



Health & safety governance – Legal framework and guidance.

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What we will cover

- Recap of H&S duties
- Who is an officer?
- Scope of the due diligence duty
- Due diligence in practice.





H&S duties

Duty holders

- **Primary duty** - PCBU must ensure, so far as is reasonably practicable
 - H&S of its workers while at work
 - H&S of other workers whose activities are influenced or directed by PCBU while carrying out work
 - other persons are not put at risk by PCBU's work/operations
- **Separate duties** also owed by
 - managers or controllers of workplaces, fixtures, fittings or plant
 - designers, manufacturers, importers, suppliers, installers of plant, substances or structures
 - workers
 - other persons at workplaces
 - officers.

Other PCBU obligations

- PCBU's duty to manage risks
 - eliminate or minimise risks
 - extent to which have, or reasonably expected to have, ability to influence and control the matter
- Risks must be managed together
 - can have more than one duty and may be shared
 - PCBU must identify, consult, co-operate, co-ordinate with other PCBUs
- Worker engagement and participation practices.

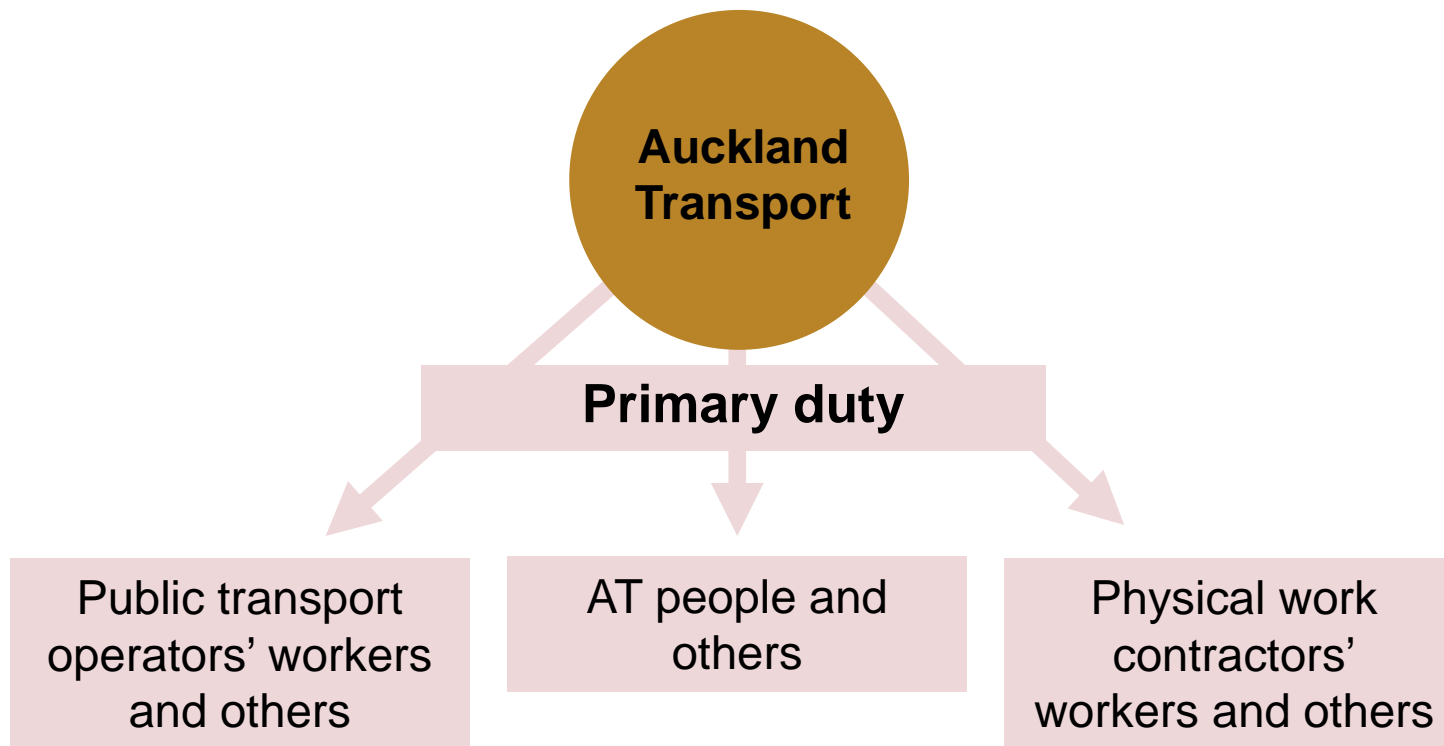


Officers

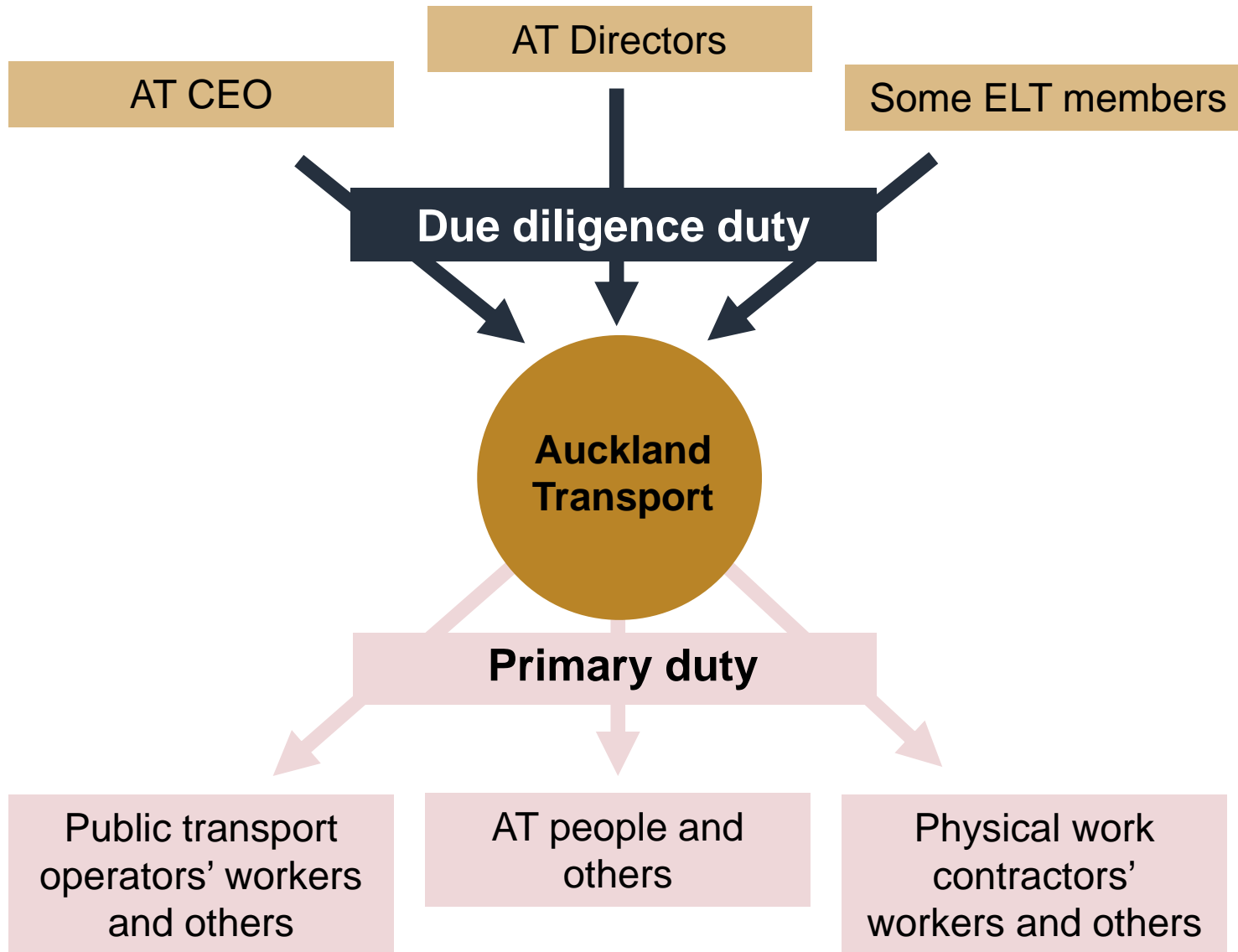
Who is an officer?

- "Officer" includes:
 - PCBU's directors (by whatever name called), partners or comparable positions
 - position that allows the person to exercise significant influence over the management of the PCBU, eg CEO
 - excludes a person who merely advises or makes recommendations to an officer
- Officers must exercise due diligence **to ensure PCBU** complies with its duties
- Officers working in the business will also owe a duty to take reasonable care as a "worker".

