
WORKSAFE POSITION ON OVERLAPPING DUTIES

PURPOSE

This position sets out our expectations in situations where Persons Conducting a Business or Undertaking (PCBUs) have overlapping duties, including contracting chains.

WHEN MIGHT DUTIES OVERLAP?

A PCBU's duties may overlap with those of other PCBUs. This might happen in:

- > a shared workplace (eg, a shopping mall or a port), where more than one PCBU and its workers control and influence the work on site
- > a contracting chain, where contractors and subcontractors provide services to a principal contractor and client.

PCBUs that share no contractual relationship may still share overlapping duties, such as when they work on the same site.

WHAT MUST PCBUS DO BY LAW WHEN THEIR DUTIES OVERLAP?

Health and safety legislation provides for a web of overlapping responsibilities to make sure coverage is complete, and responsibilities are applied consistently. In particular, the Health and Safety at Work Act 2015 (HSWA) aims to improve workplace health and safety by placing an explicit duty on PCBUs to co-operate, co-ordinate and consult with others in the workplace. This approach can be a more efficient way to meet your duties.

PCBUs must discharge their overlapping duties to the extent they have the *ability to influence and control the matter*. The [*Special Guide - Introduction to the Health and Safety at Work Act 2015*](#) offers more information on how to work out the extent of each PCBU's duty.

A PCBU should not needlessly duplicate another PCBU's work. A PCBU cannot contract out of its duties, but they can enter into reasonable arrangements with other PCBUs to ensure the risks are collectively managed, and may reflect these arrangements in contracts.

WHAT DOES WORKSAFE WANT PCBUS WITH OVERLAPPING DUTIES TO FOCUS ON?

We want PCBUs to think about health and safety in its broadest sense, and clearly understand the health and safety environment they work in. This means thinking about more than immediate work tasks. For example, is a PCBU affected by another PCBU being on the same worksite?

A PCBU isn't only responsible to the people they employ or contract. That responsibility extends to those they influence and direct, and others. It includes supporting other PCBUs to fulfil their duties, and not passing risk on to other PCBUs, or increasing risk through their arrangements with other PCBUs.

PCBUs with overlapping duties need to collaborate to manage risk together. A PCBU should assess hazards and risk and decide how to manage them. Then they should discuss their assessment with those PCBUs that control or influence the work. Both PCBUs should reach an understanding about what the hazards and risks are, how each PCBU can make sure they're managed effectively, and decide how best to monitor them.

It's more likely that a PCBU will successfully meet their duty to consult, co-operate, and co-ordinate if they:

- > plan ahead, by thinking through every stage of the work, and recognising how the work could affect other PCBUs and the public
- > identify the health and safety risks that need managing
- > consult other PCBUs to agree how to control each risk
- > consult other PCBUs to decide which PCBU or PCBUs are best placed to control each risk
- > clearly define roles, responsibilities and actions, and explain these so everyone knows what to expect
- > continue to communicate, co-operate, and co-ordinate, and carry out reasonable and proportionate monitoring, to make sure good health and safety is maintained.

The need to comply with the rules of other PCBUs shouldn't harm health and safety standards in a contracting process. Communicating effectively will help to avoid such harm.

WHAT IS WORKSAFE'S APPROACH TO OVERLAPPING DUTIES AND CONTROLLING RISK?

We expect PCBUs to be able to explain the steps they have taken to consult, co-operate and co-ordinate with other PCBUs, and their arrangements to control risks. We may then check to see that these arrangements are working well.

A PCBU must control any overlap and risks that are appropriate for them to control. The nature of that control will reflect how much influence and control the PCBU has, and what is reasonably practicable in the circumstances. We expect that arrangements, including monitoring arrangements, will be sensible and proportionate.

We expect a PCBU at the top of a contracting chain to be a leader in encouraging and promoting good and health and safety practices throughout the chain.

We also expect them to use sound contractor management processes. Processes include, but are not limited to, choosing competent contractors, exchanging information, planning and monitoring carefully, and using post-contract review. A PCBU at the top of a contracting chain should not push risk down the chain.