

# New Zealand Disability Support Network Health and Safety Governance

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# Outline

- Welcome and Whakawhanaungatanga
- What are your burning issues and needs?
- The Chatham House Rule
- Governance Principles – The Four Pillars
- The functions of good health and safety governance
- Access to competent advice
- Risk and assurance
- Overlapping duties- case study
- Is the home a workplace?
- Governing conflicting obligations
- Discussion on how the Disability Support Sector can engage more effectively with Regulators and Govt Agencies

# Getting to know each other

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- At your tables, please appoint a spokesperson
- Spend 10 minutes introducing yourselves to each other, why you are here, your governance experience and your hopes and expectations for the day
- Spokesperson to summarise and introduce the group to the rest of the room





## The Chatham House rule

- Feel free to share insights and experiences openly
- Use the information carefully
- Respect confidences
- Don't discuss legal matters that may be before the Court outside this room
- Don't attribute views to any person

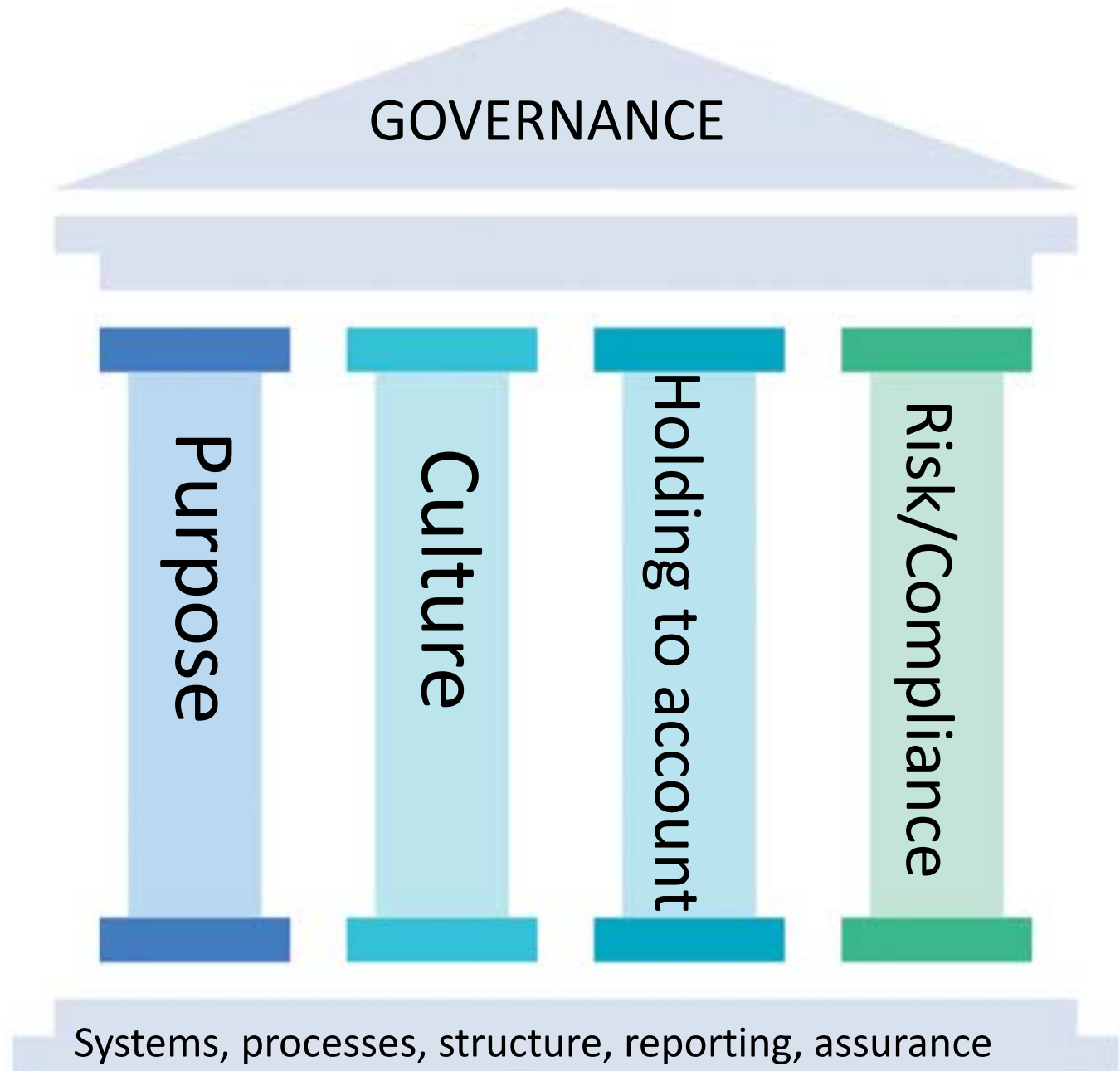
# What is the difference between Governance and Management?

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- 'Noses in, fingers out'
- Strategic –Big picture view, understand context
- Forward looking - longer term horizon (3-5 years+)
- Anticipate, not just respond
- Stakeholder perspectives
- Set parameters –delegations, risk
- Monitor outcomes
- Doing the mahi
- Short to medium term focus
- Work within budgets, priorities and other parameters
- Create the culture
- Manage change
- Own and manage the risks
- Report upwards

# The Four Pillars of Good Governance (IoD)

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# Purpose

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- What are we trying to achieve in relation to our health and safety programme?
- How does this align with our values?
- What is our strategic objective?
- What are we benchmarking against?
- How do we implement our plan?
- What does success in health and safety look like?

