

*Building 5,
Level 1/60 Highbrook Drive
East Tamaki
Auckland 1060*

9 April 2020

Mr Ross Wilson
Chair
WorkSafe New Zealand

Mr Phil Parkes
Chief Executive
WorkSafe New Zealand
Phil.parkes@worksafegovt.nz

Mr Simon Wakefield
COVID-19 Response Team
MBIE
Simon.wakefield@mbie.govt.nz

Dear Sirs,

Major Issues for PCBUs under the Hazardous Substances Regulations

It was apparent as the shutdown began that there were material issues for PCBU's which needed to be addressed. I wrote to two of you on 30 March to alert you to the issues and to propose a simple solution. What I wrote is set out below. I was referred to you, Simon, and we discussed the issues.

We still have no adequate modification to the Regulations with the following consequences:

- PCBUs are calling us concerned about how they comply with the Regulations when certifiers cannot visit their sites.
- PCBU's insurance policies may well have become ineffective because they are not in compliance with the law in a material way (they are in breach of the Regulations because they do not have current certificates).
- There are essential businesses which (i) operate outside the main centres (ii) did not require certification last year and/or (iii) were certified by a certifier who has exited the business. These businesses can only operate legally if a certifier will travel some distance to conduct a site visit – the revised COVID-19 rules applying to certification of essential businesses are too narrow.

All these businesses deserve answers. Our best answer today to anxious and angry clients is "the Regulations have not changed and we have told WorkSafe what the issues are. We will do the best we

can when the lockdown restrictions are lifted.” This is inadequate for businesses doing their best to comply with the law.

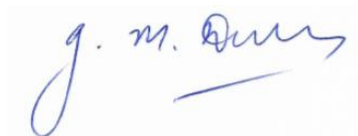
We urge you to act. Surely the policy issues are easy – PCBU’s remain bound by their obligations under the law and the Regulations and they cannot procure certification at present. Is any harm going to occur if certificates are automatically extended by the law.

What we wrote in our email to WorkSafe on 30 March was:

“We believe government needs to extend the expiries of final or conditional certificates that expired either in March or will expire during the week which is, say, eight weeks after the end of the lockdown. Business needs as much certainty as possible and it is critical that insurance coverage is maintained and not deemed to be invalidated because certificates expire. After the lockdown, there will be a backlog of demand for recertification. A modification to the law under the emergency powers that government can exercise as described above appears to be a neat solution to a potentially thorny problem.”

Government is rightly seeking co-operation of the community. Businesses legitimately expect the government to address an important issues such as this.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. M. Dunphy', with a horizontal line underneath.

James Dunphy
Managing Director
Dangerous Goods Compliance Limited