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Auckland Unitary Plan

Health & Safety/Immigration Implications

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RMA Background



The Resource Management Act 1991

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- Sustainable management of natural and physical resources
- Important components include Health & Safety
- These components must be achieved along with:
 - Meeting the needs of future generations
 - Managing adverse effects
 - Safeguarding the life-supporting capacity of resources



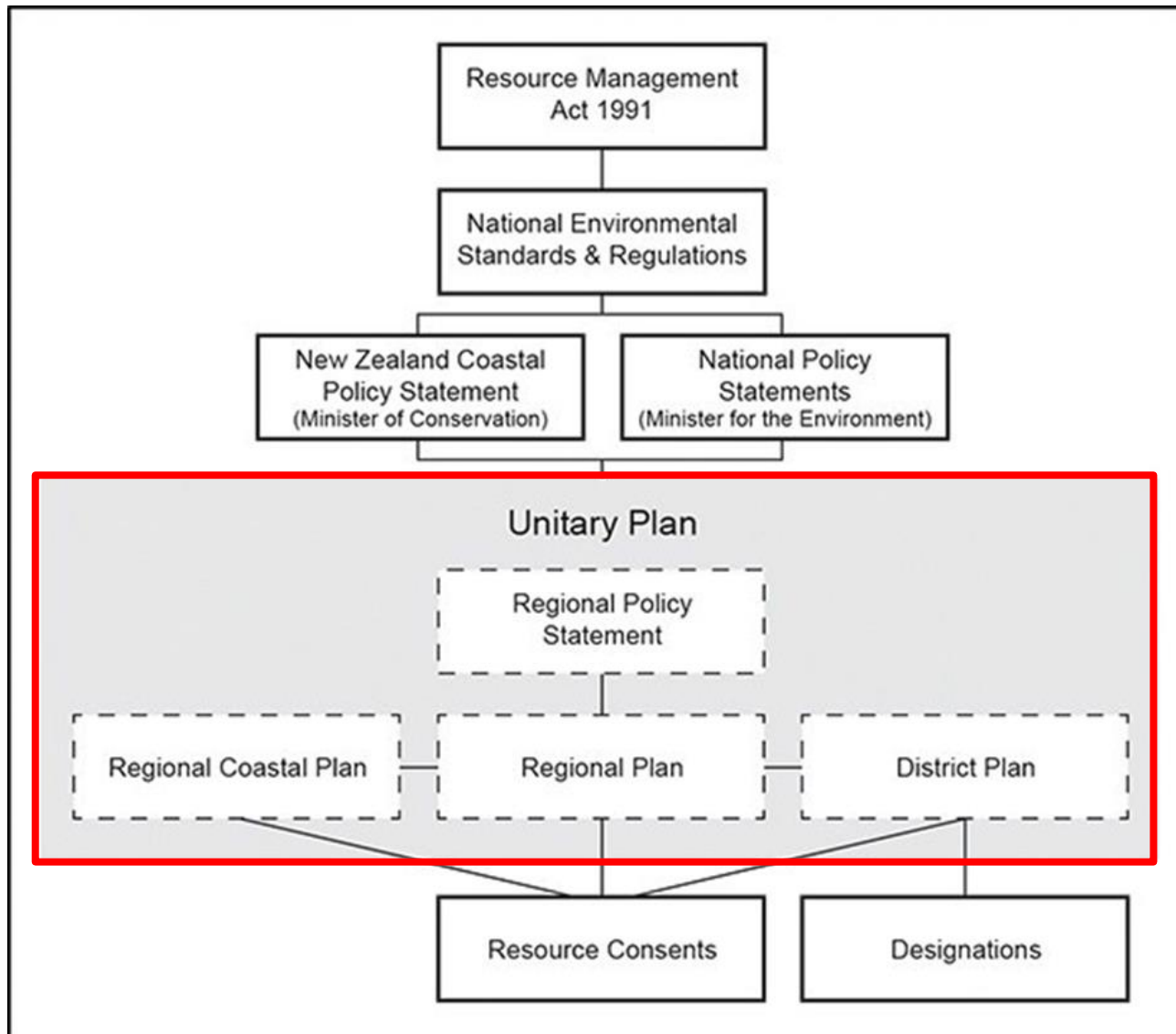
History of the RMA

- Highly visible and discussed piece of legislation
- 25 years old
- Sets the planning framework for the country
- Has been amended 21 times, but retained broadly the same structure and principles
- Current tension is between economic and environmental outcomes



