

April 2025

## How we apply our discretion in designating major hazard facilities

### This policy's purpose

This policy outlines how we use our discretion to designate an existing or proposed lower tier major hazard facility (MHF) as an upper tier MHF. We'll do this when:

- the facility doesn't meet the upper tier threshold, and
- there's increased potential for a major incident, such as when:
  - the risk associated with the facility is disproportionate to the combination and type of specified hazardous substances, and/or
  - current or changing land use around the facility increases the risk.

This policy doesn't cover:

- designating a facility as lower tier
- designating a facility as upper tier under regulation 19
- facilities that don't meet the criteria for either lower or upper tier
- re-designating an upper tier facility to lower tier, or
- review of re-designation decisions, as set out in regulation 60.

### What does the law say?

Under regulation 20 of the Health and Safety at Work (Major Hazard Facilities) Regulations 2016 (the MHF Regulations) we can use our discretion to designate an existing or proposed lower tier facility as upper tier.

We have this authority because there may be situations where we believe, upon reasonable grounds, that there's an increased potential for a major incident to occur.

We will consider:

- if the facility's designation under the regulations doesn't line up with the risk created by the quantity or combination of substances and the types of activities at the facility, and
- if land use or development in the area around the facility increases the risk at the facility, and
- any other matters that WorkSafe considers relevant

This policy should be read in conjunction with the Notification and Designation of a Hazard Facility operational guidance and regulation 20 (and subsequently regulation 16) of the MHF Regulations.

### How we'll use this power

We'll use the power sparingly and only in situations where we can identify:

- an increased risk of a major incident
- the risks we're trying to mitigate by designating the facility as upper tier, and
- how the upper tier duties will reduce the potential for a major incident in a way the lower tier duties can't.