What do you think are the merits/risks of adopting a Zero Harm strategy?







Health and Safety are positive outcomes of work going well

# Success in health and safety

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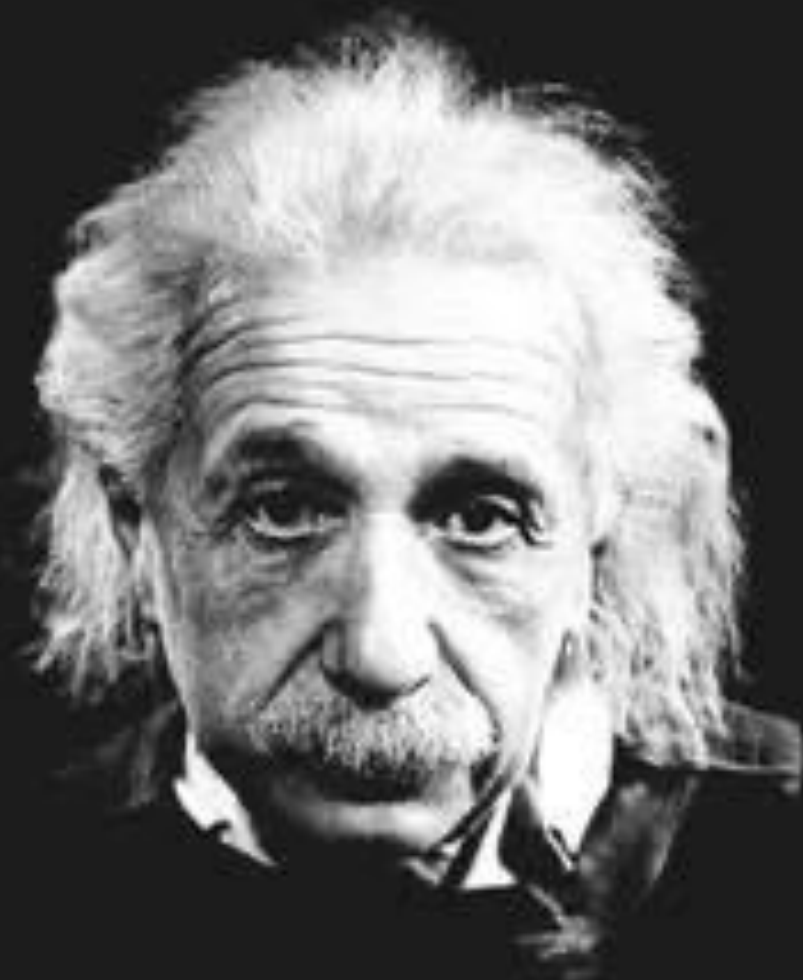
**Safety is not the  
absence of  
Accidents.**

**Safety is the  
presence of  
Capacity.**

What do we mean by capacities?

**"Not everything that  
counts can be counted,  
and not everything that  
can be counted counts."**

-Albert Einstein



At your tables, discuss what success looks like in health and safety and how you can assess and report on it

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# Diversity and culture

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- What do we mean by diversity in health and safety governance?
- What are the perspectives we want to see represented?
- What are the signs of an effective governance culture?



# Holding to account

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- Are the Board and CEO aligned?
- Does the Board create the environment for success?
- What incentives and KPIs do you set?
- Are there any unintended consequences



# Ensuring compliance and managing risk

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- Do you know what legal requirements you/your organisation must meet?
- How do you keep up to date?
- How do you reconcile potentially competing obligations?
- Do you have a risk management framework?
- Do you use risk as a means of maximising the achievement of objectives?



# Access to competent advice

- HSWA is performance-based legislation. It mostly describes the outcome to be achieved (don't put people at risk of harm), but not how to do it in your context.
- How do you know what 'good' looks like?
- How do you benchmark against others and the legal framework?
- How do you know that those advising you are competent and current?
- Do you know what S.138 of the Companies Act and S.60 of the Incorporated Societies Act say about relying on advice?



# The functions of good health and safety governance

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Understand the risk profile (acute, chronic and catastrophic), including through overlapping duties

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Demonstrate your interest through GBWA

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Commission a plan to address key gaps and opportunities to achieve your strategy

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Resource and prioritise the plan and monitor delivery

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Set appropriate KPIs for your CEO

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Ensure there is a risk framework in place

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Encourage open reporting of issues and incidents by creating the right learning culture

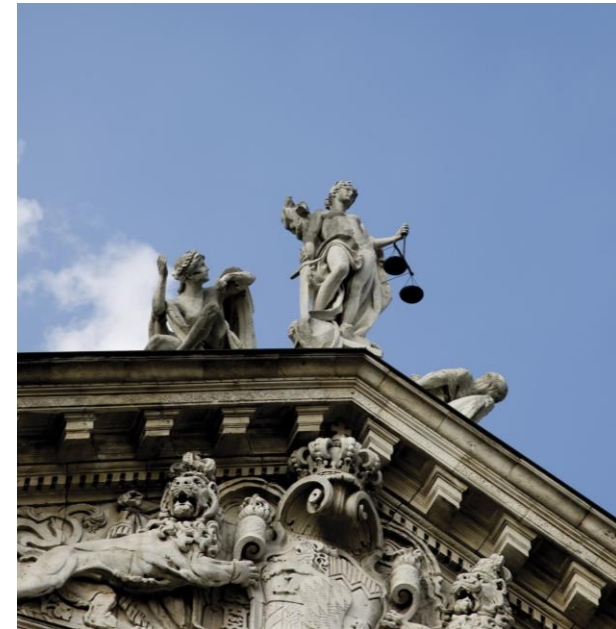
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Repeat!

