

# Franchising

## Case Study

This case study illustrates four key WHS principles that apply to all WHS duties in the model WHS Act and the duty to consult, cooperate and coordinate with other duty holders.

See the Safe Work Australia website to learn more: [swa.gov.au/law-and-regulation/duties-under-whs-laws/principles-apply-work-health-and-safety-duties](https://swa.gov.au/law-and-regulation/duties-under-whs-laws/principles-apply-work-health-and-safety-duties)



### 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.



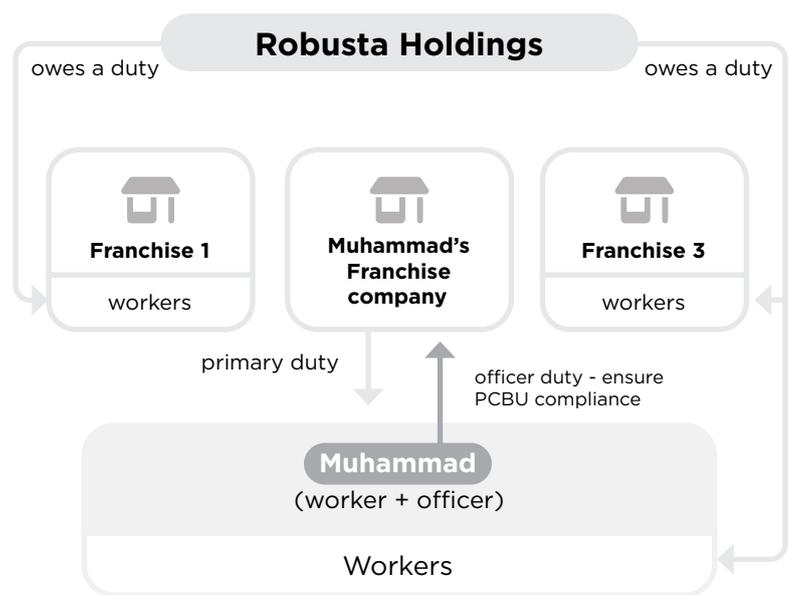
4. Management of risks.



Robusta Holdings is the head franchisor of an emerging café chain in Australia. Prospective franchise owners can join the Robusta Holdings' network by entering into a franchise agreement with Robusta Holdings. As part of this agreement, Robusta Holdings sets out requirements for the operation of cafés under its brand. This includes the café layout and fixtures, opening hours and service standards. It also specifies which suppliers franchisees can use to buy ingredients, business supplies and equipment.

Muhammad's company is the newest franchise to join Robusta Holdings' network, having recently opened a new café within the local shopping arcade.

Robusta Holdings and the franchisees within its network are all persons conducting a business or undertaking (PCBUs). As PCBUs they all have a duty to ensure, so far as is reasonably practicable, the health and safety of workers while they are at work in the business and other persons who may be put at risk from work carried out as part of the conduct of the business. Other persons include customers, visitors and suppliers of the franchised cafés.



Robusta Holdings owes a duty to workers of Robusta Holdings itself. It also owes a duty to workers of each franchisee as it will direct and influence the way workers carry out work in the cafes operating under its brand. Each franchise operating under Robusta Holdings owes a duty to workers in their business.



Muhammad has more than one duty as he is both an officer of, and a worker in his franchise company. As an officer Muhammad must exercise due diligence to ensure his franchise company complies with its duties as a PCBU. To learn more see [principle 2: A person can have more than one duty](#) factsheet.



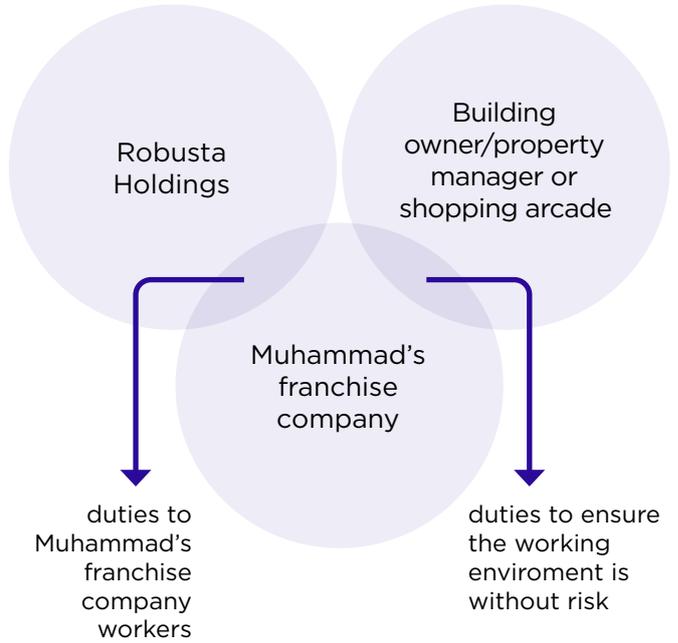
## Shared duties and consulting, cooperating and coordinating activities

Each franchisee **shares WHS duties** with Robusta Holdings as they are involved in the same activity, which is the operation of the café. Other WHS duties shared between each franchisee and Robusta Holdings include: consultation with other duty holders, consultation with workers and their health and safety representatives (HSRs), and incident notification.

Robusta Holdings and each franchisee must discharge their shared duties to the extent they **can influence or control the matter**. As shared duty holders, Robusta Holdings must **consult, coordinate and cooperate** activities with each of the franchisees.

As a tenant of the shopping arcade, Muhammad's franchise company also shares a duty with the building owner and property manager to ensure the work environment is without risk, including shared facilities such as entry and exit, air conditioning and toilets.

