

# The New Zealand Four Wheel Drive Association

## NZFWDA

### Health and Safety Policy and Guidelines

#### 1 Overview

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The New Zealand Four Wheel Drive Association (NZFWDA) is a volunteer association which exists to encourage and promote the responsible use of 4WD vehicles and to advocate for their use on public lands. A key part of the NZFWDA's ethos is its commitment to good practice health and safety standards during 4WD events, trips, competitions and use. As such the NZFWDA is committed to promoting health and safety practices to its clubs and members.

This document provides high-level overview and guidance to 4wd Clubs in New Zealand about safe practices when organising and running trips, competitions and events.

The key message is:

*Remember – it is everybody's obligation to act safely*

The NZFWDA policy statement is provided in section 5.

The NZFWDA guidelines for 4wd Clubs is provided in Section 6.

In summary, the NZFWDA recommends that every affiliated 4wd Club:

- Adopts its own Health and Safety Policy.
- Adopts its own safety processes, documents and forms and regularly reviews these to ensure that they are up to date.
- Makes all of the above material available to all its Club members, either through the members-only part of their website or on paper.
- Runs a series of regular presentations to Club members to explain their Club's Health and Safety Policy, processes, documents, forms and practices.
- Ensures that every new Club member receives a health and safety induction.
- Conveys to its members on an ongoing basis the message that the Club and its members are responsible for ensuring that they comply with their own legal obligations.
- Undertake regular health and safety reviews to ensure good health and safety practices.

The NZFWDA will endeavour to create and provide sample documents and forms that 4wd Clubs may freely use as a guideline for their own Health and Safety Policy, processes, documents and forms.

Clubs and their members are responsible for ensuring that they comply with their own legal obligations. The NZFWDA strongly encourages each Club to seek their own independent expert advice to ensure they are complying with Health and Safety obligations.

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## 3 Background

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### 3.1 The NZFWDA

The NZFWDA is the national 4wd body in New Zealand. It is an entirely volunteer based association. Volunteers, through a National Executive Council donate their time and skills to three regional zone committees and a competition committee. Each committee is run for the benefit of 4wd enthusiasts affiliated to 4wd Clubs around New Zealand.

A large number of 4wd Clubs in New Zealand are affiliated to the NZFWDA, which is an Incorporated Society and was established in 1974. It is managed by its National Executive through a structure of three regional zones, Northern, Central and Southern, and the Competition Committee.

Collectively, as at 31 March 2017, the Association comprised 62 affiliated Clubs, with 1,979 members in total.

This publication provides high-level health and safety guidelines for the New Zealand 4wd community, in the context of current legislation.

Every effort has been made to provide this in an abbreviated style that is easy to read and understand.

### 3.2 Audience

This publication is written for these audiences:

- The NZFWDA.
- All 4wd Clubs affiliated to the NZFWDA.
- All members of those 4wd Clubs.

This publication may also be referred to by:

- Government bodies, territorial authorities, land owners and land managers.
- The Public.

### 3.3 Definition of Terms

A number of the terms used in this document have specific meanings. These are described in Appendix A with further legal explanation in Appendix B.

### Basic Requirements

The NZFWDA recommends that every affiliated 4wd Club:

- Adopts its own Health and Safety Policy.
  - Adopts its own health and safety processes, documents and forms.
    - The Club is welcome to base these on any samples provided by the NZFWDA. As the NZFWDA does not know how any such material will be used, it cannot warrant or undertake that those forms can be relied upon, and it is a Club's obligation to satisfy itself about the use and reliance on such material.
  - Makes all the above material available to all its Club members.
  - Runs a series of presentations to Club members to explain their Club's Health and Safety Policy, processes, documents, forms and practices.
  - Ensures that every new Club member receives a health and safety induction.
  - Undertakes regular health and safety reviews to ensure good health and safety practices.
  - Conveys to its members on an ongoing basis the message that the Club and its members are responsible for ensuring that they comply with good health and safety practices.
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The key message is:

*Remember – it is everybody’s obligation to act safely*

The NZFWDA and members have some key obligations under the HSWA and common law:

- Hazard identification and management.
- Collaboration and cooperation with other PCBUs, such as landowners where events, trips and competitions are held.
- Obligations to ensure the public are safe at any event, trip or competition.

### 5.1 Background

#### 5.1.1 The 2015 Legislation

- With the introduction of the new Health and Safety at Work Act 2015 (the “HSWA”) in 2016, the NZFWDA has developed these guidelines for the NZFWDA and its affiliated 4wd Clubs as its commitment to the health and safety of its clubs and their members.
- This document is not a Health and Safety Policy or process for the conduct of trips or events.
- The NZFWDA’s own Health and Safety Policy and guidelines for conducting events and other activities that it organises and runs are separate publications.
- This document is not legal advice. Instead it is to provide information and guidelines only. In the case of any doubt, specific legal and other professional advice should be obtained so that clubs comply with their health and safety obligations.
- This document may be updated from time to time.