# Some legal basics and uncertainties

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- Health and safety law is criminal law with significant penalties and costs on conviction.
- There are no exemptions for the Crown, Charities, NFP, etc.
- Only purely voluntary associations are outside the law (not PCBUs)
- Volunteers have duties but no liability for an offence as an officer
- Officers can be fined and/or imprisoned
- You can insure against legal costs and reparation, but not penalty
- The interests of an officer may not be the same as for the PCBU. Do you know what your D&O cover includes?





# Legal basics cont.

- Duty of care includes to 'other persons' whose health and safety may be put at risk from work carried out as part of the business or undertaking of the PCBU. The duty only currently extends to those actually carrying out the work (Whakaari)
- An occupier of a home is not a PCBU if they engage another person solely to do residential work (Note: does not apply to work other than at/on primary residence)
- Residential work means work done by a person employed or engaged by the occupier of a home :
  - domestic work done in the home:
  - work done in respect of the home
- Volunteers can be workers, but volunteer work does not include providing care for another person in the volunteer's home (what about in the home of a person with disabilities?)

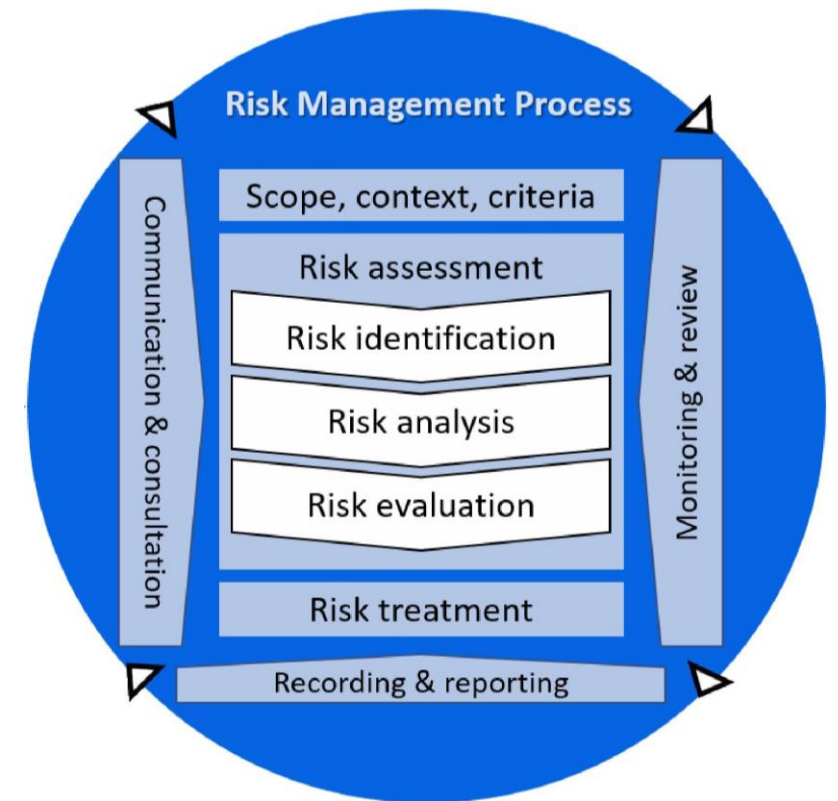
# The Status of Trusts

- WorkSafe NZ v RH and Jury Trust (NZHC 3871) Dec. 2023
- A Trust is not a PCBU as it is not a legal 'person'
- The trustees of a Trust collectively can be a PCBU as a 'body of persons unincorporate' and carry joint and several liability
- Trustees therefore carry both the primary PCBU duty and the officer duty – Double jeopardy?
- A Trust may indemnify trustees for a fine imposed on them if it permitted in the Trust deed
- How any fine is apportioned between each trustee is not yet clear
- Volunteer trustees would still be protected from prosecution

# Risk and Assurance

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- The core duty of the PCBU is to identify, assess, manage and monitor risks to health and safety
- In practice, as governors we should be focussing on critical risks –things with the realistic potential to cause death or permanent impairment –don't sweat the small stuff
- There is no requirement to have a comprehensive hazard register or a risk matrix. These are tools that can, if properly understood and used, assist in risk management



