

Getting up close and personal

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The lesser known, but widely applicable, duty under the Health and Safety at Work Act 2015.

Most businesses are aware of the recent Health and Safety at Work Act 2015 (Act). Whilst these businesses now understand that they are PCBUs and that penalties for breaches of the Act have increased significantly, there is a critical part of the Act which is not yet well understood.

Specifically, many businesses are either unaware of, or do not understand, the health and safety obligations they have when the work they are undertaking overlaps with another PCBU's obligations, such as when engaging a contractor or when a third party comes to work at their workplace.

The Act creates positive obligations on all organisations and businesses (ie PCBUs) whose health and safety duties overlap, even in circumstances where these parties have no contractual connection whatsoever. These PCBUs must consult, co-operate with and co-ordinate to ensure the health and safety of workers and others who may be affected by the performance of their tasks. Failure to do so could mean being stung with a \$100,000 fine.

Under the Act, every PCBU has a primary duty to take reasonably practicable steps to ensure the health and safety of its workers (which includes contractors), workers whose activities in carrying out work are influenced by the PCBU and any other person. Businesses must therefore consider this overriding duty in the context of the Act's newly created duty to collaborate with other PCBUs.

This means PCBUs with overlapping duties will have an obligation to take reasonably practicable steps to work together to ensure all people influenced by their work (including those who work for other PCBUs) receive the appropriate information, training, and supervision necessary to protect them from health and safety risks. They must also ensure that the health and safety of workers and the conditions at the workplace are monitored so as to prevent injury or illness.

Although this sounds onerous, the extent of a PCBU's liability is limited to the extent it can influence or control the contractor's (or other third party PCBU's) actions. Accordingly, if a business had no power to do something, it cannot be liable for not having done it.

Appointing contractors

PCBUs are required to take reasonably practicable steps to ensure that contractors they appoint are working safely. Well-crafted contractual arrangements that properly take into account the practicalities of the work being done are critical to assuring that the appropriate parties are liable in the event of a mishap, and that there are no gaps in the systems required for ensuring workers' health and safety at work.

When appointing contractors we consider a PCBU should take reasonably practicable steps to:

- Monitor the contractor's health and safety performance and ensure contractors have robust processes in place
- Ensure induction and training is provided to employees and contractors and that this is consistent and comprehensive
- Ensure that a health and safety management system is in place
- Support a culture where health and safety is promoted through enabling worker participation and where applicable, ensure adequate resources are allocated to health and safety initiatives and provide training and information about specific health and safety risks.

Compliance in the absence of a contractual relationship

In some contexts, there will not be a contractual relationship between PCBUs with overlapping duties. For example, it is common for a sub-contractor of a contractor to work at a site controlled by a third PCBU. All parties share duties under the Act and therefore must work together to ensure the health and safety of those affected by their work.

Although each situation will require its own analysis, PCBUs should:

- Take time to consider what other organisations or businesses they may share duties with. In particular, this means considering whether there are other PCBUs likely to perform work in close proximity or who may otherwise share control of a workplace or activity. Documents such as leases, licences and supply agreements can provide a useful starting point for considering whether there are third parties to co-operate with – but PCBUs also need to think "outside of the box" to ensure everyone a PCBU might interact with is identified
- Look to initiate engagement and pro-actively consult with those other organisations and businesses identified as potentially having overlapping duties
- Give specific consideration to whether there are steps that should be taken or information shared with third parties to ensure they are able to perform their work safely. For example, it may be appropriate to advise another PCBU of maintenance schedules, so that their work can be performed safely at appropriate times
- Be prompt in communicating with other PCBUs regarding these issues, including responding to reasonable requests to assist other PCBUs in complying with their duties
- Monitor the ongoing interactions and promptly address changes in circumstances, issues and incidents as they arise.

All organisations and businesses have a duty to collaborate with other PCBUs to ensure the health and safety of those affected by the work being they perform. PCBUs are positively required to consult, co-operate and co-ordinate with other duty-holders.

It will no longer be enough to merely assume that another PCBU is taking care of the health and safety components of a particular task. PCBUs must check with others and to involve themselves to ensure the health and safety of workers and others.

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