Planning Framework

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Auckland Unitary

Plan – Background



Auckland Unitary Plan

- Combined Plan
- Replaces existing regional policy statement and 12 district and regional plans
- Over a **3** year process – Decisions made but subject to appeals
- Nearly **7000** pages long



Appeals on Unitary Plan

- Environment Court appeals – merit based
 - Includes appeals against rejection of minimum and maximum parking provisions
- High Court appeals:
 - Points of law, including:
 - Removal of Maori land and mana whenua site provision
- Judicial review that may impact Auckland – wide provisions



Health and Safety

Background



**WE HAD A MEETING AT WORK AND I WAS ASKED
WHAT STEPS I'D TAKE IN THE EVENT OF A FIRE**



APPARENTLY "REALLY BIG ONES" WASN'T THE RIGHT ANSWER

WorkSafe's Position on Health & Safety

“Contrary to what many people think, the Health and Safety at Work Act (HSWA) is not about the ruthless pursuit and prosecution of New Zealanders for minor workplace incidents. It's about everyone working together to sensibly and proportionately manage the critical risks that could cause serious illness, injury or even death.”

Health and Safety Framework

- Health and Safety at Work Act 2015
- Regulations
- Codes of Practice, Industry Guidelines, Factsheets

Commencement Date: 4 April 2016



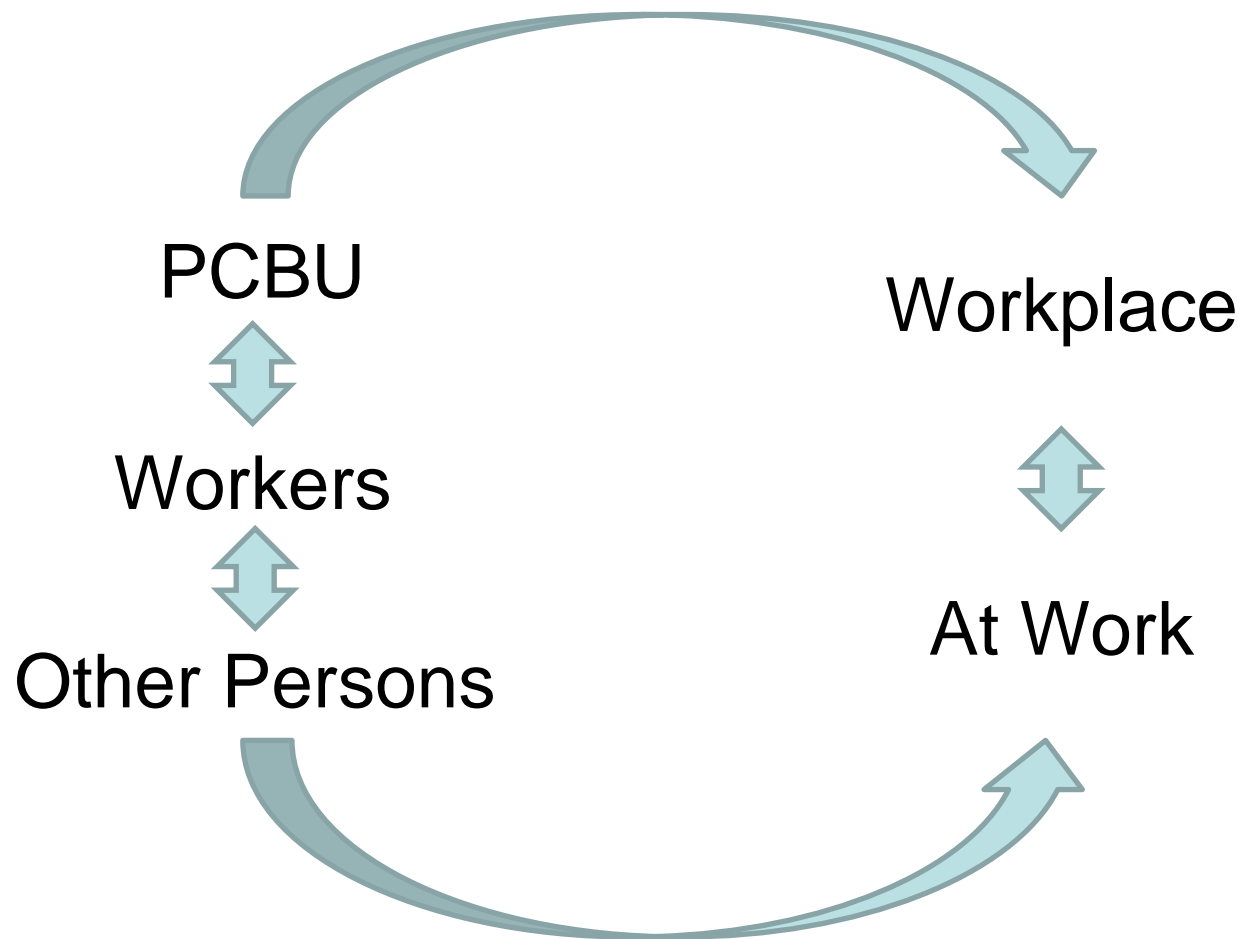
Purpose of Legislation

- **Purpose:**

- ... to provide for a “*balanced framework*” to **secure** the health and safety of workers and workplaces by:
 - Elimination or minimisation of risks
 - Fair and effective workplace representation
 - Unions and employer organisations to take constructive role
 - Promote advice, information, education and training
 - Secure compliance and enforcement measures
 - Ensure appropriate scrutiny and review of actions
 - Framework for improvement and progressively higher standards
- Provide **highest** level of protection



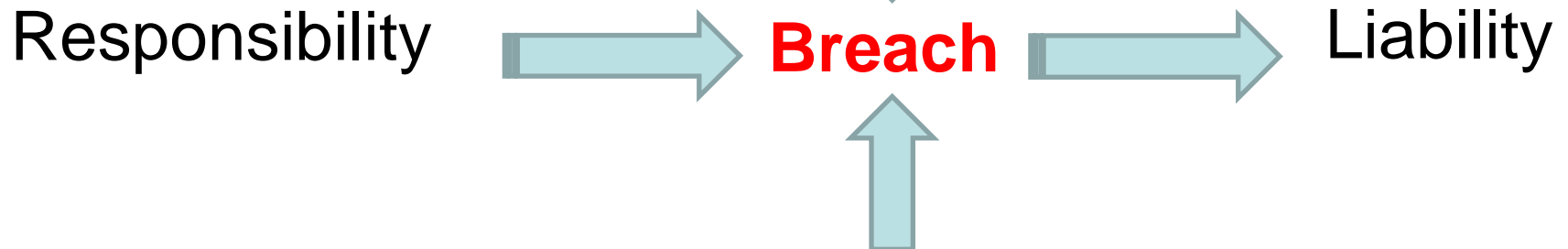
In Employment ↔ At Work



Responsibility ↔ Liability

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Influence and Control



Reasonably Practicable



Influence ↔ Control

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- **Officers** – exercise significant influence over management of PCBU
- **Management of risks** – compliance relates to ability to influence and control
- **More than one person may have the same duty** – ability to influence and control
- **Primary duty of care** – PCBU influence or direct workers



Hazard ↔ Risk

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Health and Safety in Employment Act 1992:

