Professional services

Shared operating
environment
• Landlord/Tenants
• Neighbours
• 3rd party locations
• Shared equipment
• Loaned workers

Primary
PCBU

System influence
• Regulator
• Specifier
• Funder
• Standards

Supply chain
• Contractors
• Sub-contractors
• Labour

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8.

Exercise 2: Stakeholder mapping   EXERCISE

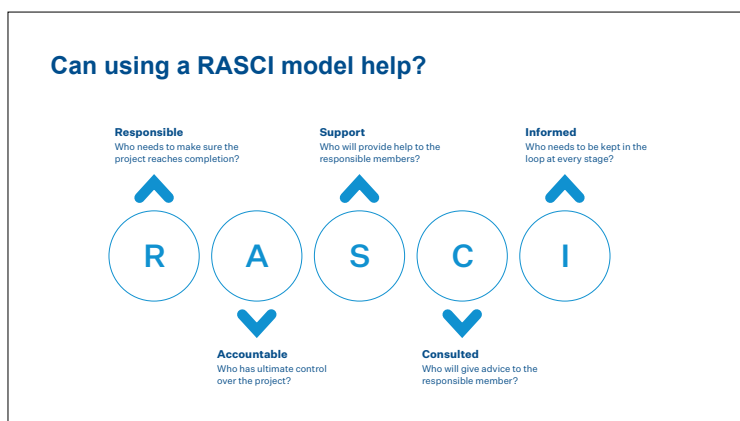1. Identify one critical risk in your risk management
programme/framework. In pairs give your partner a brief
snapshot of what this looks like for your agency,
including the different PCBUs involved.

2. Discuss the following question:

a.   How have you identified those parties who can
impact on delivery of your critical risk management
programme?
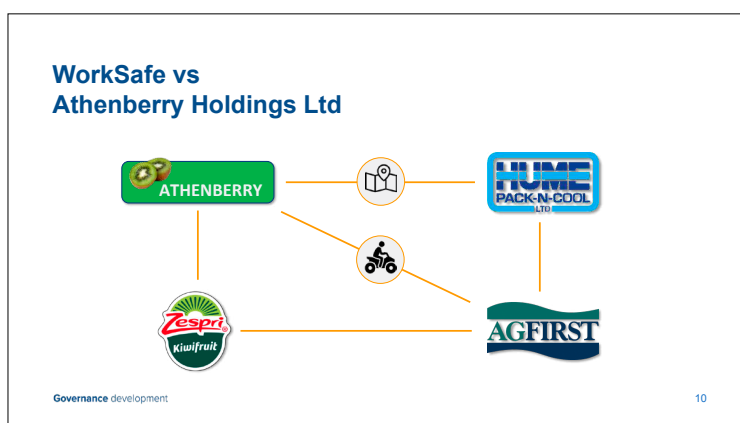
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Can using a RASCI model help?

Responsible
Who needs to make sure the project reaches completion?

Support
Who will provide help to the responsible members?

Informed
Who needs to be kept in the loop at every stage?

R   A   S   C   I

Accountable
Who has ultimate control over the project?

Consulted
Who will give advice to the responsible member?

10.

WorkSafe vs Athenberry Holdings Ltd

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11.

Deliberate ambiguity?

"There is no statutory definition, an omission which may well have been deliberate and intended to maximise flexibility of interpretation for a central statutory concept. The concept itself may be difficult to exhaustively define, but in most cases will obviously fall one side or the other of a fairly bright line of interpretation. A rigid rule of interpretation might well be counterproductive in the context of this designedly flexible legislation."

Judge Ingram WorkSafe NZ v Athenberry

12.

Exercise 3: Influence and control   EXERCISE

1. Consider a recent procurement that your agency underwent. Was health and safety top of mind when planning, sourcing and managing the process?

2.   In pairs discuss the following questions.
    a. What are the types of assurances an agency might specify that could have an impact on the ability of another PCBU to keep workers and others safe?
    b. Consider with your partner where one of your critical risks overlaps with another agency or PCBU. How do we ensure consistent approaches?

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Influence and control

- Means of influence and direction:
    ✓ Control over the conduct of work
    ✓ Provision of advice
    ✓ Specification of the matters affecting the methods of work
    ✓ Reporting requirements
    ✓ Oversight or supervision

Source: Judge Ingram, WorkSafe NZ v Athenberry

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14.

Exercise 4: Case study – Corrections fatality   EXERCISE

Corrections placed a person on community probation with a local church to complete his sentence. Due to an absence of supervision the person was enabled to use a chain saw to chop up a fallen tree trunk with another person. The log rolled down a slope and killed him.

a. With the benefit of hindsight what were the opportunities for Corrections to exercise influence and control over this situation?

b. Consider your own agency relationships with other PCBUs. What processes and/or procedures have you put in place to seek assurances that a similar event shouldn't happen?