# Risk assessment

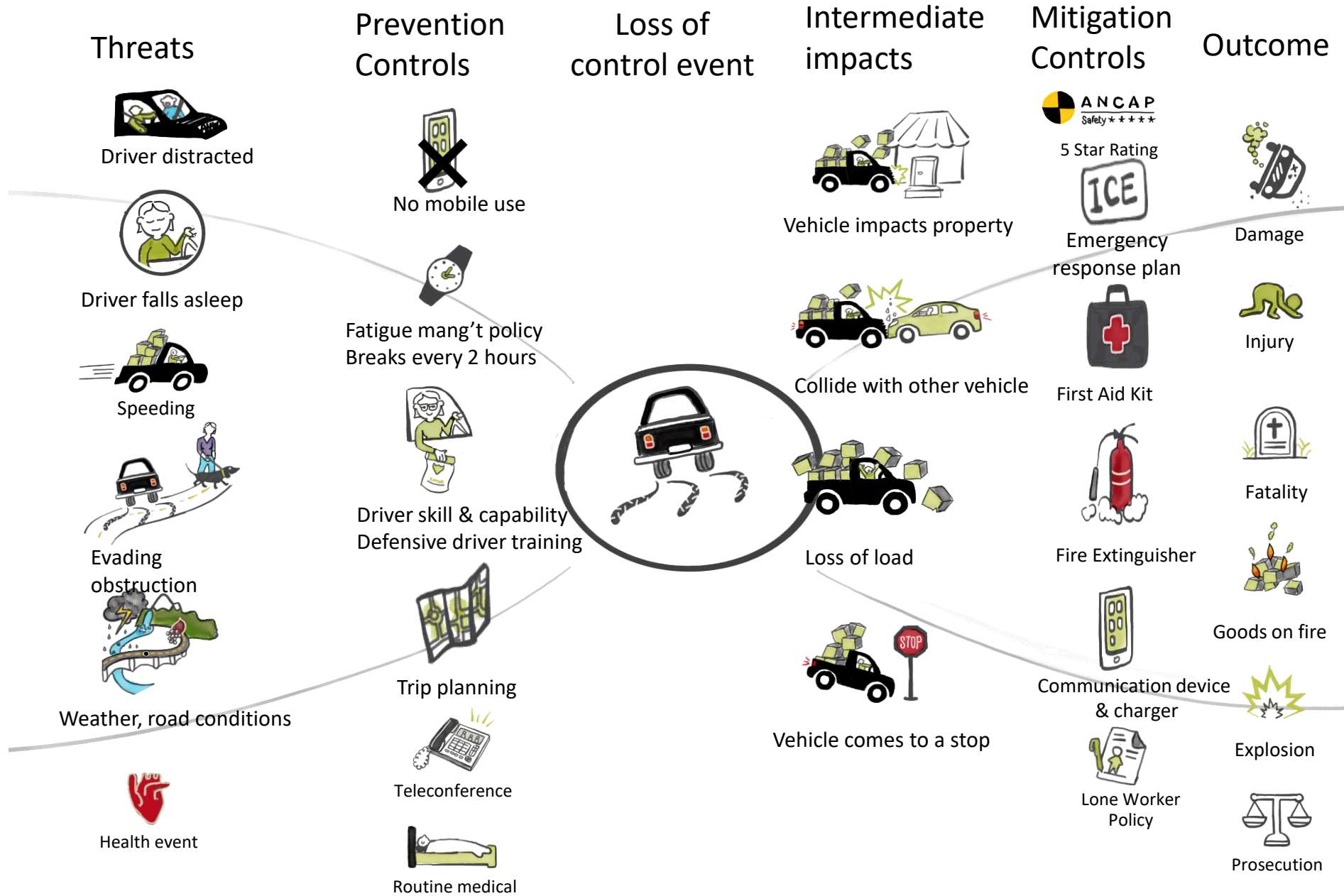
- Risk assessment is part art and part science. ISO 31000 provides a good framework for enterprise and health and safety risk
- As risk governors we need to ensure the PCBU understands and has a good process for critical risk management
- For each risk, consider :
  - Who (is exposed to the hazard and potentially hurt)
  - How (under what circumstances)
  - When (does the activity take place)
  - Where (does it take place)
  - How Serious could it be?

# Assessing critical risks

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- Define what's critical in your context (may include clinical or support risks)
- Consider the threats that could lead to the hazard becoming uncontrolled
- Consider the potential consequences
- Determine through benchmarking and consultation what are the controls that reduce threats (likelihood) and detect, regain control or mitigate the impact (consequence)
- Identify gaps between what you have and the benchmark
- Develop a plan to bridge them
- Verify critical controls are deployed and effective at the point of need –don't wait to find out they are absent or defective after an incident has occurred

