

# Principles that apply to WHS duties



## Overview

This factsheet gives an overview of the four key principles that apply to all WHS duties in the model WHS Act. Understanding these principles will assist you to interpret and apply your duties as a PCBU. See the other factsheets in this series for greater detail on each principle and the duty to consult, cooperate and coordinate with other duty holders.

As a person conducting a business or undertaking (PCBU) you have a duty under work health and safety (WHS) laws to ensure, so far as is reasonably practicable, the health and safety of workers engaged, and caused to be engaged by you, and others who may be at risk from work carried out by the business.

The term 'workers' includes employees, contractors, subcontractors, trainees and volunteers. You are also likely to have other duties such as ensuring the workplace you manage or control does not expose any person to health and safety risks.

### 4 key principles that apply to all WHS duties in the model WHS Act



1. WHS duties are not transferable.



2. A person can have more than one duty.



3. More than one person can have the same duty.



4. Management of risks.



#### 1. WHS duties are not transferable

**Your PCBU duties are not transferable. You cannot modify or contract out of your duties.** If you attempt to modify or transfer your WHS duties to another person (such as a subcontractor) by way of a contract, that provision in the contract will be invalid.

However, you can enter into reasonable arrangements or agreements with other PCBUs you are working with to make sure everyone's duties (including yours) are met, while at the same time avoiding unnecessary duplication of effort. See the factsheet '[Principle 1: WHS duties cannot be contracted out or transferred](#)'.



#### 2. A person can have more than one duty

It is possible to be a multiple duty holder. For example, if you are self-employed or work as an individual contractor, you may be **both a worker** (who is owed work health and safety duties) **and a PCBU** (owing work health and safety duties to yourself and to others).

**Self-employed people and individual contractors are usually both a PCBU and a worker.** See the factsheet '[Principle 2: A person may have more than one duty](#)'.



#### 3. More than one person can have the same duty

You and another PCBU can have the same work health and safety duties relating to a particular work activity, or the environment in which the work is taking place. This means you are both responsible for addressing WHS risks.

**Where you share duties with other PCBUs, you must:**

- **meet your duty to the extent to which you have capacity to influence and control the matter**
- **consult, cooperate and coordinate with other duty holders.**

The PCBU with the most influence and control over a matter will be in the best position to manage the associated risks. See the factsheets '[Principle 3: more than one person can have the same duty](#)' and '[Duty to consult, cooperate and coordinate with other duty holders](#)'.



#### 4. Management of risks

As a PCBU you are required to **eliminate risks to health and safety so far as is reasonably practicable**. If elimination is not reasonably practicable, you must **minimise those risks so far as is reasonably practicable**.

Reasonably practicable means doing all that you reasonably can to keep people safe at work. See the factsheet '[Principle 4: Management of risks](#)'.

# Principles that apply to WHS duties



## / Principle 1: WHS duties cannot be contracted out or transferred



You cannot transfer your PCBU duties to another person or PCBU, or reduce your responsibility for health and safety, through a contractual agreement or arrangement with another.

If you attempt to transfer your WHS duty to another person via a contract, that provision in the contract will be invalid.



Work health and safety (WHS) laws have four principles to help guide you as a person conducting a business or undertaking (PCBU) on how to apply your WHS duties:

1. [WHS duties are not transferable](#)
2. [A person can have more than one duty](#)
3. [More than one person can have the same duty](#)
4. [Management of risks.](#)



### **I have a minor role in how the work is performed. Other PCBUs are better placed to address risks. Why can't I contract out of my duties?**

All PCBUs involved in work are responsible for the health and safety of workers or others.

No matter how minor, you are likely to have some role or ability to influence or direct a particular project or aspect of work that others may not.

Remember, your duties are qualified by the term 'reasonably practicable'. This means doing everything you are reasonably able to do to ensure health and safety.

The extent of your knowledge and ability to manage risks are some of the factors that will assist you in determining what is reasonably practicable in complying with your duties.



### **If there are multiple duty holders, how do I avoid duplication of effort?**

Consulting, cooperating and coordinating with other PCBUs will help you determine who is in the best position to address a particular risk.

You and the other PCBUs can nominate one person to take the action required to address the risk. You can enter into reasonable agreements with other PCBUs to formalise the arrangement and clarify roles and expectations of the various duty holders.

But this alone will not be enough to meet your duties. You must still confirm that the action is being carried out as agreed and the risk has been addressed.

It is good practice to make a record of any consultation or discussions you have, and agreements you reach, around how work will be carried out.



### **Do I still have a duty if I rely on an expert contractor to undertake specialised work?**

Yes. You are entitled to rely on the expertise of others, but you still have a duty to do all that is reasonably practicable to ensure health and safety.

Although you may not have the knowledge or skill to undertake the work, it is still reasonably practicable for you to make sure health and safety standards are maintained. This may include verifying the expert contractor:

- has the relevant knowledge, qualifications and high risk work licenses to carry out the work
- has their own systems to carry out work safely

- is carrying out the work safely in accordance with their own processes, and
- has inspected and maintained their plant appropriately.

Consulting, coordinating and cooperating with your expert contractor is essential for you both to fulfil your WHS duties.

Before you engage an expert contractor, you may wish to seek advice from an appropriate legal representative on your WHS duties.