#### 5.1.2 Overview of the HSWA and its Effect

- The HSWA introduces responsibilities for managing work-related risks that could cause serious injury, illness or even death.
- Where there are risks or hazards, the HSWA imposes obligations to eliminate, or if this is not possible minimise or control them.
- The NZFWDA is committed to promoting safe events, trips and competitions and that Clubs aim to reduce hazards and risks as far as is practicable.
- Under the HSWA, the primary duty holder is any Person Conducting a Business or Undertaking (a “PCBU”). An undertaking is not defined and could include a sports or recreation club or club event. In most cases PCBUs will be an organisation, however an individual can also be a PCBU. More than one PCBU may have health and safety obligations for the same activity at the same time.
- Your club should not be a PCBU if it is volunteer association. A volunteer association is defined in the HSWA as a group of volunteers (whether incorporated or unincorporated) who are joining together for one or more community purposes.
- A group of volunteers will only be a volunteer association if none of the volunteers, or the association as a whole, employs anyone to carry out work for the Volunteer Association.
- Volunteer Associations should not have health and safety obligations under the HSWA, as they are expressly excluded from the definition of ‘PCBU’. However, a group of volunteers may be a PCBU, and consequently have health and safety obligations under the HSWA, if they do not fall within the definition of a ‘Volunteer Association’ in the HSWA and outlined above.

- Warning: there is a risk that if you assume that your club is a Volunteer Association (and therefore not a PCBU), WorkSafe New Zealand (New Zealand’s Health and Safety regulator) and/or the Courts might hold a different view. Any fundraising or business-type activity may cause a volunteer association to become a PCBU and subject to the HSWA.
- The HSWA also places duties on:
  - Officers of a PCBU. A person will be an officer if they have a position that allows them to exercise significant influence over the management of the PCBU.
  - Workers of a PCBU. A person will be a worker if they carry out work in any capacity for a PCBU, including (but not limited to) employees, contractors, and volunteer workers.
  - Others in a workplace. This includes visitors to a work place, customers, members of the public who come into contact with a PCBUS’s work, or casual volunteers.

### 5.1.3 *Adventure Activities Regulations 2016*

- In addition to the HSWA, the Health and Safety at Work (Adventure Activities) Regulations 2016 may apply to your club. Those regulations list “Off-road vehicle driving” as an example of an adventure activity.
- At present adventure activities do not include:
  - An activity for which instruction is given only in relation to the supply of equipment for use in the activity
  - An activity provided by a sport club or recreation club to:
    - A member of the club
    - A member of another sports or recreation club under an agreement between the clubs
    - A person who is not a member of the club, if the activity is provided to one person for no more than 12 days in any 12 month period and is provided to:
      - encourage membership of the club
      - to encourage interest in the club’s activities
      - for the purposes of competition.
- Please note that:
  - WorkSafe may investigate or prosecute under the HSWA if they consider that an adventure activity does not comply with the exemptions
  - There is a risk that while you assume that the HSWA does not apply, WorkSafe and/or the Courts might decide it does apply
  - Once again, the NZFWDA encourages each club to seek independent advice as to whether its activities are caught by these regulations
  - The NZFWDA recommends that its clubs and members act as safely as is practicable, to avoid the risk of prosecution under either the HSWA or the Land Transport Act.

## 5.2 The NZFWDA Health and Safety Policy Statement

<i>Statement Clause</i>	<i>Explanation</i>
1. The NZFWDA wants all 4wd Clubs and their members to enjoy safe 4wd experiences.	<ul style="list-style-type: none"><li>• The NZFWDA wants everyone to be safe.</li><li>• Safety should be a priority alongside positive relationships with land owners and land managers and enjoyment of off-road 4wd activities.</li></ul>
2. The NZFWDA recommends that all 4wd Clubs undertake a risk identification process before any event, trip or competition.	<ul style="list-style-type: none"><li>• Risk identification is an important part of planning events, trips and competitions.</li><li>• Examples of common risks that can apply to events, trips and competitions are listed in the Guidelines section of this document.</li><li>• Clubs should also look out for risks during trips, events and competitions and act to mitigate these.</li></ul>
3. The NZFWDA recommends that all 4wd Clubs put in place a risk management plan for the hazards and risks identified for any event, trip, or competition.	<ul style="list-style-type: none"><li>• Following the risk identification step, a plan should be put in place to manage those hazards and risks. Eliminate, minimise and control, in that order, must be the approach to identifying and managing risks/hazards:<ul style="list-style-type: none"><li>▫ <b>Eliminate</b> risks/hazards where reasonably practicable, removing the chance of the risk/hazard causing death or serious injury</li><li>▫ <b>Minimise</b> risks/hazards that cannot be eliminated as far as reasonably practicable</li><li>▫ <b>Control</b> those risks/hazards that cannot be eliminated or minimised through safety procedures.</li></ul></li><li>• The NZFWDA recognises that the nature of this sport and the events, trips and competitions that 4wd Clubs run, means that risks/hazards are part of the environment our members choose to be in. As such IDENTIFYING AND THEN MINIMISING AND CONTROLLING the hazards will be the most likely route to managing everyone's health and safety.</li></ul>
4. Every 4wd Club is responsible for managing health and safety. Workers and members of the club also have important responsibilities for health and safety.	<ul style="list-style-type: none"><li>• Within each Club, the Club itself and every person (including the following) has responsibilities for safe practices:<ul style="list-style-type: none"><li>▫ The Club</li><li>▫ Trip and/or Event Leaders and organisers</li><li>▫ Other officials</li><li>▫ Club members</li></ul></li></ul>