# Driving on the road



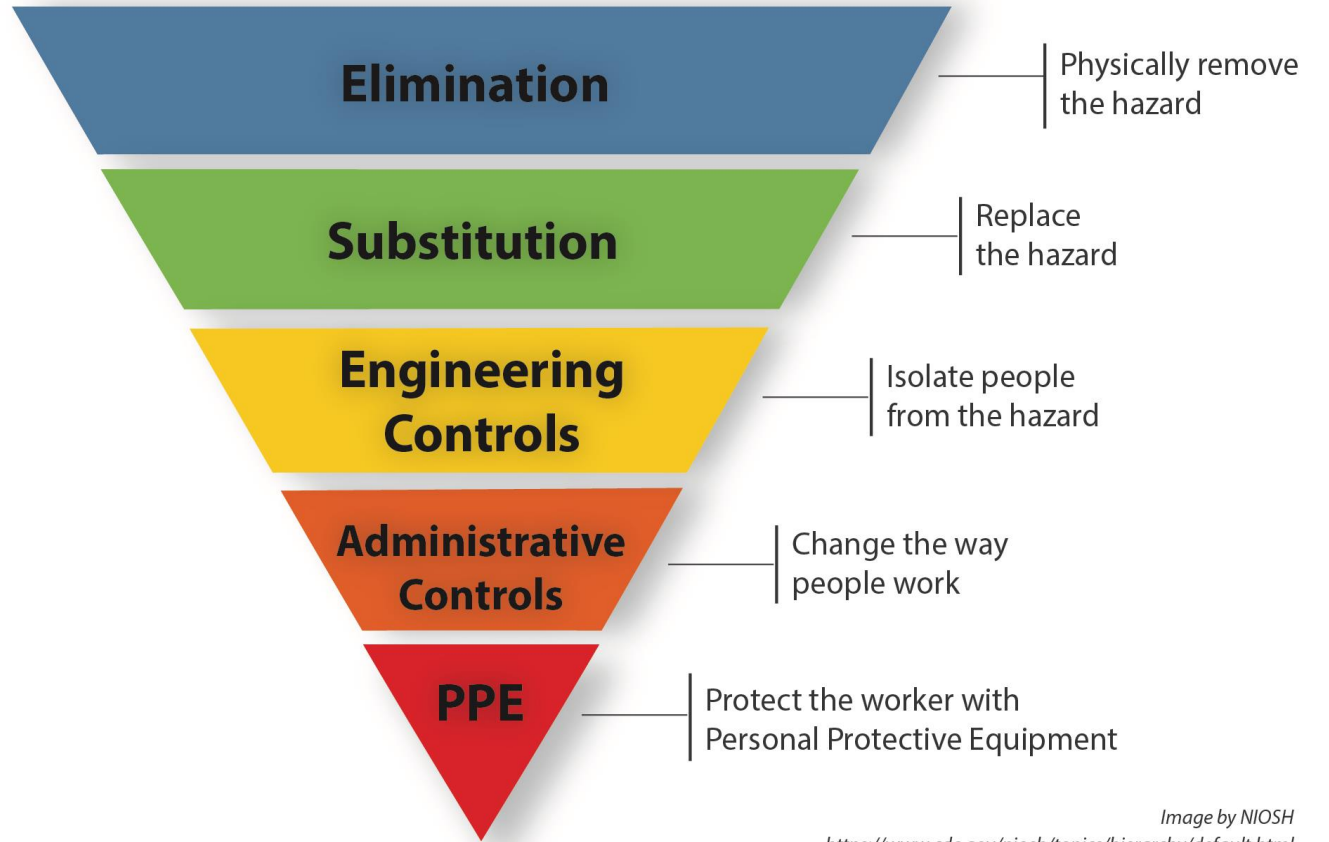


Not all  
controls  
are equal

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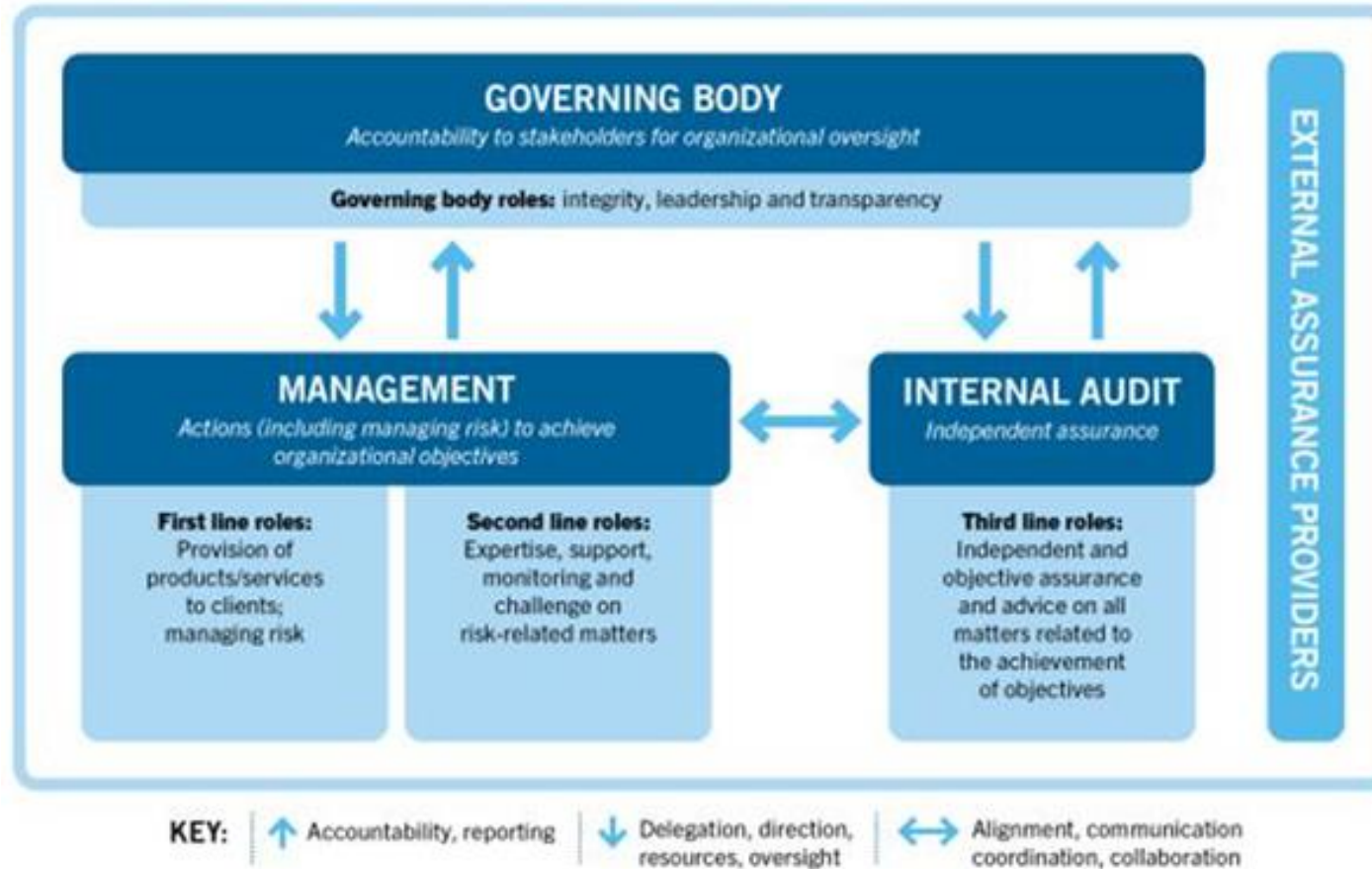
Most effective  
Least effective