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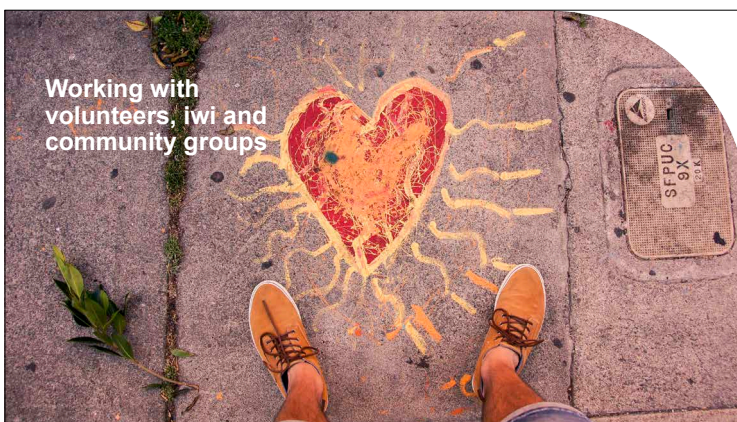
15.

16.

Whakaari White Island explosion

Source: NZ Herald

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17.

Working with volunteers, iwi and community groups

18.

Governing overlapping duties – takeaways

- Does our strategy include risks to non-employees?
- Do our systems explicitly recognise overlapping duties?
- Is procurement at the centre of our approach?
- Do we have a process for identifying touch points?
- Are our systems flexible enough to take account of different contexts and needs?
- Are our project and contract managers competent relationship managers?
- Do we share information routinely?
- Do we receive reports on 3rd party performance and include them in deep dives?

19.

Reflections

- Where does most of our risk sit?
- Who is best capable of managing it?
- How do we apply the hierarchy of control to managing overlapping duties?
- What are the critical success factors that will indicate effective control?
- What should our priorities be in developing and implementing a framework?
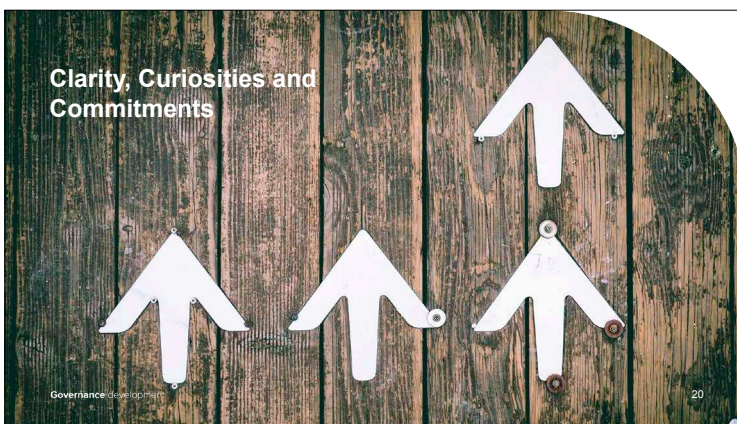
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20.

Clarity, Curiosities and Commitments

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Summary of exercises

Exercise 1 – Clarity and commitments

Value of exercise: To share, reflect and collaborate between agency's to influence the lives of all New Zealanders, by protecting them from harm.

Instructions:

1. At your tables, each person to address and discuss the following questions.
    a. Reflect on one key takeaway, that is top of mind, from the programme so far.
    b. What have you changed or committed to as a result of this programme?
2. Report back to the wider group and share your insights and learnings.

Points to consider

Think about how you could better use governance and leadership to change the health and safety culture of your agency. Reflect on your current practices and the examples your peers have given around the frameworks they use and how these might be applied to your situation.

Notes:

Exercise 2 – Stakeholder mapping

Value of exercise: To identify and map the different stakeholder relationships, giving oversight on the risk to your people, workers from other PCBUs and third parties.

Instructions:

1. Identify one critical risk in your risk management programme/ framework. This could be violence and aggression, driving or hazardous substance handling.

2. In pairs give your partner a brief snapshot of what this looks like for your agency, including the different PCBUs involved.

3. Discuss the following question:
   – How have you identified those parties who can impact on delivery of your critical risk management programme?

4. Report back to the wider group and share your insights and learnings.

Points to consider

As you discuss the above question, think about those other PCBUs whose actions might put your people at risk. Consider also workers from other PCBUs or 3rd parties who might be put at risk by your actions/decisions. What assurances have you or could you put in place to mitigate this risk?

Notes:

Exercise 3 – Influence and control

Value of exercise: Prioritising good health and safety practices as a strategic objective in procurement to deliver harm reduction, cost savings, enhanced organisational performance and long-term financial gain.

Instructions:

1. Consider a recent procurement that your agency underwent. Was health and safety top of mind when planning, sourcing and managing the process?

2. In pairs discuss the following questions.

   a. What are the types of assurances an agency might seek that could have an impact on the ability of another PCBU to keep workers and others safe?

   b. Consider with your partner, where one of your critical risks overlaps with another agency or PCBU. How do we ensure consistent approaches?

3. Report back to the wider group and share your insights and learnings.

Points to consider:

How do prospective supply chain partners demonstrate competence and commitment in a way that goes beyond box ticking?

