



February 2019

WORKSAFE POSITION

Designers, manufacturers, importers and suppliers (also called 'Upstream PCBUs')

Purpose

This position sets out WorkSafe's expectations of persons conducting a business or undertaking (PCBUs) who design, manufacture, import, or supply plant, substances or structures. These expectations are from the Health and Safety at Work Act 2015 (HSWA). They are also called 'upstream' duties.

What duties do designers, manufacturers, importers and suppliers have?

You have a duty to consider health and safety when you:

- design, manufacture, import, or supply plant, substances or structures for work
- install, build, or commission plant, substances or structures for work.

This duty helps ensure the plant, substances or structures will not negatively affect the health and safety of the people who use, handle, construct, store, maintain, and/or repair the plant, substances or structures.

It is more efficient and effective to plan for health and safety when designing, manufacturing, importing or supplying plant, substances or structures than to retrofit health and safety solutions for poor designs.

What does a PCBU have to do under the law?

HSWA requires every PCBU to think about health and safety risks of plant, substances or structures at work. Designers, manufacturers, importers and suppliers must:

- eliminate the risk, once identified, or if they can't do that, minimise it
- recognise their duty to other PCBUs in a supply chain to ensure risk is not passed along
- consult, cooperate with, and coordinate activities with other PCBUs
- consider all risks in the life cycle of the plant, substance or structure
- provide health and safety information to other PCBUs about their products or designs.

If a PCBU changes part of a plant or of a structure, they are a designer and have upstream duties for health and safety. If a PCBU does maintenance or decommissions plant or a structure, they must manage risks.

Designers, manufacturers, importers and suppliers of hazardous substances

Designers, manufacturers, importers and suppliers of hazardous substances may also have duties under the Hazardous Substances and New Organisms Act 1996. More information about these duties is available here: worksafe.govt.nz/topic-and-industry/hazardous-substances

What risks should PCBUs focus on?

PCBUs should collaborate to manage risk. For example, a designer PCBU should share information with all users (including those who handle, construct, store, maintain, and/or repair it) on how to use the plant, substance or structure in a way that is safe and healthy.

A supplier importing plant, substances or structures into New Zealand must ensure a safe and healthy working environment. They should consider health and safety implications and make reasonable enquiries about what they are buying or commissioning for use at work. When buying from an unfamiliar or overseas supplier or commissioning a structure, WorkSafe expects them to carry out more active checking.

If a PCBU finds a design or manufacturing fault that contributes to a health and safety risk at work, they should raise that with the designer, manufacturer, importer, or supplier.

WorkSafe's approach to designers, manufacturers, importers and suppliers

It is more efficient and effective to prevent risks at the design, manufacturing, import, or supply stage. WorkSafe works with designers in New Zealand to encourage designs that try to eliminate risk and, if this isn't possible, minimise risk.

Much of the plant used in New Zealand is designed and manufactured overseas. Importers, suppliers and installers have an important part to play in ensuring safety and health at work. WorkSafe expects them to ensure that the equipment they import, supply or install for use at work is fit for purpose.

WorkSafe may take enforcement action

WorkSafe may consider taking enforcement action where a design or manufacturing fault has contributed to a health and safety risk at work. WorkSafe may follow up design, manufacturing or installation faults with the PCBU that had upstream duties. WorkSafe is more likely to follow up where there is a pattern of failures from a design or manufacturing fault, or when importers or suppliers have provided unsafe equipment.

Further information

Special guide - refers to 'Upstream' PCBU duties on pages 28 & 29: [*Introduction to the Health and Safety at Work Act 2015*](#)

Health and Safety at Work Act 2015, sections 37-43: www.legislation.govt.nz/act/public/2015/0070/latest/DLM5976660.html?src=qs