

Appendix 5: Upstream duties sections 39–43 of HSWA

A PCBU in the supply chain (upstream) also has a duty to ensure, so far as is reasonably practicable, that the work they do or the things they provide to other workplaces do not create health and safety risks.

An upstream PCBU is a business that:

- designs plant, substances, or structures
- manufactures plant, substances, or structures
- imports plant, substances, or structures
- supplies plant, substances, or structures
- installs, constructs or commissions plant or structures.

Upstream businesses are in a strong position to eliminate or minimise risk. They can influence and sometimes eliminate health and safety risks through designing, manufacturing, importing or supplying products that are safe for the end user.

Example

A worker using a badly designed or poorly manufactured saw may be at risk of injury. This risk should have been eliminated or minimised, so far as was reasonably practicable, by the designer or manufacturer.

For more information, see our website: [worksafe.govt.nz](https://www.worksafe.govt.nz)

Upstream duties for designers section 39 of HSWA

A designer creates or modifies a design for plant, substances or structures that are to be used or operated, or could be used or operated, in a workplace.

A designer has a duty, so far as is reasonably practicable:

- to make sure the products they design do not create health and safety risks for the people that use them and those nearby
- to make sure the products they design have been tested so they are safe for use in a workplace
- to give the following information to those who will use the designed products:
 - the design's purpose or intended use
 - the results of any calculations or tests
 - any general and current relevant information about how to safely use, handle, store, construct, inspect, clean, maintain, repair, or otherwise work near the designed products.

These requirements apply across the product's entire lifecycle – from manufacture and construction, through to everyday use, decommissioning and disposal.

For more information, see our guidance: [Health and safety duties for businesses that design products for workplaces](#)

Upstream duties for manufacturers section 40 of HSWA

A manufacturer makes plant, substances or structures that are to be used, or could be used or operated, in a workplace.

A manufacturer has a duty, so far as is reasonably practicable:

- to make sure the products they manufacture do not create health and safety risks for the people that use them and those nearby
- to make sure the products they manufacture have been tested so they are safe for use in a workplace

- to give the following information to those that will use the manufactured products:
 - the purpose or intended use of each product
 - the results of any calculations and tests
 - any general and current relevant information about how to safely use, handle, store, construct, inspect, clean, maintain, repair, or otherwise work near the manufactured products.

These requirements apply across the product's entire lifecycle – from manufacture and construction, through to everyday use, decommissioning and disposal.

For more information, see our guidance: [Health and safety duties for businesses that manufacture products for workplaces](#)

Upstream duties for importers [section 41 of HSWA](#)

An importer imports plant, substances or structures that are to be used, or could be used or operated, in a workplace.

An importer is a business:

- that goods are imported **by**, or
- that goods are imported **for**.

Importation is another word for importing. Importation refers to the **arrival of goods** in New Zealand from a point outside New Zealand. These goods can arrive in any manner.

An importer has a duty, so far as is reasonably practicable:

- to make sure the products they import do not create health and safety risks for the people that use them and those nearby
- to make sure the products they import have been tested so they are safe for use in a workplace
- to give the following information to those who will use the imported products:
 - the purpose or intended use of each product
 - the results of any calculations and tests
 - any general and current relevant information about how to safely use, handle, store, construct, inspect, clean, maintain, repair, or otherwise work near the imported products.

These requirements apply across the product's entire lifecycle – from construction or assembly, through to everyday use, decommissioning and disposal.

Imported products must also meet all New Zealand regulatory requirements relevant to that product.

For more information, see our guidance: [Health and safety duties for businesses that import products for workplaces](#)

Upstream duties for suppliers [section 42 of HSWA](#)

A supplier supplies plant, structures or substances that may be used in a workplace.

A supplier has a duty, so far as is reasonably practicable:

- to make sure the products they supply do not create health and safety risks for the people that use them and those nearby
- to make sure the products they supply have been tested so they are safe for use in a workplace

- to give the following information to those who will use the supplied products:
 - the purpose or intended use of each product
 - the results of any calculations and tests
 - any general and current relevant information about how to safely use, handle, store, construct, inspect, clean, maintain, repair, or otherwise work near the supplied products.

These duties do not extend to the sale of second-hand plant sold 'as is'.

These requirements apply across the product's entire lifecycle - from construction or assembly, through to everyday use, decommissioning and disposal.

For more information, see our guidance: [Health and safety duties for businesses that supply products for workplaces](#)

Upstream duties for installers, constructors or commissioners of plant or structures [section 43 of HSWA](#)

An installer/constructor builds and/or assembles and installs plant and structures that may be used at a workplace. A commissioner performs adjustments, tests and inspections on plant and structures before they are used for the first time in a workplace.

An installer, constructor or commissioner has a duty, so far as is reasonably practicable, to make sure that the way the plant or structure is installed, constructed or commissioned does not create health and safety risks to the people that come into contact with it across the product's entire lifecycle - from construction or assembly, through to everyday use, decommissioning and disposal.

For more information, see our guidance: [An additional health and safety duty for businesses that install, construct or commission plant or structures for workplaces](#)