Statement Clause	Explanation
5. The NZFWDA cannot have and does not have control or responsibility for the practices of Clubs and their members.	<ul style="list-style-type: none"> <li>▫ Participants, families, friends, visitors, spectators and anyone else involved in the 4wd Club event or trip.</li> </ul> <hr/> <ul style="list-style-type: none"> <li>• The Association does not control or manage 4wd Clubs or their trips, competitions or events.</li> <li>• As a voluntary association it has no direct means of controlling or managing the activities of Clubs.</li> <li>• Each club and its members are responsible for ensuring their own compliance with the HSWA and associated regulations and standards.</li> </ul>
6. The NZFWDA has provided these guidelines for 4wd Clubs.	<ul style="list-style-type: none"> <li>• The guidelines provided in this document are intended to assist 4wd Clubs to follow safe practices.</li> <li>• Each Club and its members should adopt their own guidelines to ensure safe practices are followed, and that they comply with legislation and legal obligations.</li> </ul>
7. Every 4wd Club and its members are responsible for compliance with legislation, regulation and legal obligations.	<ul style="list-style-type: none"> <li>• Legislation has many aspects: <ul style="list-style-type: none"> <li>▫ Crimes Act</li> <li>▫ Land Transport Act</li> <li>▫ The Health and Safety at Work Act 2015 (HSWA), to the extent that the HSWA applies to 4wd clubs and their members.</li> <li>▫ Other Acts and regulations, for example the Sports Anti-Doping Act 2006</li> <li>▫ Common law.</li> </ul> </li> <li>• Even if not an HSWA matter, driving “off road” is likely to be subject to the Land Transport Act 1988 and its subsequent amendments (“the Land Transport Act”). Whether or not the HSWA and other legislation applies, everybody should try to act safely.</li> <li>• Tracks are often legal roads. If the public has access the track is probably a road. If the HSWA does not apply a person may be prosecuted by the Police under the Land Transport Act or other legislation and regulations.</li> </ul>
8. Personal Responsibility.	<ul style="list-style-type: none"> <li>• Every person is responsible for: <ul style="list-style-type: none"> <li>▫ Themselves</li> <li>▫ The consequences of their acts and their omissions</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>▫ Keeping themselves and other people safe.</li> <li>● Personal responsibility applies to: <ul style="list-style-type: none"> <li>▫ Club members</li> <li>▫ Club members' co-drivers, crew and passengers</li> <li>▫ Other drivers and their passengers</li> <li>▫ Volunteers and volunteer workers</li> <li>▫ Organisations or persons "employed" by a Club</li> <li>▫ Contractors</li> <li>▫ Spectators</li> <li>▫ The Public</li> <li>▫ Other people</li> <li>▫ And anybody else that could be involved in or affected by a Club event.</li> </ul> </li> <li>● In addition, any workers of a 4WD Club (including contractors, subcontractors, employees and volunteer workers), must also co-operate with any reasonable policy or procedure of the NZFWDA or 4wd Club or other involved PCBU relating to health and safety that has been notified to them.</li> <li>● If a 4wd Club becomes a PCBU, under the HSWA, "officers" of a PCBU have due diligence obligations to ensure that the PCBU is complying with its HSWA obligations.</li> </ul>
<p>9. When there are employees, volunteers, volunteer workers, contractors or similar.</p>	<ul style="list-style-type: none"> <li>● There are specific requirements under the HSWA: <ul style="list-style-type: none"> <li>▫ These apply when a person is directly employed (as defined in the Employment Relationship Act)</li> <li>▫ Payments may result in incurring obligations under the HSWA.</li> </ul> </li> <li>● When a 4wd Club engages a company or other organisation (a "contractor"): <ul style="list-style-type: none"> <li>▫ That contractor should be the employer of any of its staff or sub-contractors and has HSWA responsibilities</li> <li>▫ The 4wd Club nonetheless has HSWA responsibilities as the principal engaging the contractor, see "6.8 Volunteer Workers".</li> </ul> </li> <li>● If a 4wd Club employs a person: <ul style="list-style-type: none"> <li>▫ The 4wd Club is the "employer" and has the HSWA responsibilities</li> <li>▫ The 4wd Club will be deemed a PCBU for the purposes of the HSWA</li> <li>▫ The 4wd Club as "employer" must comply with the HSWA as a PCBU</li> </ul> </li> </ul>

Statement Clause	Explanation
10. Events that a 4wd Club organises and/or runs.	<ul style="list-style-type: none"> <li>▫ The 4wd Club has obligations to keep volunteers and volunteer workers safe.</li> <li>• More than one duty holder can have a duty in relation to the same matter.</li> </ul>
11. Events that the NZFWDA itself organises and/or runs.	<ul style="list-style-type: none"> <li>• To be a Club event, the event must be approved in advance by the Club.</li> <li>• Each 4wd Club is responsible for events that it organises and/or approves as a club event.</li> <li>• The 4wd Club has obligations to keep its workers, volunteers and volunteer workers and others who may be present at the event safe.</li> <li>• If charging for an event, the Club may be subject to the Health and Safety at Work (Adventure Activities) Regulations 2016.</li> <li>• Land access fees/payments passed on to a land owner or land manager should not be considered a charge by the Club.</li> <li>• WARNING: If a club organises an event and becomes a PCBU then club officers and committees and also officials involved in an event have the responsibilities of the HSWA and may incur personal liability so they each need to take steps to ensure that they each fulfil any obligations they may have under the HSWA.</li> </ul>
12. General public	<ul style="list-style-type: none"> <li>• To be an NZFWDA event organised by the NZFWDA itself, the event must be officially approved in advance by the NZFWDA.</li> <li>• The guidelines for 4wd Clubs also apply to events organised and/or run by the NZFWDA.</li> <li>• The NZFWDA must have its own: <ul style="list-style-type: none"> <li>▫ NZFWDA Health and Safety Policy</li> <li>▫ Processes, documents, forms, practices.</li> </ul> </li> <li>• Spectators, passers-by and general members of the public all have their own responsibilities which may include responsibilities and obligations under the HSWA.</li> <li>• Where any of these people are within a site where a 4wd Club is conducting an event, the 4wd Club has responsibilities to ensure the safety of those people, as set out above and elsewhere in these guidelines.</li> </ul>