- Risk: Mentioned twice in 2 sections

Health and Safety at Work Act 2015:

- Risk: Mentioned 138 times in 38 Sections
- **Hazard** = Defined to include a person's behaviour
- **Risk** = Not defined, common law interpretation:
“a situation involving **exposure** to danger”



The Unitary Plan

Practical Application



1. The Unitary Plan: Public Access to Private Land

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- In certain circumstances resource consents generally require developers to provide public access through *their land* to waterways, the coast, walkways etc
- Is a private developer at risk?



1. Health and Safety Implications

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- A **workplace** is defined as:
 - A place where work is being **carried out**, or is **customarily carried out**, for a business or undertaking; and
 - Includes any place where the worker goes, or is likely to be, while at work
 - Includes a:
 - vehicle
 - vessel
 - aircraft
 - other mobile structure
 - Includes any waters and any installation on land, on the bed of any waters or floating on any waters



1. Health and Safety Implications

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- Places where work is:
 - “**being**” carried out (for example, on a power pole)
 - or is “**customarily**” carried out (for example, a workshop)
- This would make it clear that a workplace does not remain a workplace indefinitely, once work **has been carried out** there



2. The Unitary Plan: Natural Hazards

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- Unitary Plan focuses on a limited number of natural hazards
- A ***hazard risk assessment*** is to be undertaken when subdivision, use or development is proposed in an area of natural hazard, such as coastal erosion, requires resource consent
- Are there health and safety implications of non-compliance?



2. Health and Safety Implications

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- Management of Risk to Health and Safety:
- Duty imposed on a person under the Act requires the person:
 - To **eliminate** risk to health and safety, so far as is reasonably practicable
 - If it is not reasonably practicable to eliminate risks to health and safety, to **minimise** risks so far as it is reasonably practicable



3. The Unitary Plan: Public Open Space and Recreation [Council Owned]

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- The Unitary Plan seeks to enable public access to waterways and the coastal marine area but can **restrict access** where necessary for health and safety
- Where do we draw the line in restricting access to public areas?