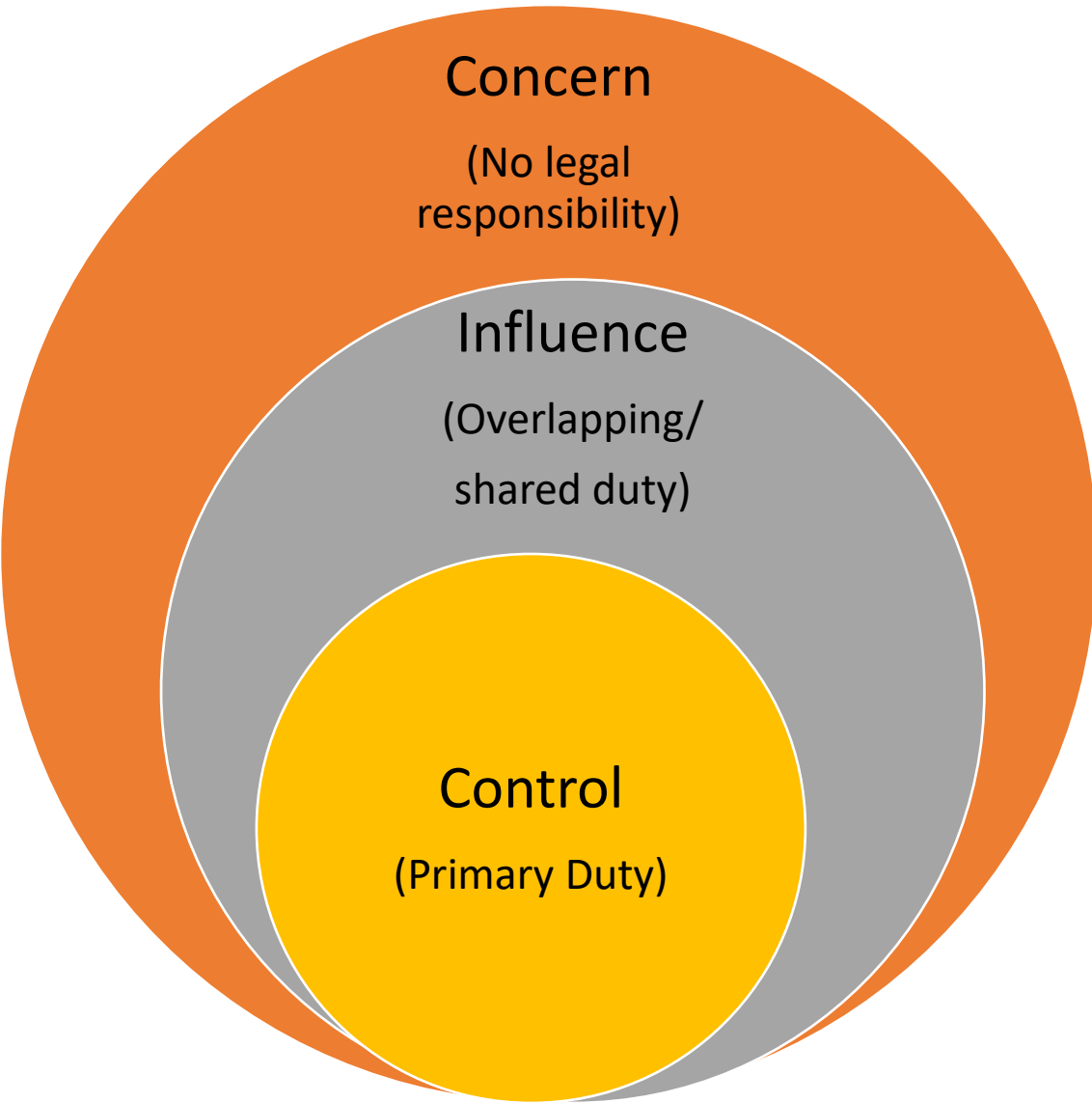
## Hierarchy of Controls



# Assurance

## The IIA's Three Lines Model (2020)





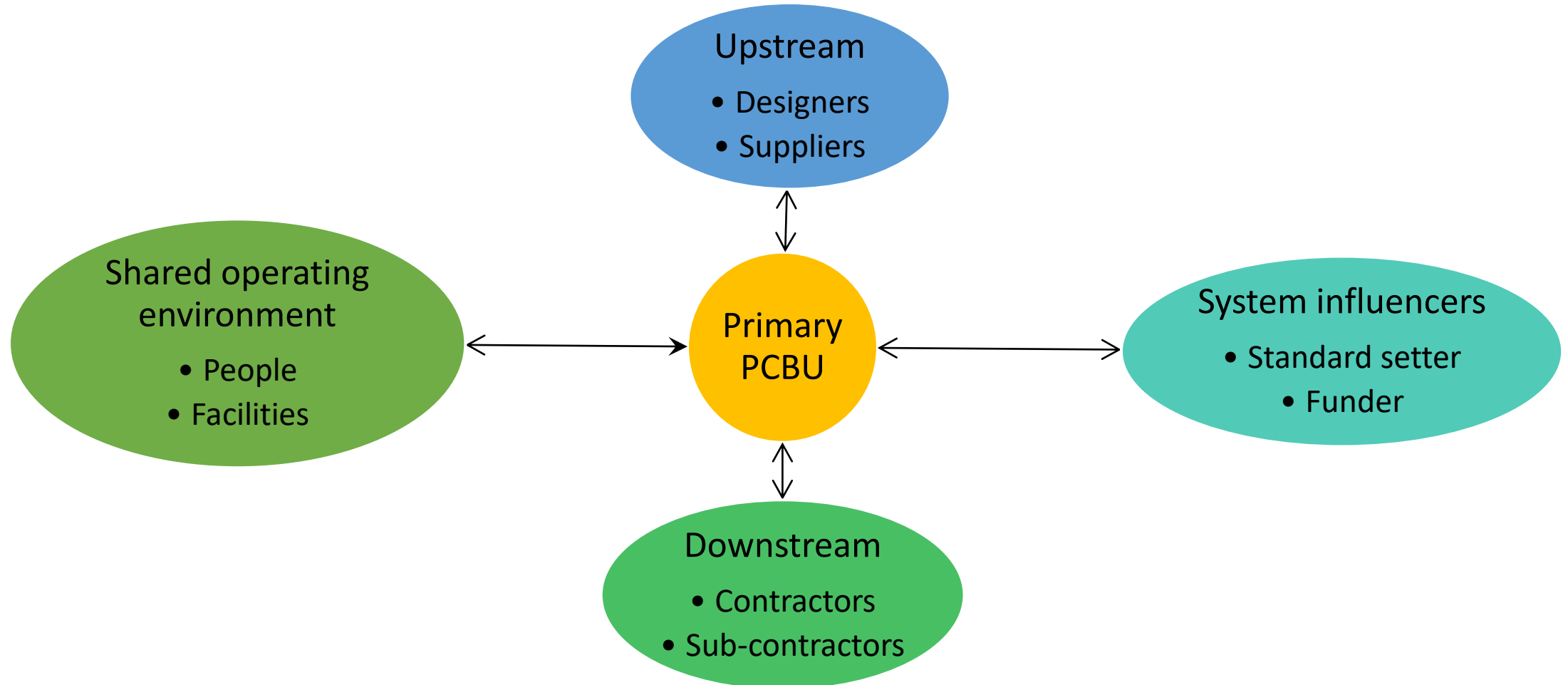
# Overlapping duties

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- Critically important for governors as the duty/liability of the PCBU is potentially far wider than might be imagined.