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<i>Statement Clause</i>	<i>Explanation</i>
13. Alcohol and Drugs	<ul style="list-style-type: none"><li>• The NZFWDA does not condone the use of drugs or alcohol associated with any trip, competition or event that involves vehicles or equipment.</li><li>• The NZFWDA policy is that all persons participating in a 4wd Club trip, competition or event comply with all relevant laws and regulations regarding drugs and alcohol.</li><li>• The NZFWDA recommends that 4wd Clubs adopt appropriate policies and practices in relation to drugs and alcohol.</li></ul>

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## 6 Guidelines for 4wd Clubs

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This section sets out suggested guidelines for 4wd Clubs affiliated to the NZFWDA.

These are not mandatory, they are recommendations for 4wd Clubs to consider and to make their own decisions about.

An asterisk \* indicates where a sample document may be provided in due course. The planned library of sample documents is described in Section 7.

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### 6.1 Personal Responsibility

- Every person (including every 4wd Club and every member of a 4wd Club) is responsible for:
  - Taking reasonable care for their own health and safety
  - Taking reasonable care that what they do (or do not do) does not adversely affect the health and safety of anyone else
  - Complying with any reasonable instruction given by the Club so that it can comply with its health and safety obligations including all safe work procedures, rules and health and safety training
  - Attending any trip briefings, ensuring they can hear it, and paying attention to the details.
- Every person should, so far as is reasonably practicable, promote and where possible ensure the safety of all persons including Club members and members of the public.
- This means *“taking responsibility for what you can control”*
- This applies to everybody participating in or that could be affected by the Club’s event.

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### 6.2 Club Responsibilities

- Each Club is responsible for:
  - Its own Health and Safety Policy, systems, processes and practices
  - Documenting and filing any indemnities<sup>1</sup> it considers necessary, obtaining signatures as relevant
  - Its members
  - Other people within the Club’s sphere of operations
  - Conduct of its Trip Leaders
  - Relationships with land owners and land managers, and complying with their requirements
  - Approving the scheduling of each trip and event
  - Its duty of care to any person who may be affected by the consequences of the Club’s actions
  - Compliance with legislation, regulation and legal obligations.
- Incorporation:
  - Each Club should consider becoming an incorporated society, if it has not already done so
  - As an incorporated society, there is a measure of protection against liability for the Club’s members
  - If a club is not an incorporated society, any liability under HSWA is likely to be imposed on individual members. Whereas if the club is an incorporated society, then that society (rather than the individual members) is likely to be liable. The NZFWDA

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<sup>1</sup> See “6.10 Indemnities”

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recommends that 4wd clubs become incorporated societies to reduce the risk of personal liability.

- Administration:
  - Some administration is necessary
  - The NZFWDA will endeavour to progressively provide some sample documents and forms, that Clubs may use as the basis for developing their own safety processes; these will be made available progressively through an online library.
- Club Health and Safety Policy:
  - The Club should have a Health and Safety Policy \*
  - This should be reviewed by the Club from time to time as required.
- Club Safety Processes, which may include:
  - Code of conduct \*
  - Trip organisation and conduct \*
  - Record of participants \*
  - Trip Leader processes \*
  - Vehicle fit for purpose \*
  - Driver in a fit state
  - Vehicle equipment \*
  - Vehicle recovery \*
  - Track maintenance \*
  - Drug and alcohol policy.
- Safe Practices, the Club should provide:
  - Guidelines for its Trip Leaders \*
  - Guidelines for its Club Members \*
  - Guidelines for family, friends, visitors and other people \*
  - Guidelines for managing safety of the general public at Club events \*.
- When a Club engages a contractor, volunteer worker or any other paid person or organisation:
  - See “6.6 Paid Workers”
  - See “6.7 Volunteers”
  - See “6.8 Volunteer Workers”
  - See “6.9 Other People”.

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## 6.3 Trip Leader Responsibilities

### 6.3.1 Overall objective

- Get everyone home safely.

### 6.3.2 Qualification as a Trip Leader

- A person filling the role of Trip Leader should be a member of an affiliated 4wd Club and approved by their Club as a Trip Leader.

### 6.3.3 Safe Practices

- Each Trip Leader should comply with their duties as Trip Leader (along the lines of the Trip Leader Responsibilities listed here) and their Club’s safe practices guidelines for Trip Leaders.

### 6.3.4 Trip Preparation

- Ensure trip recorded in advance as a Club event
- Use a fresh trip preparation checklist \*
- Plan route, including start-point and end-point that minimise impact on residents and traffic
- Liaise with the land owner/manager

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- Obtain any necessary permits for access to the land
  - If requested, give the land owner/manager a signed indemnity form between Club and land owner
  - Confirm the conditions of access
  - Obtain land owner/manager's hazard identification and management information (this may be verbal)
  - Obtain details from land owner/manager, and from own analysis, to record on Club's hazard identification and management form for the event \*
  - Undertake a risk/hazard identification of the planned route and clearly identify the risks/hazards to participants
  - Organise collection and return of keys
  - Prepare trip information sheet or equivalent for Club's purposes \*
  - Obtain any other advance paperwork required, for example indemnity forms between Club and participants \*
  - Make any last-minute checks for changes in conditions.

