



Overlapping Duties

Businesses that work together will likely share health and safety duties in relation to the same matter. These are known as overlapping duties.

WHEN CAN DUTIES OVERLAP?

Duties can overlap in a shared workplace (eg a shopping centre or a port), where more than one business and its workers control and influence the work on site.

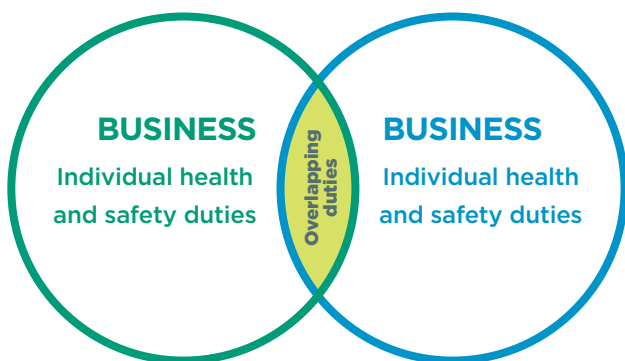


Figure 1: Overlapping duties in a shared workplace

Example

A small coffee cart business operates inside Rusty's garden centre. Because the coffee cart operates on the same premises as the garden centre, the two businesses will have overlapping health and safety duties.

Duties can also overlap in a contracting chain, where contractors and subcontractors provide services to a head contractor or client and don't necessarily share the same workplace.

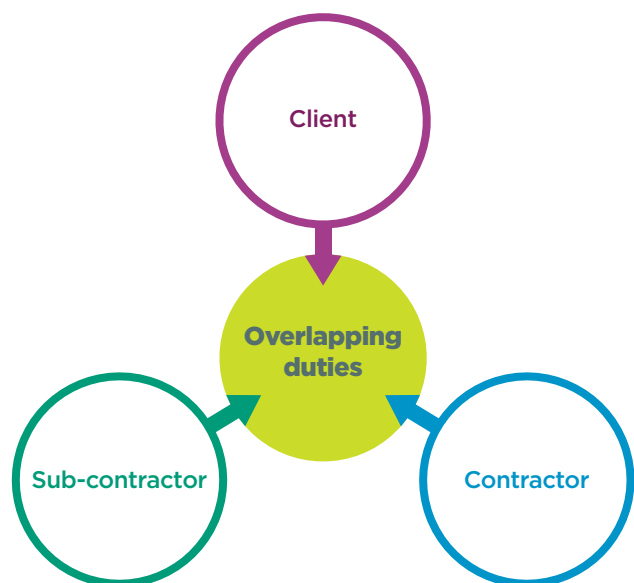


Figure 2: Overlapping duties when businesses don't share a workplace

Example

An Otago farmer contracts a Tauranga-based logging company to harvest his woodlot located outside of Rotorua. The logging company sub-contracts another company to harvest and transport the logs. Even though the farmer, contractor and sub-contractor don't share the same workplace, they still have overlapping health and safety duties.

An example of a shared overlapping duty between multiple businesses that don't share a workplace is the duty to notify WorkSafe in the event of:

- > a death that occurs as a result of work
- > a notifiable illness or injury that occurs as a result of work
- > a notifiable incident that occurs as a result of work.

After consulting with each other the three parties decide the sub-contractor carrying out the work at the woodlot would be best placed to notify WorkSafe if a notifiable event occurs. The sub-contractor would then tell the other two parties if a notification had been made.

CONSULTATION, COOPERATION AND COORDINATION

CONSULTING, COOPERATING AND COORDINATING ACTIVITIES WITH OTHER BUSINESSES

Businesses must so far as is reasonably practicable consult, cooperate and coordinate activities with all other businesses they share overlapping duties with.

