

## Person Conducting a business or Undertaking (PCBU)

### Q: What is a PCBU?

A PCBU, or "Person Conducting a Business or Undertaking," can be an individual or an organisation—though typically it's an organisation like a company or business. But even a sole trader (someone self-employed) counts as a PCBU.

you might wonder what "business" or "undertaking" actually means since the law (HSWA) doesn't spell it out clearly. Here's an easy way to think about it:

- 'business': an activity carried out with the intention of making a profit or gain
- 'undertaking': an activity that is non-commercial in nature (eg certain activities of a local authority).

### Who counts as a PCBU?

Anyone running work activities, regardless of their legal setup, can be a PCBU. Here are some examples to help you picture it:

- A business in the form of an incorporated company.
- A sole trader or self-employed person.
- A general partner in a partnership (if the partnership is a limited partnership).
- A partner in a partnership (if the partnership is not a limited partnership).
- An organisation created by legislation (e.g. government department, university, school or local authority).

### Example of different duty holders within PCBUs and their interaction:

Northland Skydive (NSD) operates a skydiving business which offers parachuting activities for tourists. **Simon** is **NSD's** sole director, **CEO** (which is a senior person position required under CAA rules) and the **Operations Manager** (another senior person position required under CAA rules)

**NSD** employs several staff who train and jump with the customers and regularly contracts **Jill**, a **self-employed camera-person**, to take photos of **NSD's** clients during jumps.

- **NSD** is therefore a **PCBU** and a certified aviation organisation conducting the business of offering parachuting activities for paying clients.
- **NSD's** employees are **workers** of **NSD**.
- **Simon**, as the **Director** and **CEO** is an **officer** of **NSD**.
- As Simon is a senior person (other than CEO) in a certified aviation organisation this may also mean he is considered an **officer** of **NSD** for the Purposes of the Health and Safety at Work Act 2015.
- **Jill** is a **PCBU** conducting her photography business as a **sole trader**.
- As a **PCBU** she must **consult, co-operate and co-ordinate shared activities** with **NSD** as they are **two PCBUs with overlapping duties**.
- **Jill**, along with being a worker of her own company, is both **Director and CEO** and therefore an **officer** of her photography business.
- **Jill** is also a **worker** for **NSD** because she is engaged by **NSD** to complete camera-person work on **NSD's** flights.

## Q: Who is not a PCBU?

The following are not PCBUs:

- volunteer associations
- home occupiers who employ or engage someone solely to do work around the home
- persons to the extent they are solely employed as a worker or an officer in the business or undertaking
- statutory officers to the extent they are officers or workers in the business or undertaking
- other persons declared by regulations not to be PCBUs for the purposes of HSWA or any provision of the Act.

## Q: What is the primary duty of care?

A PCBU must ensure, so far as is reasonably practicable, the health and safety of workers and that of other people are not put at risk by its work. This is called the 'primary duty of care'.

This means ensuring, so far as is reasonably practicable:

- the health and safety of workers who work for the PCBU (e.g. employees or contractors, including their subcontractors or workers) while they are at work in the business or undertaking
- the health and safety of workers whose work activities are influenced or directed by the PCBU while the workers are carrying out the work (e.g. a franchise company whose franchise requirements influence or direct the workers of the franchisee).
- that other persons are not put at risk by the work of the business or undertaking (e.g. a visitor to the workplace, or members of the public who could be affected by a work activity).

A self-employed person who is a PCBU must also ensure, so far as is reasonably practicable, his or her own health and safety while at work.

### Specific obligations:

The primary duty of care is a broad overarching duty. It includes but is not limited to, ensuring, so far as is reasonably practicable:

- the provision and maintenance of a work environment that is without risks to health and safety
- the provision and maintenance of safe plant and structures
- the provision and maintenance of safe systems of work
- the safe use, handling and storage of plant, structures and substances
- the provision of adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking, including ensuring safe access and egress to those workplaces where work activity is undertaken
- the provision of any information, training, instruction, or supervision that is necessary to protect all people from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking
- the monitoring of health of workers and the conditions at the workplace for the purpose of preventing injury or illness of workers arising from the conduct of the business or undertaking.

PCBUs must also maintain any worker accommodation that is owned or managed by the PCBU and provided because other accommodation is not reasonably available. The accommodation must be maintained so the worker is not exposed to health and safety risks.

## **Q: Who has the primary duty to ensure health and safety?**

All PCBUs have the primary duty of care.

## **Q. Is a registered charity a legal entity under HSWA?**

HSWA does not define legal entities, it only defines a Person Conducting a Business or Undertaking (PCBU). The legal form of a PCBU is not relevant in terms of its coverage by, and duties under, HSWA. If an organisation meets the definition of a PCBU it has the duties of a PCBU regardless of its legal construct.

## **Is my business in the 'high-risk' category?**

The removal of the "high-risk sector or industry" factor as a criterion for declining a health and safety representative or committee ensures that no sector is overlooked. [This broadens the focus on safety](#), allowing businesses across various domains to strengthen their health and safety culture. This means that PCBUs will no longer be able to decline a request for a health and safety representative or committee simply because the workplace is not in a designated high-risk sector.

Specifically:

- All businesses with 19 or more workers must:
  - arrange the election of HSRs if requested by a worker, and
  - consider whether to set up an HSC if one is requested by an HSR or five or more workers.

If you have a Health and Safety problem or issue that you think falls within the CAA's jurisdiction then you should:

- In the first instance, address it with your colleagues or representatives, and then your employer, in an attempt to get the issue resolved in the best way. The [Health and Safety at Work Act](#) is quite specific with respect to the responsibilities of all parties.
- If your in-house action does not result in a fix for the problem or deal with the issue, then contact the Health and Safety Unit in the CAA.

You have the right to contact the CAA at any time regarding any HSWA issues that fall within the CAA's designation.

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*The information presented in this document is intended for general use only. It should not be viewed as a definitive guide to the law, and should be read in conjunction with the Health and Safety at Work Act 2015 and associated regulations (where relevant).*