3. Health and Safety Implications

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- PCBU's **primary duty of care**:
- PCBU to ensure health and safety:
 - PCBU to workers:
 - who **work** for the PCBU
 - who in carrying out work are **influenced** by the PCBU
 - PCBU to other persons:
 - not put at risk **by work** of PCBU



4. The Unitary Plan: CPTED Principles

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- Consideration needs to be given to whether crime prevention through environmental design principles have been integrated into external building and layout design
- What are the health and safety implications of a ***building that is badly designed*** and does not comply with the CPTED principles?



4. Health and Safety Implications

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- Duty of PCBU - **manages or controls** workplace:
 - Ensure without risk to “*any person*”
 - Relates to the workplace:
 - Entering;
 - Exiting; and
 - Arising from
- The duties should apply to PCBUs who manage or control workplaces rather than PCBUs who merely have an *ability* to manage workplaces
- Note exclusion of **unlawful** persons



5. The Unitary Plan: Heritage Buildings

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- The Unitary Plan provides stringent controls around the protection of *heritage buildings* and special character areas.
- When does the risk to the public outweigh the protection of heritage values?



5. Health and Safety Implications

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- In Auckland, historic heritage places can include:
 - archaeological sites and features
 - buildings, structures and monuments
 - shipwrecks and underwater heritage
 - groups of inter-related places, including cultural landscapes, townscapes, streetscapes and settlements
 - gardens, trees and plantings
 - places of historical or cultural importance, including places of significance to mana whenua



5. Health and Safety Implications

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- Heritage New Zealand Pouhere Taonga Act 2014:
S.62 Determination of applications
 - In determining an application for an emergency authority, Heritage New Zealand Pouhere Taonga must have regard to:
 - The need to protect public health and safety
- Building Act 2004:
S.131 Territorial authority must adopt policy on dangerous, earthquake-prone, and insanitary buildings
 - The policy must state:
 - How it will apply to heritage buildings



5. Health and Safety Implications

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- Auckland Council Earthquake-prone, Dangerous and Insanitary Building Policy 2011 – 2016:
 - Approach to managing risk associated with heritage buildings
 - Heritage buildings scheduled in district plans and/or registered by the New Zealand Historic Places Trust will be assessed by December 2015
 - If found to be earthquake-prone, owners of these buildings will have 30 years to carry out seismic strengthening (2045)



6. The Unitary Plan: Infrastructure Upgrades

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- Developers are often required to utilise or upgrade existing infrastructure to support developments in existing urban areas
- Generally the Developer pays for the upgrades but **does not carry out the works** – who is responsible for the health and safety obligations?



6. Health and Safety Implications

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- Duty is not transferable
- A person may have more than one duty
- More than one person can have the same duty
- Duty to **consult** other PCBUs:
 - Reasonably practicable
 - Co-operate
 - Co-ordinate activities
- Comply other enactments



7. The Unitary Plan: Asbestos Management

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- **Asbestos** is managed in two ways:
 - Generic Auckland wide Rule
 - Site specific Provisions
- What are the health and safety requirements if the Unitary Plan requirements are not met? Is this the only document users of the Unitary Plan need to comply with?



7. Health and Safety Implications

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- **Asbestos - New Zealand's number one killer in the workplace**
- It is estimated that **170** people die each year from asbestos-related diseases – it accounts for around 20% of all work-related disease deaths
- WorkSafe inspectors carried out over **900** proactive inspections related to asbestos in 2015/16, issuing **113** enforcement actions relating to asbestos during the same period



7. Health and Safety Implications

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- **Health and Safety at Work (General Risk and Workplace Management) Regulations 2016:**
- Substance Hazardous to Health
 - Means a substance, or product containing a substance, that is known or suspected to cause harm to health; and
 - Includes—
 - a substance classified as having toxic or corrosive properties under the [Hazardous Substances and New Organisms Act 1996](#);
 - a substance for which a prescribed exposure standard exists;
 - a substance specified in a safe work instrument as requiring health monitoring



7. Health and Safety Implications

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- Managing risks associated with substances hazardous to health
 - Ensuring prescribed exposure standards for substances hazardous to health are not exceeded
 - When exposure monitoring required
 - When health monitoring required
-
- **Health and Safety at Work (Asbestos) Regulations 2016**



8. The Unitary Plan: Hazardous Substances and Contamination

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- Where certain rules are triggered resource consent is required to:
 - discharge contaminants from contaminated land
 - Use, store or dispose of ***hazardous substances***
- How are the risks associated with those activities managed?