It is more likely that a business will successfully meet their duty to consult, cooperate and coordinate if they:

- > plan ahead, by thinking through every stage of the work, and recognising how the work could affect other businesses and the public
- > identify the health and safety risks that need managing
- > consult other businesses to agree how to control each risk
- > consult other businesses to decide which business, or businesses, are best placed to control each risk
- > clearly define roles, responsibilities and actions, and explain these so everyone knows what to expect.

For information on questions to ask during consultation see Table 2.

THE BENEFITS OF BUSINESSES CONSULTING, COOPERATING AND COORDINATING WITH EACH OTHER ABOUT OVERLAPPING DUTIES

Consultation, cooperation and coordination will help to avoid unnecessary duplication of effort. It can help businesses reach a common understanding and establish clear roles, responsibilities and actions.

Consultation will also help to prevent any gaps in managing health and safety risks.

GAPS CAN HAPPEN WHEN:	BENEFITS OF CONSULTATION, COOPERATION AND COORDINATION INCLUDE:
<ul style="list-style-type: none"> > there is a lack of understanding about how each business's work activities may add to the health and safety risks in the workplace as a whole or in a chain of work activities 	<ul style="list-style-type: none"> > ensuring businesses on a shared worksite or in a contracting chain work together to sort out any issues
<ul style="list-style-type: none"> > a business assumes another business is taking care of a particular health and safety issue 	<ul style="list-style-type: none"> > ensuring everyone is aware of their roles and responsibilities around health and safety
<ul style="list-style-type: none"> > the business that is managing a risk is not the business in the best position to do so 	<ul style="list-style-type: none"> > helping businesses work out who is in the best position to manage identified risks
<ul style="list-style-type: none"> > businesses do not know what other work is happening and when. 	<ul style="list-style-type: none"> > helping to ensure working arrangements on shared work sites and in contracting chains run smoothly and efficiently, which can lead to productivity gains.

Table 1: Identifying gaps and the benefits of consultation, cooperation and coordination

Example

Two businesses in a local shopping mall, a clothing store and a book store, have discovered leaks in their ceilings. The book store also needs an electrician to fix a faulty light. Both stores contact the shopping mall owner who contracts a plumber and an electrician to carry out the repairs. The mall owner arranges a meeting with all the businesses to create a plan for carrying out the work.

Having a meeting before any work is carried out will ensure that all the businesses coordinate with each other on the repairs, rather than each store trying to get their repairs fixed individually. It will also ensure that each business is aware of their health and safety responsibilities towards each other and any overlapping duties.

HOW CAN BUSINESSES CONSULT, COOPERATE AND COORDINATE WITH EACH OTHER?

Consulting, cooperating and coordinating can be as simple as getting the right people from each business together to exchange important health and safety information about the following:

TOPIC	QUESTIONS
Work activities	<p>What work activities will each business carry out? For example:</p> <ul style="list-style-type: none">> What will each business do?> How will they do it?> When will they do it?> Where will it be done?> What plant (equipment, tools, vehicles) or substances may be used? <p>Which workers will be involved in the work activity?</p> <p>What other people may be affected by the work activity (other than workers)?</p> <p>How could one business's work activities affect other businesses' work?</p> <p>Will one business's work activities introduce or increase the health and safety risks to other businesses (and other people) at the workplace or down a contracting chain?</p> <p>How could each business's work activities affect the work environment?</p>
Health and safety risks	<p>What do the workers in each business know about the health and safety risks associated with the work activities they carry out?</p> <p>How will each business and its workers manage (eliminate or minimise) risks associated with the work activities they carry out?</p>
Ongoing communication on health and safety	<p>How will workers communicate with the businesses, and have input on health and safety matters? What types of communication do the workers prefer to use?</p> <p>What information might one business need to provide to another business and its workers for health and safety purposes?</p> <p>How will businesses engage with workers and others (eg joint site meetings, shared newsletters)? What types of communication do the workers respond to best?</p> <p>How will the businesses coordinate their emergency procedures?</p> <p>Who will notify the regulator if a notifiable event occurs?</p> <p>What further consultation or communication will be required in monitoring health and safety measures, and identifying changes in the work or environment? (eg how will workers and businesses communicate with one another about a new risk, and determine the best response to that risk?)</p> <p>What facilities could be shared (eg first aid or sick rooms)?</p>

Table 2: Questions to ask during consultation

WORKING TOGETHER

WHAT DO BUSINESSES NEED TO DO WHEN WORKING WITH EACH OTHER?