#### 6.3.5 *At the start of a Trip*

- Assemble drivers at trip meeting point
- Record each vehicle and its driver and passengers in the trip attendance sheet \*
- Organise any indemnity forms the Club requires, including signatures as necessary of drivers, passengers and other participants who are not already covered by a pre-existing Club membership indemnity \*
- Consider appointing assistant Trip Leaders if appropriate for the trip
- Turn away any vehicles not fit for purpose or not in a fit state, such as vehicles that:
  - do not comply with any scrutineering standards applicable to the event, or
  - do not comply with the club's requirements.
- Turn away any drivers who are not suitably experienced, do not carry a valid driver's licence or equivalent, and/or anyone who is not in a fit state or who does not meet club trip requirements.
- Give trip and safety briefing, including:
  - Hazards identified on the route or course
  - Appropriate safe driving practices
  - What to do and who to contact in an emergency
  - What gear and equipment should be carried in the vehicle
  - Details about the Trip Leader(s) for the trip
  - Any trained first-aiders on the trip.
- *All drivers, passengers and other participants should be present at any trip briefing.*

#### 6.3.6 *During a Trip*

- While running the trip, at all times endeavour to monitor what's happening and endeavour to ensure safe practices are followed
- As far as practical, manage any vehicle recovery operation \*
- As far as practical, manage any injury or health issues \*
- Complete any incident report forms necessary \*

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### 6.3.7 After the Trip

- Account for all vehicles, drivers, passengers and other participants at the end of the trip
- Report any incidents, as considered appropriate to the:
  - Club \*
  - Land owner/manager \*
  - Police and/or any other authorities \*
- Return keys
- Provide participant numbers and/or trip report to land owner/manager and Club if required
- Share any lessons learned with their Club
- Provide trip report to Club if required.

## 6.4 Club Member Responsibilities

- Each Club member should obtain and familiarise themselves with their Club's rules\* and their Club's guidelines for Club members\*
- Each Club member's responsibilities include:
  - Making sure their vehicle is safe and meets required standards
  - Ensuring that they, their drivers and passengers *attend the trip briefing*
  - Keeping the passengers and crew safe
  - Driving appropriately for the conditions and taking into account any risks and hazards that have been identified on the route
  - Driving safely
  - Asking for help if in doubt
  - Ensuring their crew and passengers are briefed accordingly and (to the best of their ability) behave accordingly.
- Each Club member and all other participants should comply with:
  - The Law
  - Their personal responsibilities
  - Their Club's vehicle requirements
  - Their Club's driver experience requirements
  - The trip information sheet \*
  - Land access conditions
  - The trip and safety briefing \*
  - Trip instructions from Trip Leader
  - Guidance from the Trip Leader and other more experienced Club members (except where the person deems this unsafe)
  - Any specific policies and procedures of their Club.
- Insurance:
  - Club members should have their own vehicle insurance, including cover for liability to third parties (other vehicles and other people)
  - The NZFWDA insurance:
    - Does not cover vehicle to vehicle crashes or accidents
    - Is a Club third party, non-vehicle last resort insurance
  - To be covered by the NZFWDA insurance, participants in a club event must be:
    - Club members
    - On a club sanctioned approved event - recorded and approved in advance.

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- Occasional day visitors may be covered by NZFWDA insurance if:
    - A club’s constitution specifically permits day membership<sup>2</sup>; and
    - Proper processes are followed for that day membership (a fair use, not abuse, policy should apply).
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## 6.5 Club dealings with Land Owners and Land Managers

- Land owners/managers have their own responsibilities under the HSWA:
    - Land owners/managers may impose requirements which the 4wd Club must comply with as a condition of access
    - If the Club is not prepared to comply, the land owner/manager has a legal right to deny access
    - See as an example the WorkSafe brochure “WSNZ-2239 Visitors and Events on Farms” \* (the latest version should be at [www.worksafe.govt.nz](http://www.worksafe.govt.nz)).
  - The Club should establish a mutually respectful relationship and dialogue between any landowner and member clubs. This is crucial to maintaining and enhancing the NZFWDA and its members’ reputation in the eyes of landowners, government departments and the public.
  - Role of the 4wd Club in respect of land owners/managers:
    - Trip Leaders
      - see “Trip Leader Responsibilities” above in 6.3
    - Club members
      - see “Club Member Responsibilities” above in 6.4
    - Other trip participants
      - see “Other People” below in 6.9.
  - When dealing with land owners/managers the Club must engage and cooperate with the land owners/managers on health and safety and planning matters. The Club and the land owners/managers have a duty to consult under the HSWA, even though the Club is likely to be a volunteer association for the purposes of the HSWA.
  - The land owners/managers and Club should collaborate to identify and manage risks that may arise on the land during the event, trip, or competition.
  - All participants should respect all landowners’ rights and any privilege and conditions of access that they may grant.
  - It is suggested where appropriate that the Club should retain a record of collaboration discussions as well as the health and safety plan and hazard identification and management plan.
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<sup>2</sup> See “6.11 Day Members”