8. Health and Safety Implications

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- Hazardous Substances and New Organisms Act 1996:
 - The purpose of this legislation is to protect the environment, and the health and safety of communities, by preventing or managing the adverse effects of hazardous substances/new organisms
 - All hazardous substances are required to have approval under this legislation. When a substance is approved, controls are applied that are designed to manage any risk
 - This legislation is administered by the Environmental Protection Authority (EPA)
 - WorkSafe undertakes, on behalf of the EPA, certain hazardous substances functions plus enforcement action



8. Health and Safety Implications

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- Health and Safety at Work (Hazardous Substances) Regulations 2016 [**Draft**]
 - The Regulations for work involving hazardous substances carry through requirements currently prescribed under the Hazardous Substances and New Organisms Act 1996
 - The Regulations also incorporate changes to codify existing good practice, in some cases based on the provisions of the Australian Model Regulations



9. The Unitary Plan: Intensification

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- The development of 422,000 new homes is enabled through a centres and corridors approach of intensifying urban centres
- How will they be constructed, *immigration labour* opportunities/issues/strategies



9. Immigration Implications

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- MBIE forecasts to 2019: employment growth of 30,000 new roles in construction and related activities
- Staying in the game: consideration of offshore migrant recruitment strategy
- Recruiting migrants presents challenges...but also opportunity



9. Immigration Implications

Perception	Reality
It takes too long	<ul style="list-style-type: none">• Anticipate potential visa requirements and set up systems and processes that are compliant from the outset• Make use of alternative visa routes to speed process up• End to end process can be as fast as 4 weeks
It costs too much	<ul style="list-style-type: none">• Shared approach to costs• Clawback provisions
They won't integrate into our team	<ul style="list-style-type: none">• Access the wealth of free support available to help settle migrant workers• Outsource to settlement experts to provide the support
<i>"Too hard"</i> basket	<ul style="list-style-type: none">• Good systems can help simplify the process• Use the various experts to manage the process on your behalf

9. Immigration Implications

- Defining strategic approach is the key
- Making the system work for your business
- Consider recruitment and also settlement
- Filipino labour – access to bulk labour, but has unique challenges to manage
- Be aware of common pitfalls



10. The Unitary Plan: Emergency Situations

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- ***Emergency provisions*** in the RMA (override the Unitary Plan) and enable emergency works to be carried out, and consent sought retrospectively
- Do health and safety obligations constitute an emergency?



10. Health and Safety Implications

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- **Duty to prepare/maintain/implement Emergency Plan**
- A PCBU must ensure that an emergency plan is prepared for the workplace, which includes:
 - An effective response to an emergency
 - Evacuation procedures
 - Procedures for notifying emergency service organisations at the earliest opportunity
 - Medical treatment and assistance procedures
 - Procedures to ensure effective communication between the person authorised by the PCBU to co-ordinate the emergency response and all other persons at the workplace



10. Health and Safety Implications

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- The PCBU must:
 - Provide for testing of the emergency procedures, including the frequency of testing
 - Provide for information, training, and instruction to be given to relevant workers in relation to implementing the emergency procedures
 - Maintain the emergency plan for the workplace so that it remains effective
 - Implement the emergency plan for the workplace in the event of an emergency



What Does This Mean For Auckland?

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- **Unitary Plan:** In a nutshell, it enables a huge amount of development, expanding boundaries and the intensification of housing
- **Health and Safety:** Auckland businesses need to establish and/or review Health and Safety systems with contingencies to address any potential adverse effect on workers and work places
- **Immigration:** There is a skills shortage in Auckland and the Unitary Plan will intensify demand for a workforce from offshore



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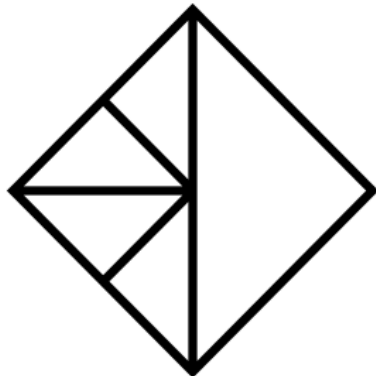
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Note

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The material contained in this workshop is necessarily in summary form. It is not intended to be a comprehensive statement on the law as it applies to the above topics. Accordingly, you must not rely solely on this information without first seeking detailed legal advice



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