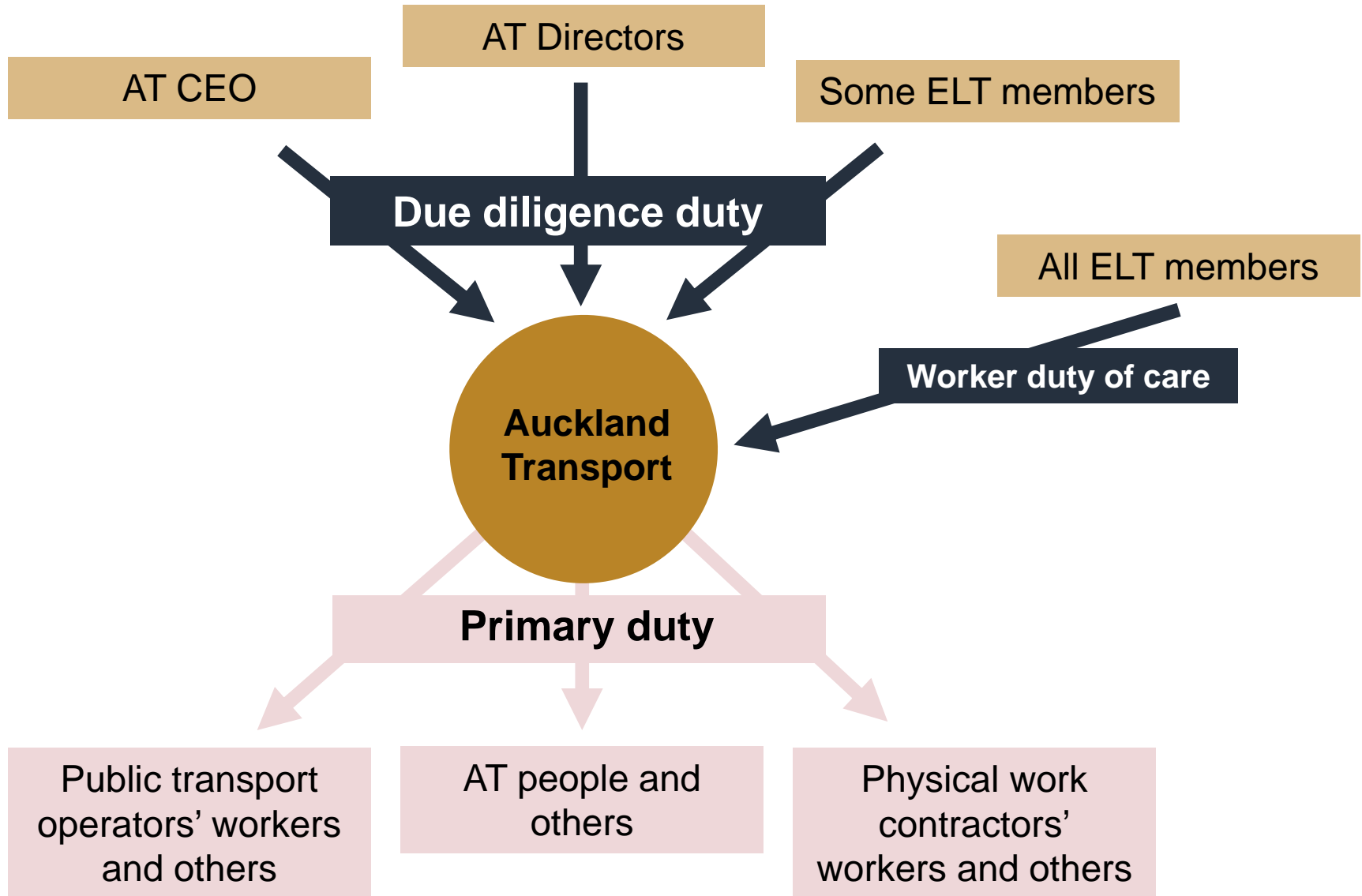
AT as PCBU



AT's officers



AT's officers and ELT as workers





Due diligence duty

What is the duty of due diligence?