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## 6.6 Paid Workers

- Under the HSWA Act, a worker includes:
  - an employee
  - a contractor or subcontractor and their employees, and employees of a labour hire company and their sub-contractors and the sub-contractors employees assigned to work in the undertaking
  - an outworker (including a homemaker)
  - an apprentice or a trainee and a person gaining work experience or undertaking a work trial
  - a volunteer worker.
- When workers are present at a workplace, they have duties under the HSWA to:
  - take reasonable care for his or her own health and safety
  - take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons; and
  - comply, as far as the worker is reasonably able, with any reasonable instruction that is given by the PCBU to allow the PCBU to comply with this Act or regulations
  - co-operate with any reasonable policy or procedure of the PCBU relating to health or safety at the workplace that has been notified to workers.
- When a 4wd Club has paid workers:
  - The Club will be deemed a PCBU under the HSWA and will have to ensure it complies with the health and safety requirements under the HSWA
  - There are additional requirements under the HSWA as an employer.
- When a 4wd Club contracts a company or organisation (the “contractor”) to provide services:
  - The contractor has obligations for their employees and their sub-contractors under the HSWA
  - The Club may also have HSWA responsibilities for the contractor as a person at its workplace or site
  - To meet its requirements, the contractor may require the 4wd Club to put in place arrangements relating to the management of risks in relation to its employees, and the Club must do so
  - The contractor may require the 4wd Club to engage and consult with him or her on a health and safety plan while the contractor is working with the Club.

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## 6.7 Volunteers

- Under the HSWA, a volunteer is a person who is acting on a voluntary basis, whether or not the person receives out-of-pocket expenses.
- When Volunteers are present at a workplace, they have duties under the HSWA as ‘other persons at a workplace’. These duties include:
  - Taking reasonable care for their own health and safety
  - Taking reasonable care that their acts or omissions do not adversely affect the health and safety of other persons
  - Complying, as far as they are reasonably able, with any reasonable instructions given by the PCBU (‘person conducting a business or undertaking’) to allow the PCBU to comply with the HSWA and associated regulations.

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- Generally, members of 4wd Clubs are volunteers in terms of the HSWA:
    - Volunteers are not paid
    - The HSWA limits requirements on such volunteers (see HSWA sections 51, 45, 46)
    - Contribution to out-of-pocket expenses should not be a payment for services.
  - There is a risk that a person claiming to be a volunteer may not be considered a volunteer by WorkSafe.
  - Note that if a Club or its members become a PCBU within the meaning of the HSWA then they owe a duty to volunteers and volunteer workers.
  - Note that when any Club member becomes a volunteer worker then the HSWA applies as set out below.
- 

## 6.8 Volunteer Workers

- An unpaid volunteer who receives a contribution to expenses might not be an employee but might become a volunteer worker.
  - Volunteer workers:
    - Do not include persons:
      - participating in a fund-raising activity
      - assisting with sports or recreation or activities for an educational institute, sports club, or recreation club
    - Have the same duties under the HSWA as all other workers (see above).
- 

## 6.9 Other People

- A 4wd Club and the members of that 4wd Club must ensure, so far as is reasonably practicable, that the health and safety of ‘other’ persons is not put at risk while they are attending or in the vicinity of any Club event.
  - These persons might be spectators, visitors, or general members of the public.
  - They might be on private land or public land.
  - The Club and its members might fulfil their duties with actions such as those listed here, with the format and method depending on the situation:
    - The health and safety plan for the event should include the safety of these other people
    - Signage and fencing should be installed where considered necessary
    - Health and safety briefings for these other people
    - Deployment of marshals.
  - People who participate in trips, competitions and other events as drivers or in any other capacity (whether as a day member<sup>3</sup> or not) should consider joining a 4wd Club and benefiting from its affiliation with the NZFWDA, even if a member of the NZFWDA in any other capacity.
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<sup>3</sup> See “6.11 Day Members”

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## 6.10 Indemnities

- The HSWA makes it unlawful to indemnify another person, or to be indemnified by another person, in respect of any fine or infringement fee.
  - Therefore if a club is a PCBU it should not give or seek any indemnity in respect of HSWA obligations.
- 

## 6.11 Day Members

- To ensure that each Club continues to fall within the exemption for sports clubs under the Regulations it is important that day members (if so permitted by the club) do not participate in more than 12 events, trips, or competitions in a 12 month period. If they do, then the Club may no longer have the benefit of its exemption from the Regulations. It will then need to adhere to the Regulations for adventure activities.
  - Individual Clubs may have their own rules around day membership, that may be tighter than the Regulations.
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## 7 Guideline Document Samples

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### 7.1 The Library

The NZFWDA is developing a library of sample documents and forms that will be made available to Clubs.

The intention is to provide the library online, possibly open to the public as well as the Clubs.

As sample documents and forms are developed or obtained, they may be progressively added to the library on approval by the NZFWDA Executive.

Once the library has been implemented, Clubs will be encouraged to download sample forms and documents from the library and adapt them to meet their own requirements.

Clubs are also encouraged to share their documents and forms with each other and the NZFWDA.

The NZFWDA strongly encourages each Club to seek their own independent expert advice on these documents and does not certify that these are suitable to be relied upon for the purpose of complying with the HSWA 2015, any related legislation, regulators or codes of practice.

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### 7.2 Printing

Clubs will be expected to make their own arrangements if they need printed copies of sample documents and forms.