To learn more see [principle 3: More than one person can have the same duty](#) and the [Duty to consult, cooperate and coordinate with other duty holders](#) factsheets.



Robusta Holdings has a large degree of influence and control over the operation of its franchisees (as set out in the franchising agreement). It has established health and safety policies and procedures to ensure safe systems of work, as well as information, training and instruction on these systems. Robusta Holdings requires the franchisees to implement and follow the policies and procedures.

However, Robusta Holdings must still consult, cooperate and coordinate so far as is reasonably practicable with Muhammad and the other franchisees, who have management and control over day-to-day operations, on the application of these policies and procedures to the individual business. Although each franchisee may face similar hazards, the risk of these hazards arising may vary due to the environment they operate in (for example, a café in a shopping centre vs a café on a sidewalk) or the characteristics of its workers (for example, full-time experienced workers vs part-time student workers).

As part of the franchisee induction process, Robusta Holdings and Muhammad's franchise company also consult on who is best positioned to carry out certain actions.

### Both agree:

#### Robusta Holdings will:

- provide health and safety policies and procedures to ensure safe systems of work
- provide information, training and instruction to franchisees on safe systems of work
- oversee the safe design of systems of work, and
- maintain and repair plant and equipment it requires the franchisee to use.

#### Muhammad's franchise company will:

- implement health and safety policies and procedures
- train workers to perform tasks safely
- notify WHS regulators and Robusta Holdings of incidents, and
- monitor the health of workers.



Regardless of any terms included in their franchising agreement, Robusta Holdings **cannot contract out of or transfer its WHS obligations** to Muhammad's franchise, nor can Muhammad's franchise transfer its WHS responsibilities to Robusta Holdings (or anyone else). Robusta Holdings and a franchisee can enter into an agreement to divide responsibility according to who is best placed to manage the WHS risk or meet a WHS obligation. However, this alone will not be enough for them to meet their duties; each party must still confirm the action is being carried out and the risk has been addressed. To learn more see [principle 1: WHS duties are not transferable](#) factsheet



## Managing a WHS risk in Muhammad's cafe



As PCBUs, Robusta Holdings and its franchisees must **manage risks to health and safety** by eliminating them, or if not reasonably practicable, minimising them so far as is reasonably practicable.

The risk management approach requires Muhammad's franchise company to review the effectiveness of existing control measures in place to manage WHS risks to both workers and customers.

At all stages of this process each duty holder must consult, coordinate and cooperate with other relevant PCBUs, so far as is reasonably practicable.

### Identify hazards and assess the risks

Robusta Holdings' cleaning procedures require the mopping of spills as soon as they occur. However, the workers say they have difficulty monitoring and responding quickly to spills while also serving customers. A few of the younger workers note they find it hard to squeeze the mop using the small wringer mop bucket, which means the floors are left soaking wet for longer.

Consistent with a PCBU's consultation duties, Muhammad talks to his workers and their health and safety representative (HSR) about how the risk can be managed. The workers come up with a few ideas to manage the slip risk including replacing the supplied mop with a commercial grade wringer mop bucket.

Muhammad then consults with Robusta Holdings. As it may take a few days to get in touch with the right person at Robusta Holdings, Muhammad decides to implement some temporary solutions to address the slip risk, immediately reminding all workers of the requirement to wear appropriate, non-slip footwear and to go over the wet floor with a dry mop.

Muhammad informs Robusta Holdings of the outcomes of the consultation with workers and the proposed control measures. Robusta Holdings considers it reasonably practicable to also consult with Muhammad's workers given its operating procedures directly affect how the workers carry out their work.

Robusta Holdings believes other franchisees are also likely to have the same issues and proposes to all franchise workers they establish a health and safety committee (Committee) to discuss this and any other WHS issues. Workers agree, and the current HSRs consent to being on the Committee. A constitution for the Committee is developed and Robusta Holdings ensures at least half of the members are workers who are not nominated by it or the franchisees.

### Controlling the risk

The Committee

- discusses the cleaning processes and its system of work to determine how to address the risk of spills, injuries to workers when cleaning and other measures to manage peak periods.
- agree it is not reasonably practicable to eliminate the spill hazards because it is not possible to prevent customers from spilling drinks or ice-cream, so they consider how to minimise the risks so far as is reasonably practicable.

The Committee refer to the hierarchy of control measures to help rank possible control measures from the most effective and reliable to the least. The Committee then provides Robusta Holdings and its franchisees their recommendations on which control measures to implement. The PCBUs agree to the Committee's recommendations:

- resurface the floors to increase grip (a higher-level substitution control) and cooperates and coordinates with each franchisee to do so.
  - o As a tenant of a shopping arcade, Muhammad's franchise company will also have to consult, coordinate and cooperate with the building owner and property manager to manage risks to workers and customers who are in the vicinity of the café as the floor is being resurfaced.
- implement lower-level administration controls such as new cleaning processes and equipment, including using a commercial grade wringer mop bucket.
  - o Changes are communicated to franchisee workers through team meetings, and by placing the Committee's meeting minutes on franchisees' noticeboards.
  - o Relevant procedures are amended by Robusta Holdings to reflect the changes, and updates provided to its franchisees, who in turn, provide updated training to their workers.

### Review and monitoring of control measures

Muhammad's franchise company and the other franchisees give Robusta Holdings regular updates on the effectiveness of the new measures and whether any new risks to workers or customers have been created. Robusta Holdings and the franchisees:

- continue to monitor the safety of the work environment, in consultation with HSRs, to identify if anything more can be done to improve health and safety.
- provide the Committee with relevant information as required.

The Committee continues to meet at least once every three months to discuss and review health and safety policies and procedures.

To learn more, see the [principle 4: Management of risks](#) factsheet.