Businesses can enter into reasonable agreements with each other to ensure risks are collectively managed. These agreements can be reflected in contracts and will avoid duplication of effort.

While a business can enter into reasonable agreements with other businesses, this does not mean they no longer hold any responsibility for their workers. They must still monitor the other business to ensure they follow through on what was agreed.

Example

An agency contracts out housekeeping services to a local hotel. The agency has a duty to ensure the health and safety of their workers, so far as is reasonably practicable. This includes the duty to provide first aid facilities. The agency agrees with the hotel that if their workers need first aid while on site they can access the hotel's facilities.

This is an example of a business entering into a reasonable agreement with another business to meet the duty to provide first aid to their workers. The agency would need to be satisfied the hotel can provide ongoing, adequate first aid facilities for their workers.

A business is not only responsible to the people they employ or contract. The business's responsibility extends to people they influence and direct, and other people at the workplace. It includes supporting those people to fulfil their health and safety duties, and not pass risk on, nor increase risk through their arrangements with them.

Example

A construction company is building a new apartment complex on a vacant lot. A local courier company delivers packages daily to the site. The construction company meets with the courier to discuss safe access to the site and where to deliver the packages. The construction company and the courier agree that if risks arise from the building work in that area where the courier driver would normally access the site, then the construction company will advise the courier ahead of time and if necessary provide alternative safe access to the site. This way the construction company is not passing on or transferring risk to the courier.

ESTABLISHING EACH BUSINESS'S LEVEL OF RESPONSIBILITY TOWARDS HEALTH AND SAFETY DUTIES

Each business's responsibility to carry out their duties will most likely be different. This will depend on what ability the business has to influence and control the health and safety matter.

The more influence and control a business has over a health and safety matter, the more responsibility it is likely to have.

A business can have influence and control over health and safety matters through:

- > **Control over work activity:** A business in control of the work activity may be in the best position to control the health and safety risks.
- > **Control of the workplace:** A business who has control over the workplace, including plant and structures in the workplace, has some influence and control over health and safety matters relating to work carried out by another business.
- > **Control over workers:** A business has more influence and control over its own workers and contractors than those of another business.

A business with more influence and control (and the greatest share of the responsibilities) will usually be in the best position to manage the associated risks.

A business with less influence and control may fulfil their responsibilities by making arrangements with the business with more influence and control.

The size of the business or its financial resources (eg a large company versus a sole trader) does not equate to its ability to have influence and control over health and safety matters. This means the business with the most financial resources does not automatically have most of the responsibilities.

All businesses should:

- > discuss what work activities are being carried out
- > agree on the degree of influence and control each business has
- > agree on who will manage what and how it will be managed
- > monitor and check how things are going on an ongoing basis.

WORKSAFE'S APPROACH TO OVERLAPPING DUTIES

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

WorkSafe expects businesses to be able to explain the steps they have taken to consult, cooperate and coordinate with each other about their overlapping duties, and their arrangements to control risks. WorkSafe may then check to see that these arrangements are working well.

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

WorkSafe also expects businesses to use sound contractor management processes. Processes include, but are not limited to, choosing competent contractors, exchanging information, planning and monitoring carefully, and undertaking post-contract review.

A business at the top of a contracting chain should not push risk down the chain.

CASE STUDY

A local Council has contracted Smoother Paths to carry out maintenance on a walking track in a council-owned park.

The Council organises a meeting with Smoother Paths to establish each business's health and safety duties.