If a Club does not have online access or printing capability, the NZFWDA will consider requests for providing one printed copy with a small fee to cover costs for printing and shipping (applies to affiliated 4wd Clubs only).

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### 7.3 Forms

The library of sample documents and forms may include some forms that are ready for Clubs to use, without any need for alteration.

If so, for Clubs who are unable to print these, the NZFWDA is likely to charge a small fee to recover costs for printing and shipping.

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### 7.4 Library Contents

The sample documents and forms are expected to fall into the following categories:

- Health and Safety Policy
- Health and Safety Processes
- Trip Leader Responsibilities
- Club Member Responsibilities
- Responsibilities relating to Land Owners/Managers
- Other People
- Reference Material.

The NZFWDA reserves the right to alter these categories and the contents of the library at any time.

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## 7.5 Hosting Club Documents

The NZFWDA is investigating the feasibility of providing a simple service for Clubs who do not have online document storage capability.

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## 8 Promotion

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### 8.1 Credibility of Documentation

The NZFWDA has obtained independent legal review of these policies and guidelines in relation to the HSWA. The NZFWDA strongly encourages each Club to seek their own independent expert advice on the HSWA and does not certify that this policy and these guidelines are suitable to be solely relied upon for the purpose of complying with the HSWA 2015, any related legislation, regulators or codes of practice.

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### 8.2 Feedback

The NZFWDA welcomes reasonable feedback to this policy and guidelines document by way of comments and contributions.

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### 8.3 Publicity Campaign

The NZFWDA may promote this Health and Safety publication and other material to:

- The Zones.
  - Clubs.
  - 4wd publications.
  - Potentially the press.
  - Potentially other media.
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## 9 Copyright

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The NZFWDA claims copyright of this publication and its content, where not material copied from legislation or regulations, and the right to be acknowledged as the author in any reference to any part of this publication.

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## 10 Appendix A: Definition of Terms

These terms are used in this document and have these meanings:

<p><b>4wd:</b> Four wheel drive.</p>	<p><b>Club or 4wd Club:</b> A 4wd Club that is affiliated to the NZFWDA.</p>
<p><b>Club Official:</b> A member of a 4wd Club who holds a position of responsibility on the club's committee or as a Trip Leader. <i>See more details in Appendix B.</i></p>	<p><b>Contractor:</b> A PCBU may be a contractor and will owe duties and be owed duties under the HSWA. Note that not everyone who works for another is an employee. A worker may be engaged as a contractor under a contract for services and/or may be described as self-employed and may be a PCBU. <i>See more details in Appendix B.</i></p>
<p><b>Duty of Care:</b> Broadly, this is an obligation to act in a responsible way to avoid or minimise injury or putting at risk others who may be owed a duty of care. Note that under the HSWA, the <b>Primary Duty of Care</b> means that a PCBU has the primary responsibility for the health and safety of workers and others influenced by its undertaking. This is a broad overarching duty to act in a responsible way to avoid or minimise injury or putting at risk others who may be owed a duty of care. <i>See more details in Appendix B.</i></p>	<p><b>Employer:</b> A person or undertaking that employs workers. <i>See more details in Appendix B.</i></p>
<p><b>Event:</b> Any occasion that is organised by a 4wd Club or the NZFWDA. This includes trips and competitions.</p>	<p><b>H&amp;S:</b> Health and Safety.</p>
<p><b>HSWA:</b> Health and Safety at Work Act 2015.</p>	<p><b>NZFWDA:</b> The New Zealand Four Wheel Drive Association Incorporated.</p>
<p><b>PCBU:</b> A person (or organisation) conducting a business or undertaking, whether or not the business or undertaking is conducted for profit or gain. NOTE: A 4wd club should not be a PCBU if that club falls within the definition of a Volunteer Association. NOTE: There may be occasions where charging money for events could mean that a club becomes a PCBU even if no person or organisation is employed or contracted. <i>See the legal definition in Appendix B. Also see Sections 5.1.1 and 5.1.2 and other references throughout this document.</i></p>	<p><b>Trip:</b> A specific type of event, usually involving the driving of 4wd vehicles, organised by a 4wd Club or the NZFWDA. Sometimes the terms "event" and "trip" are both used in this document, for clarity and emphasis.</p>
<p><b>Trip Leader:</b> A person appointed by a 4wd Club as able and responsible for planning and managing an event or trip.</p>	<p><b>Volunteer:</b> A person who is acting on a voluntary basis (whether or not the person receives out-of-pocket expenses).</p>

<p><b>Volunteer association:</b> a group of volunteers (whether incorporated or unincorporated) working together for one or more community purposes where none of the volunteers (whether alone or jointly with any other volunteer) employs any person to carry out work for the volunteer association.</p>	<p><b>Volunteer worker:</b> A person who carries out work for a PCBU with the knowledge or consent of the PCBU. However does not include volunteers assisting with sport or recreation for a sports or recreation club. <i>See more details in Appendix B.</i></p>
<p><b>Worker:</b> An individual who carries out work in any capacity for a PCBU, including employees, contractors, sub-contractors, an employee of a contractor or sub-contractor, an outworker, a person gaining work and experience, a volunteer worker.</p>	

Further definitions and more detailed definitions of some of these terms are provided in Appendix B.

## 11 Appendix B: Detailed Definitions

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This appendix contains a number of detailed definitions, including further definition of some of the terms referenced in Appendix A: "Definition of Terms".