- Can also be a lever of opportunity for those higher up the supply chain (funders)

# Overlapping duties scope

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# Case study

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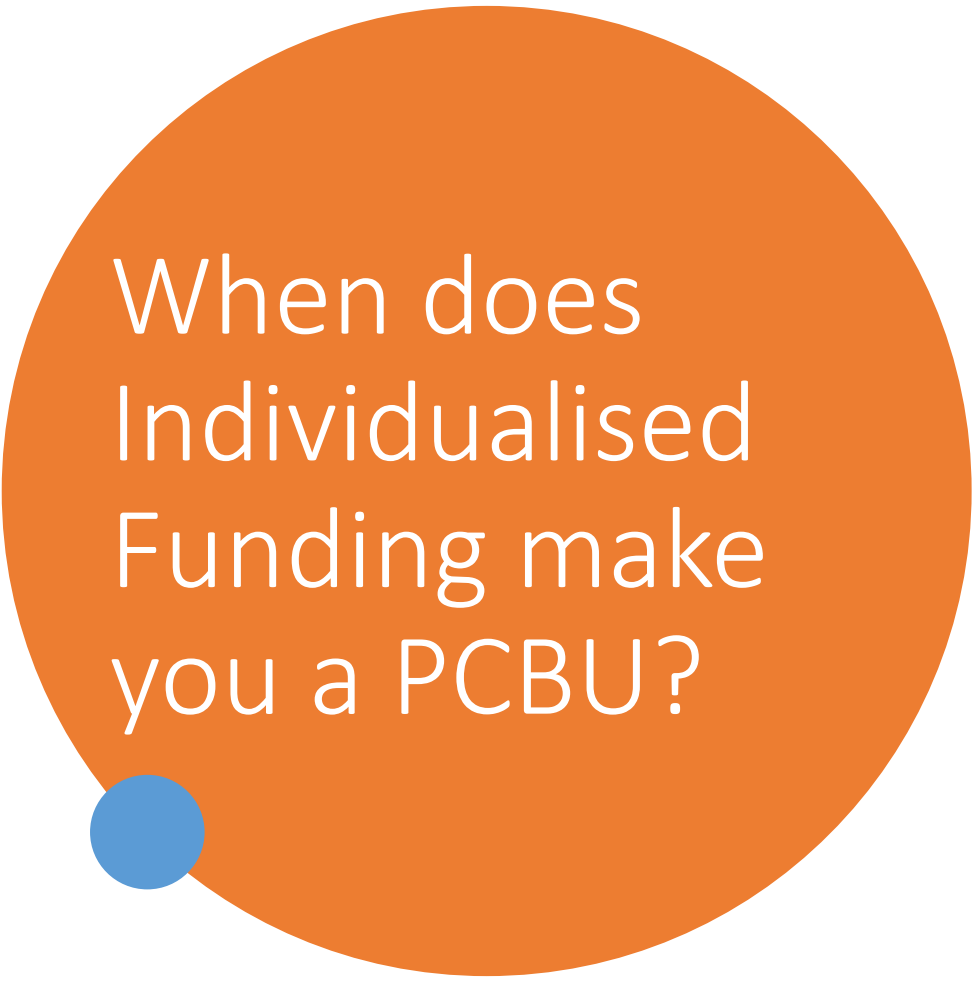