The Council and Smoother Paths decide:

Smoother Paths:

- > has the most influence and control over the work on the walking track so they will be responsible for managing any risks to workers and the public created by the work. **Smoother Paths must ensure public safety during the day (eg place signs/barriers at the work site), and ensure the site is left safe at the end of the day.**

The Council:

- > has little control over the work or work site but does have control over the area surrounding the work site including any risks from other businesses working in the same area (eg gardeners or lawn mowing activities in the park). The Council has a responsibility to manage those risks. **The Council must place warning signs at the park entrances to warn park users about walking tracks that are under maintenance and ensure the work site is not interfered with overnight (as part of their usual security checks of the park area).**
- > as the client, the Council also has control over the timeframes and is therefore responsible for not setting unrealistic timeframes for completion which could encourage cutting corners.

Example

If the Council has an upcoming event at the park which would interfere with the work on the walking track then they would need to ensure that there is enough time for the work to be completed before the event or reschedule the work.

The Council and Smoother Paths must identify any overlapping duties they may have. They must consult, cooperate and coordinate with each other and agree on who is going to do what.

Scheduled catch ups are arranged between Smoother Paths and the Council to discuss managing ongoing risks and any new overlapping duties.

KEY CONCEPTS IN THIS QUICK GUIDE

WHAT AND WHO IS A PCBU?

A 'PCBU' refers to a person conducting a business or undertaking. A PCBU can be an individual such as a self-employed builder or a hairdresser, or an organisation (eg a company). For simplicity, this guide uses the term 'business' instead of 'person conducting a business or undertaking' (PCBU). Where 'business' is used, it's intended to also encompass undertakings.

THE DIFFERENCE BETWEEN A PCBU AND A WORKER

There is a clear difference between a PCBU and a worker when the PCBU is a company or organisation. However, when an individual is a PCBU (ie self-employed) the difference may be less clear.

When a person is self-employed, decides how their work is done, and creates and controls risks, they are considered to be a PCBU. However, if a self-employed person is working for another PCBU and that PCBU decides what they do, and how and when they do it, then they are considered to be a worker of that PCBU.

WHAT DOES REASONABLY PRACTICABLE MEAN?

Certain health and safety duties need to be managed so far as is reasonably practicable. Reasonably practicable means doing what is reasonable in your circumstances to ensure health and safety (eg what a reasonable person in your position would be expected to know and do). You first do what is reasonable to eliminate the risk. If the risk can't be eliminated, then you must minimise it.

HOW DO YOU DECIDE WHAT IS REASONABLY PRACTICABLE IN YOUR CIRCUMSTANCES?

When thinking about what 'so far as is reasonably practicable' means, ask the following questions:

- 1 How likely is the hazard or risk?**
The more likely a risk is to occur, the more you should do to eliminate or minimise the risk.
- 2 How severe is the harm that might result?**
More should be done to eliminate the risk if death or serious injury is a possible or likely result. The greater the potential harm, the greater the action required.
- 3 What do you know, or ought reasonably to know, about the hazard or risk and the ways of eliminating or minimising it?**
You are expected to find out if there are any ways (control measures) to eliminate or minimise the risk. Doing hazard identification and risk assessments with input from workers, other PCBUs in the industry and health and safety representatives', and looking at health and safety records and processes of other businesses, will help inform decisions.
- 4 What is the availability of the control measures, and how suitable are they for the specific risk?**
How a risk is eliminated or minimised will depend on the situation, type of work, work environment etc. This is where you will need to ask for worker input and then apply judgement to figure out the most effective actions to take.
- 5 Finally, what are the costs of the control measure and is the cost grossly disproportionate to the risk?**
After assessing the answers to questions 1-4, consider the costs associated with the ways to eliminate or minimise risks including whether they are grossly disproportionate to the risk.

You must give your workers opportunities to contribute before you make decisions about the ways to eliminate or minimise the risks.

For more information see the *Reasonably Practicable* fact sheet on the WorkSafe website: www.worksafe.govt.nz