Any reference to the HSWA or any other Act, legislation, regulation or law is included as guidance only and the full original documents should be referred to in order to ensure complete definition.

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### **Primary Duty of Care (HSWA)**

Under the HSWA, a PCBU has the primary duty of care for the health and safety of workers and others influenced by its works.

A PCBU must ensure, so far as is reasonably practicable, the health and safety of its workers and other persons put at risk from the work or activities carried out.

In order to discharge this duty a PCBU must ensure that work environment is, so far as reasonably practicable, without risk. This includes ensuring that equipment is maintained and provided to workers, safety procedures are in place and followed, health and safety training is regularly undertaken, and the health and safety conditions of the workplace are regularly monitored.

Section 36 of the Act refers to the Primary Duty of Care:

- (1) A PCBU must ensure, so far as is reasonably practicable, the health and safety of—
  - (a) workers who work for the PCBU, while the workers are at work in the business or undertaking; and
  - (b) workers whose activities in carrying out work are influenced or directed by the PCBU, while the workers are carrying out the work.
- (2) A PCBU must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.
- (3) Without limiting subsection (1) or (2), a PCBU must ensure, so far as is reasonably practicable,—
  - (a) the provision and maintenance of a work environment that is without risks to health and safety; and
  - (b) the provision and maintenance of safe plant and structures; and
  - (c) the provision and maintenance of safe systems of work; and
  - (d) the safe use, handling, and storage of plant, substances, and structures; and
  - (e) the provision of adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking, including ensuring access to those facilities; and
  - (f) the provision of any information, training, instruction, or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking; and
  - (g) that the health of workers and the conditions at the workplace are monitored for the purpose of preventing

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injury or illness of workers arising from the conduct of the business or undertaking.

- (4) Subsection (5) applies if—
- (a) a worker occupies accommodation that is owned by, or under the management or control of, a PCBU; and
  - (b) the occupancy is necessary for the purposes of the worker's employment or engagement by the PCBU because other accommodation is not reasonably available.
- (5) The PCBU must, so far as is reasonably practicable, maintain the accommodation so that the worker is not exposed to risks to his or her health and safety arising from the accommodation.
- (6) A PCBU who is a self-employed person must ensure, so far as is reasonably practicable, his or her own health and safety while at work.

WorkSafe's guidance can be found at the following link:

<https://worksafe.govt.nz/managing-health-and-safety/getting-started/understanding-the-law/primary-duty-of-care/what-is-the-primary-duty-of-care/>

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#### **Employer**

The Employment Relations Act 2000 defines an employer as a person employing any employee or employees and includes a person engaging or employing a homeworker.

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#### **PCBU**

Typically a PCBU will be a company, a partnership, a limited partnership, or a body corporate that employs workers and operates a workplace, whether that workplace is fixed in one place or not.

The NZFWDA itself in its role as a representative body considers it is not a PCBU as it falls into the definition of a volunteer association below.

A PCBU is defined in HSWA section 17:

17 (1) In this Act, unless the context otherwise requires, a person conducting a business or undertaking or PCBU—

(a) means a person conducting a business or undertaking –

- (i) whether the person conducts a business or undertaking alone or with others; and
- (ii) whether or not the business or undertaking is conducted for profit or gain; but

(b) does not include—

- (i) a person to the extent that the person is employed or engaged solely as a worker in, or as an officer of, the business or undertaking.
- (ii) a volunteer association

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#### **Volunteer**

As defined in HSWA section 16:

Interpretation: Volunteer means a person who is acting on a voluntary basis (whether or not the person receives out-of-pocket expenses)

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**Volunteer Association**

The NZFWDA is a volunteer association for the purposes of the HSWA. Each Club will need to assess whether it meets the definition of volunteer association below.

The status of a volunteer association is a new concept under the HSWA and remains untested. Where accidents occur, people need to be cautious about whether or not they will be exempt from liability.

As defined in the HSWA section 17 (2):

Meaning of PCBU:

(2) In this section, volunteer association means a group of volunteers (whether incorporated or unincorporated) working together for 1 or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association.

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**Volunteer Worker**

As defined in the HSWA section 19:

Meaning of worker:

(3) In this Act, a volunteer worker—

(a) means a volunteer who carries out work in any capacity for a PCBU—

(i) with the knowledge or consent of the PCBU; and

(ii) on an ongoing and regular basis; and

(iii) that is an integral part of the business or undertaking; but

(b) does not include a volunteer undertaking any of the following voluntary work activities:

(i) participating in a fund-raising activity:

(ii) assisting with sports or recreation for an educational institute, sports club, or recreation club:

(iii) assisting with activities for an educational institute outside the premises of the educational institution:

(iv) providing care for another person in the volunteer's home.

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**Worker**

As defined in the HSWA section 19:

Meaning of Worker

(1) In this Act, unless the context otherwise requires, a worker means an individual who carries out work in any capacity for a PCBU, including work as—

(a) an employee; or

(b) a contractor or subcontractor; or

(c) an employee of a contractor or subcontractor; or

(d) an employee of a labour hire company who has been assigned to work in the business or undertaking; or

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- (e) an outworker (including a homemaker); or
  - (f) an apprentice or a trainee; or
  - (g) a person gaining work experience or undertaking a work trial; or
  - (h) a volunteer worker; or
  - (i) a person of a prescribed class.
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*Remember – it is everybody’s obligation to act safely*