- Your organisation provides support to 6 people with disabilities who are resident in a care facility owned by another party
- The equipment available for use by your staff (hoist) is owned and maintained by the other party
- When you have staff shortages you use a labour hire agency to provide extra workers
- During transfer of a resident by one of your staff working with an agency worker, the sling slips off the hoist and they fall, fracturing their hip and suffering severe head injuries
- Who do need to inform?
- The hoist has no Standard marking on it. The sling has been previously repaired. The instruction manual provided with it is not translated into English
- What are the respective responsibilities of the various parties?
- How might you each manage things better in future?



# Conflicting legal obligations

- *In the IHC drowning in the bath case, how does HSWA sit with notions of informed consent, privacy and human rights?*
- *Each are covered by legal requirements, so how do you reconcile these and still deliver the required support?*
- *How can the regulator gain a better understanding of your context?*



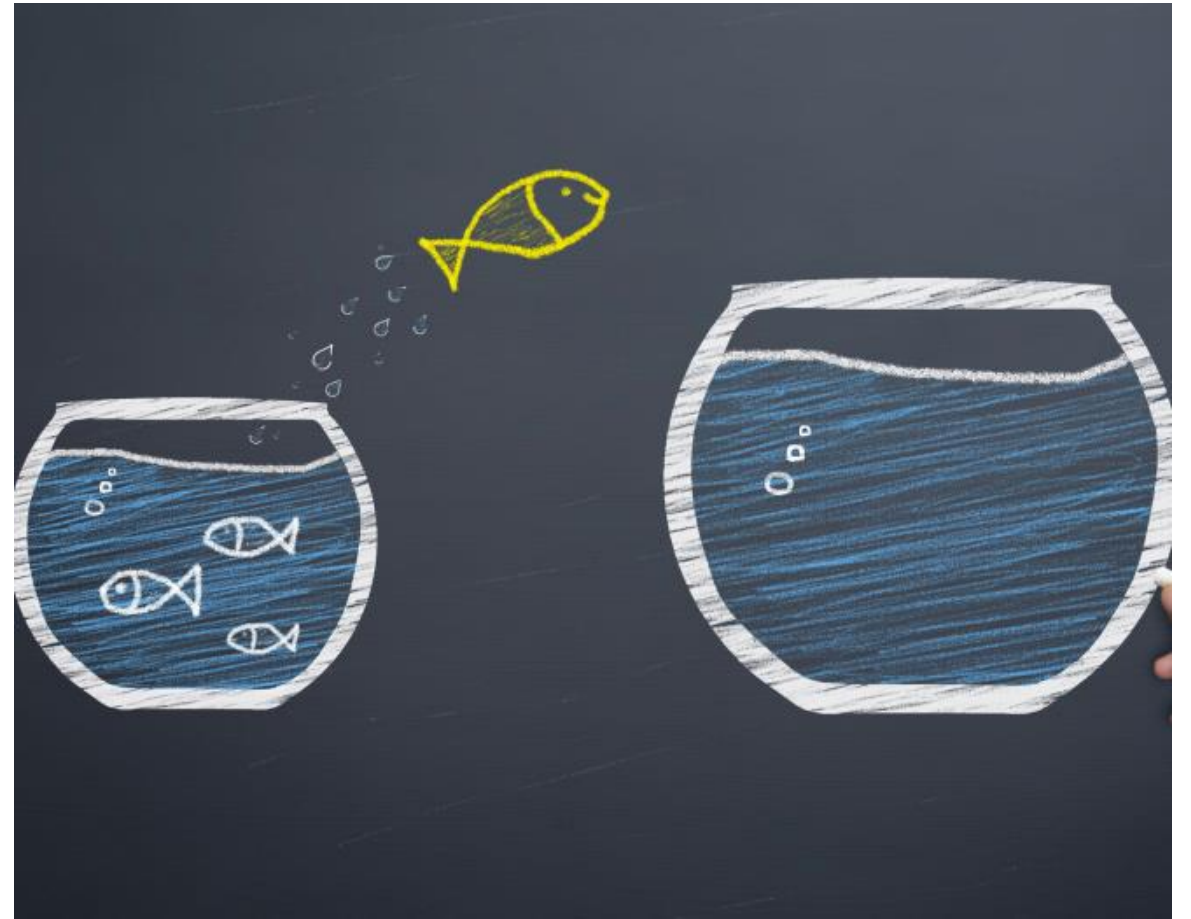


## When does Individualised Funding make you a PCBU?

- Is engaging another to provide you with support an ‘undertaking’?
- One definition is “a job, task, or piece of work that someone has decided or agreed to do”
- If a self-employed or family carer is injured due to defective equipment or inadequate resourcing where does liability sit?

What other opportunities and risks do you see in the current political and economic climate?

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# Moving forward

- Should the sector collectively seek expert legal advice on these complex issues to provide a degree of comfort for the positions you take?
- Should the sector develop a Code of Practice for disability support to define your own best practice standards in the absence of anything from WorkSafe NZ?
- Are existing Standards and accreditation schemes helping, hindering or irrelevant in this context?



