

Person Conducting a business or Undertaking (PCBU)

Q: What is a PCBU?

A PCBU is a ‘person conducting a business or undertaking’. While a PCBU may be an individual person or an organisation, in most cases the PCBU will be an organisation (for example, a business entity such as a company).

An individual, such as a sole trader, can also be a PCBU.

While the terms ‘business’ and ‘undertaking’ are not defined in HSWA, the usual meanings of these terms are:

- ‘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).

Examples of PCBUs:

Individuals or organisations can be PCBUs if they carry out work, regardless of their legal structure. Examples of PCBUs are:

- 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 (eg 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 cameraperson, to take photos of NSD’s clients during jumps.

- NSD is 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 HSW Act.
- Jill is a **PCBU** conducting her photography business as a sole trader.
- As a PCBU she must consult, co-operate and co-ordinate activities with NSD, as **multi PCBUs with overlapping duties**.
- Jill, as the Director and CEO is an **officer** of her photography business.
- Jill is also a **worker** for NSD because she is engaged by NSD to complete cameraperson 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 to do work around the home
- persons to the extent they are solely 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 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 (eg 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 (eg 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 (eg a visitor to the workplace, or members of the public who could be affected by a work activity).

A PCBU who is a self-employed person 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, so far as is reasonably practicable:

- providing and maintaining a work environment that is without risks to health and safety
- providing and maintaining safe plant and structures
- providing and maintaining safe systems of work
- ensuring the safe use, handling and storage of plant, structures and substances
- providing adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking, including ensuring access to those facilities
- providing 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
- monitoring the 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?

There is a legal 'high-risk' category which has special rules about health and safety representatives (HSRs) and health and safety committees (HSCs). (Refer to HSWA [s62\(4b\)](#) and [s66\(3b\)](#)).

Specifically:

- All businesses with 20 or more workers or who are in one of the high-risk sectors or industries listed in the [Regulations for Worker Engagement, Participation and Representation](#), 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.

Rule Part 115 is defined as an Adventure Activity and as such falls under the same requirements as legally identified 'high risk', so have the same requirements for health and safety representatives (HSRs) and health and safety committees (HSCs). They also have a requirement to have a Drug and Alcohol policy (see fact sheet on Part 115 Drug and Alcohol policy).

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 HSU at any time regarding any HSWA issues that fall within the CAA's designation.

Postal

Manager Health and Safety Unit
Civil Aviation Authority
PO Box 3555
Wellington 6140

Phone

0508 472 338 (0508 4 SAFETY)
04 560 9400

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).