- Personal duty separately owed by each officer
- Positive and proactive duty
- Must exercise the care, diligence and skill of a reasonable officer in the same circumstances, taking into account:
 - nature of the business or undertaking
 - officer's position and the nature of the responsibilities they undertake
- Can rely on others and external advice
- Must be **personally satisfied**.

What does due diligence require?

Due diligence includes taking six non-exhaustive steps:

- Acquire **knowledge** about H&S matters
- **Understand** the PCBU's operations and associated risks
- Ensure PCBU has and uses **resources** and processes **to control risks**
- Ensure PCBU has **processes to** receive, consider and **respond to** information on **incidents and risks**
- Ensure PCBU implements processes for **complying** with duties
- **Verify** the provision and use of resources and processes.

Enabling duties



Knowledge and understanding
(of H&S at AT)

Resourcing duties



Resources and processes (in place to control and respond to risks and incidents)

Accountability duties



Compliance and verification
(of AT's H&S systems)



Due diligence in practice

Enabling duties – know and understand

- Acquire, and maintain, **knowledge** of H&S
 - base knowledge of H&S law, and relevant CoPs, guidance and standards, so can make informed decisions
 - monitor changes and developments in transport industry
 - trainings and briefings may be required, with refreshers, eg H&S governance, incident investigation methodologies
 - specialist external assistance
 - interact with boards of other PCBUs, eg AT's major contractors, other CCOs, wider transport industry.



Enabling duties – know and understand

- **Understand** AT's operations, and the risks it creates
 - contextualise H&S knowledge in relation to AT's operations, risks and systems
 - understand AT H&S policies and procedures, and how they work in practice
 - active and personal interest in AT's operations, eg induction processes, conduct site visits, reports on critical risks
 - understand line management responsibilities and how they influence H&S
 - Board H&S charter, division of H&S responsibility
 - H&S regular board item, and annual calendar of activities.

Resourcing duties - resources and processes

- Ensure AT has, and uses, (financial and human) **resources** and processes **to control risks**
 - ensure fit-for-purpose H&S systems & processes
 - safety considered as part of all resourcing decisions, including budgets, capex and any new initiatives or developments
 - funding is available for safe working, and continuous improvement
 - sufficient and adequate staffing levels maintained (not just in the H&S team), and staff provided with regular and refresher training
 - ensure systems and processes are used effectively through monitoring and reporting.

Resourcing duties - resources and processes

- Ensure AT has **processes to consider and respond to** information on **incidents and risks**
 - ensure management has systems in place to inform of risks and incidents within an applicable timeframe, eg incident escalation processes, risk identification programs
 - require these to be reviewed to ensure effectiveness
 - ensure that systems identify, consult, cooperate and coordinate with other PCBUs that share duties
 - ensure worker participation practices are adhered to, eg hear directly from reps and committees
 - safety performance of ELT requires action and accountability.

Accountability duties - compliance and verification

- Ensure AT implements processes for **complying** with duties
 - determine who will report to Board and on what, and ensure this covers both positive and negative indicators
 - AT H&S Dashboard
 - ensure personally satisfied with results and actions
 - query to establish patterns and trends, revisit risk controls, require further reports, look for gaps
 - ensure processes are effective at capturing non-compliance, and staff empowered to speak-up
 - require internal compliance auditing and act on results.

Accountability duties - compliance and verification

- **Verify** the provision and use of resources and processes
 - periodically review AT's governance structure
 - commission formal reviews of health and safety systems (external so will challenge)
 - undertake annual reviews of CEO and EGMs' performance
 - implement changes identified in reviews
 - adequate record-keeping to demonstrate that reasonable enquiries have been made.



Other practical tips

- Make sure you personally know enough:
 - technical, eg AT's legal obligations
 - situational, eg nature of AT's work, what it involves, what it means for H&S
 - strategic, eg what AT should be doing and why
- Keep your own personal log, eg what you saw on site visits
- Drive a positive and open H&S culture, and be seen
- You can rely on others (eg management, external experts) but be personally satisfied
- Lead, look, learn.

Further reading

- Health and Safety Guide: Good Governance for Directors, March 2016, IOD and WorkSafe NZ
- Due diligence and beyond: Safety governance and leadership for directors and senior executives, May 2015, Business Leaders' Health and Safety Forum
- What is Safety leadership: A guide for Chief Executives, October 2014, Business Leaders' Health and Safety Forum
- Also see <http://www.zeroharm.org.nz/resources/leadership>.



Questions?

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