Module Six: Legal Responsibilities, Codes of Practice & Accepted Best Practice

## 30 Minutes (EOTC Guidelines Chapters 6 & 7)

Whakatauki (2 minutes)

He ture whenua tuaukiuki

Ma te ture tangata e pupuri

The ancient lore of the land

Be protected by human law.

Ka tika te rapaunga whakaaro

Ka tika ko te whakaharatau.

Getting the philosophy right

Will ensure informed practice.

What do the whakatauki for Chapter 6 and Chapter 7 mean for you? Share with your neighbour.

**Key messages**

* There are legal responsibilities which everyone must observe
* Leaders must be aware of the relevant codes and accepted best practice

### Starter question (2 minutes)

Participants individually answer **question 25** in their workbook and share with their neighbour.

25. What legislation did your activity operate under?

Now refer participants to the **page 52, Figure 6.1, and paragraph 188** in the EOTC Guidelines.

### Background information

4. The Mangatepopo Incident

### Supporting resources

1. Powerpoint presentation
2. Participant Workbook

### Hierarchy of responsibilities

Note that there is a hierarchy of responsibilities. Each of the following will be considered in turn. Refer to the PowerPoint diagram:

1. Legislation.

2. Codes of practice.

3. Formal accepted best practice.

4. Informal accepted best practice.

### Discussion: *Legislation* (10 minutes)

### What are your responsibilities under the Education Act and the Health and Safety in Employment Act (HSE Act)?

* The **Education Act** – provides the reason for teachers’ being and provides for the wellbeing of students. Why are NEGS, NAGS and the national curriculum important to EOTC?
**Page 54, paragraphs 202–205**.
* The **Health and Safety in Employment Act** (HSE Act) is primarily about employment and volunteers but also states the duty of care owed to others. Consider each of the six bullet points in the EOTC Guidelines, **page 54, paragraph 206.** Can you demonstrate that your school is addressing all of these six bullet points and what evidence do you have to show that you are doing this?

**Note:** A seventh point needs to be added – *monitor that policy and procedures are implemented.*

* DOL charged OPC under the HSE Act in relation to its responsibilities to the instructor (employee) and its responsibilities to visitors to the site (the teacher and students). See Background information 3. The Mangatepopo Incident.
* The HSE Act on workplace. A **place of work** is defined very broadly as ‘any place (including part of a building, structure or vehicle) where any person is to work, is working for the time being, or customarily works **for gain or reward’**.
* Other legislation includes the **Crimes Act** (a duty of care is imposed on those ‘in charge of dangerous things’ and ‘in charge of dangerous acts’), Food Safety Regulations, and the Land Transport Act.
* See EOTC Guidelines glossary **page 70** for definition of ‘all practicable steps’.

Increasingly, regional authorities are introducing **bylaws**, e.g. the Queenstown Lakes District Council and the Auckland Council require boaties to wear a lifejacket. Point out that people need to be aware of any bylaws that pertain to the places where they are conducting EOTC experiences.

### Discussion: *Governance responsibilities, accountability, and liability* (5 minutes)

### Read and draw from page 53, paragraphs 194–199. Could refer back to the Waka activity and shared responsibilities.

The key points that participants need to take away from this:

* School boards have overall legal responsbility to provide a safe physical and emotional environment for students. School management and staff have active responsbility for this.
* The BOT, including the principal is legally responsible for the safety of all students and others involved in EOTC programmes.
* Where the board, staff, and volunteers plan well and follow accepted best practice guidelines, the possibility of legal liability, if anythings goes wrong, will be greatly diminished.
* Criminal liability is unlikely to arise in all but the rarest situation (**page 53, paragraphs 194-199**).

**Discussion:** ***Codes of practice*** (5 minutes)

### Starter question

Participants individually answer **question 26** in their workbook and share with their neighbour.

26. Did any codes of practice apply?

**Read** **page 56, paragraph 223**

**Share:** You must follow the standards that apply to EOTC activities, e.g. employees using protective clothing and equipment, storing fuel and ropes, operating a school pool, dealing with an incident, and using a ropes course. **Pages 57–59, paragraphs 226–235.**

Note: These systems tend to be called standard operating procedures or SOPs.

**Discussion:** *Formal accepted best practice*(5 minutes)

### Starter questions

Participants individually answer **question 27** in their workbook and share with their neighbour.

27. What accepted best practice did you check you were working to?

**Read page 56, paragraphs 224–225.**

* What do you understand by ‘accepted best practice’ versus ‘current accepted practice’?

Discuss and record in small groups. Facilitator to share what the **Glossary, page 70** says. Key message is that this concept called ‘best practice’ exists and they need to know what it is for their specific activities.

Refer to the EOTC Guidelines Appendix 2 Accepted best practice resources, *Outdoor Activities: Guidelines for Leaders*, Mountain Safety Council manuals, the MSC AdventureSmart codes and website, Water Safety River Safety DVD, the care codes, including the NZ Outdoor Access Code (Walking Access Commission). **Links to all of these are in the *Participant’s Workbook***.

**Discussion:** ***Informal accepted best practice*** (2 minutes)

Where do we turn when there appears to be a gap? See **Page 60, paragraphs 238–240.**

**Conclusion** (1 minute)

* In education circles, the legal chapter in the EOTC Guidelines is highly regarded as succinctly capturing the responsibilities and accountabilities under NZ law.
* With students at the centre there are statutory requirements and obligations for boards.

Society’s expectations around safety are increasing and so you need to understand governance responsibilities, accountabilities, and liability.

**Personal actions** (2 minutes)

Ask participants to note any actions for their own programme.