Do professional service providers (architects, designers, project managers, etc.) have systems and processes to implement whole of life safety in design reviews?

Notes:

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Exercise 4 – Case study: Corrections fatality

Value of exercise: To evaluate and analyse where we have control and influence over different roles and responsibilities.

Scenario

Corrections placed a person on community probation with a local church to complete his sentence. Due to an absence of supervision the person was enabled to use a chainsaw to chop up a fallen tree trunk with another person. The log rolled down a slope and killed him.

Instructions:

1. At your tables, discuss the following questions.
   a. With the benefit of hindsight, what were the opportunities for Corrections to exercise influence and control over this situation?
   b. Consider your own agency relationships with other PCBUs. What processes and/or procedures have you put in place to seek assurances that a similar event shouldn't happen?
2. Report back to the wider group and share your insights and learnings.

Points to consider

Think about the different PCBU relationships that fed into this situation. What assurances could Corrections have sought prior to this undertaking? How could they have held the church to account to verify that these assurances were being actioned?

Notes:

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Appendix 1: Useful models
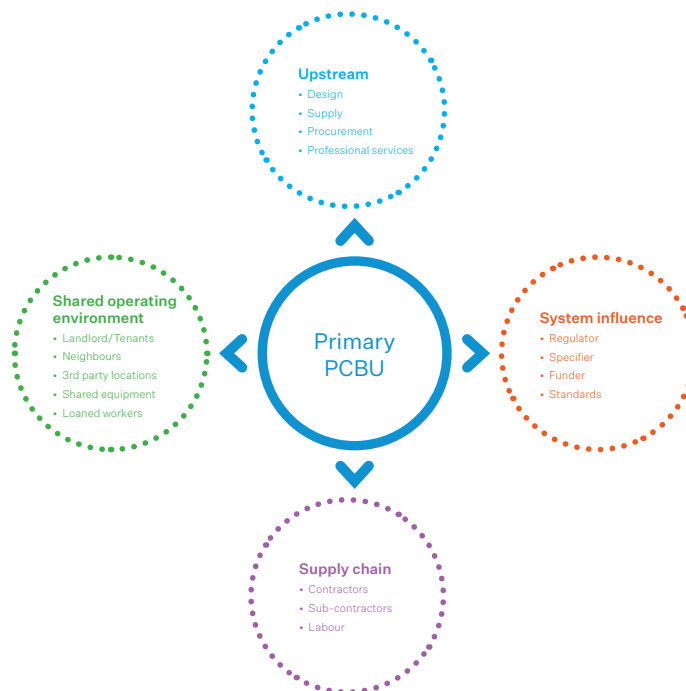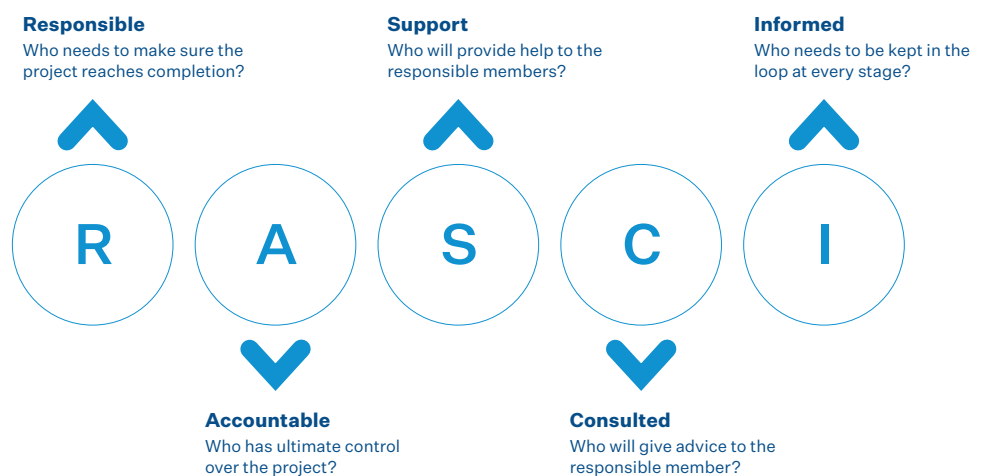
Figure 1: Upstream, downstream and horizontal duties

Upstream
- Design
- Supply
- Procurement
- Professional services

Shared operating environment
- Landlord/Tenants
- Neighbours
- 3rd party locations
- Shared equipment
- Loaned workers

Primary PCBU

System influence
- Regulator
- Specifier
- Funder
- Standards

Supply chain
- Contractors
- Sub-contractors
- Labour

Figure 2: RASCI model

Responsible
Who needs to make sure the project reaches completion?

Support
Who will provide help to the responsible members?

Informed
Who needs to be kept in the loop at every stage?

R **A** **S** **C** **I**

Accountable
Who has ultimate control over the project?

Consulted
Who will give advice to the responsible member?

Source: Adapted from the RASCI model first published by Kristoffer v. Grude, Tor Haug and Erling S. Andersen

Notes:

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