

Labour hire

Case Study

This case study illustrates the 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



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.



Good Catering is a catering company which provides a ‘VIP’ food and drink experience for selected patrons at major sporting and music events. It usually works out of its large mobile kitchen, with adjoining marquee tents, where patrons are served food and drinks both inside and outside the tent in a fenced-off area.

Good Catering has a busy festival schedule ahead and requires additional workers at a week-long festival to help with catering. Good Catering decides to engage Event Labour, a labour hire service to provide event labourers and staff for the festival.

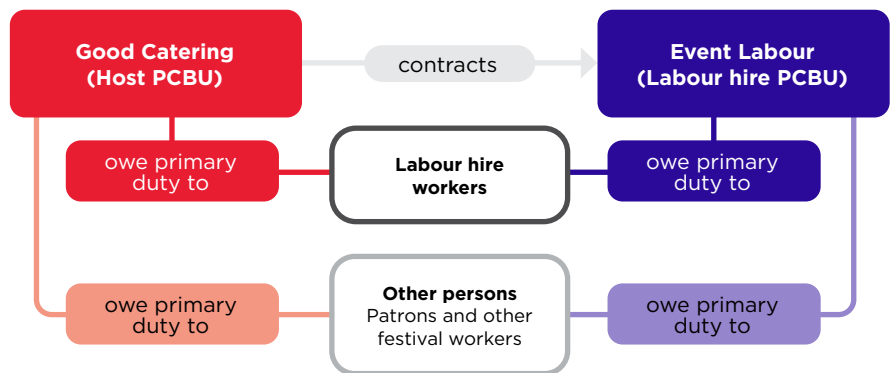
A person conducting a business or undertaking (PCBU) owes a primary duty of care to ensure, so far as reasonably practicable, the health and safety of workers and other persons.

Both Good Catering and Event Labour are PCBUs, and therefore both have a primary duty of care to labour hire workers and other persons. As the business hosting the labour hire workers, Good Catering is the ‘host PCBU’. Event Labour is the ‘labour hire PCBU’.

Good Catering owes a primary duty to the labour hire workers while they are at work in its business.

When Good Catering contracted with Event Labour to supply labour hire workers, it caused those workers to be engaged and their work will be influenced and directed by Good Catering during their placement.

Event Labour owes a primary duty to the labour hire workers as it has engaged them as employees. It owes this primary duty to the workers even when they are assigned to work with Good Catering.



To meet the primary duty, Good Catering and Event Labour must ensure risks to their workers' health and safety during the placement are eliminated, or if that is not possible, minimised so far as is reasonably practicable.

The PCBUs may also share other WHS duties in relation to the labour hire workers such as incident notification and consultation with workers.



The PCBUs cannot contract out of, or transfer, their duties to each other or to anyone else. See the [WHS duties are not transferable](#) fact sheet for more information.



Consultation, coordination and cooperation activities

Activities before labour hire workers commence their placement

Event Labour and Good Catering arrange a discussion over the telephone to clarify their roles and decide how both will meet their duties without duplicating activities.

Both PCBUs must discharge their duty to the extent they influence and control the labour hire workers. Good Catering and Event Labour discuss the type of hazards and risks associated with the work and agree who will take what action in addressing WHS risks.



To learn more see [principle 3: More than one person can have the same duty](#).

Good Catering is in the best position to take action to address risks to labour hire workers when they are on placement. This doesn't mean, however, that Event Labour does not have to take any action to meet its duty.

Even if duties are shared with another duty holder, each PCBU retains responsibility for their duty. To meet its duty, Event Labour must confirm Good Catering is taking the agreed actions and the risks are being managed. Event Labour can also take steps before and during the placement of the labour hire workers to ensure their health and safety.

The table below sets out the roles, responsibilities and actions the PCBUs agreed to:

Issue discussed	Outcome
<p>Worker activities- including verifying the labour hire workers have the relevant skills and knowledge to perform work safely.</p>	<p>Good Catering provides all relevant information to Event Labour about the nature of the work to be carried out, including skills requirements, workplace procedures, the type of equipment being used and the work environment.</p> <p>Event Labour and Good Catering agree the workers are suitably qualified for the work as they have previously worked in kitchens and are familiar with safe systems of work in this environment. However, Event Labour notes that not all workers have experience working in a mobile kitchen, or catering to large festival crowds. Good Catering informs Event Labour that this training is part of Good Catering's induction process.</p>
<p>Information, instruction, training and supervision</p>	<p>Both PCBUs agree they will ensure workers are provided with adequate training and instruction, including health and safety information about working in mobile kitchens and operating at this particular festival, including security arrangements and emergency procedures.</p> <p>Event Labour will inform workers of the tasks they will be performing, and processes for reporting any concerns or issues.</p> <p>Good Catering will provide information and instruction on how to perform work and how risks to their health and safety will be managed, as well as the supervision and support to be provided. Good Catering will also provide instruction on how to respond to difficult patrons or situations and how to seek the assistance of supervisors. They agree to inform Event Labour of any incidents in which the labour hire workers have had to seek assistance.</p>

Issue discussed	Outcome
<p>Good Catering's WHS management system and operating procedures- including the effective risk controls they have already implemented for their own employees who perform similar work tasks.</p>	<p>Before agreeing to provide labour hire workers to Good Catering, Event Labour sought information to make sure Good Catering's operations are safe before the labour hire workers start their placement.</p> <p>Good Catering provided Event Labour with its workplace policies and procedures. When reviewing the documents, Event Labour identified procedures to protect workers from hazardous chemical exposure were inadequate. Both PCBUs worked collaboratively to develop and implement a procedure for workers to safely handle and store hazardous chemicals at the event.</p> <p>These policies and procedures will also be discussed with the labour hire workers during induction training.</p>
<p>The work environment- including facilities available to all staff and access to first aid.</p>	<p>Good Catering provides Event Labour with the documentation provided by the festival organisers about the worksite's facilities, including worker amenities, maps of their location and control measures already put in place by festival organisers to minimise risks to workers (e.g. emergency management plans). Both Good Catering and Event Labour will need to review this documentation and work together to ensure any concerns about WHS risks are raised with the festival organisers and addressed appropriately.</p>
<p>Equipment being used and operated- including the provision of personal protective equipment (PPE).</p>	<p>Equipment will be supplied by Good Catering, e.g. mechanical lifting aids to assist the handling of stock and minimise the risk workers will experience a musculoskeletal injury. Good Catering will ensure workers have the necessary skills to operate the equipment, and if not, they will provide the workers with the training needed. Required PPE will be provided by Good Catering, including gloves for the cleaning of the kitchen and service areas. However, safety boots will be provided by Event Labour.</p>
<p>WHS incidents (Duty to notify)</p>	<p>Good Catering will immediately notify the regulator of any notifiable incidents involving the labour hire workers. Good Catering will also immediately inform Event Labour of notifiable incidents, as well as any other incidents that pose a risk to the health and safety of the labour hire workers.</p> <p>If a WHS incident occurs, both PCBUs will work together to ensure a thorough investigation is conducted into why it happened, and how to prevent or minimise the risk of a similar incident happening in the future.</p>
<p>Consultation processes (Duty to consult)</p>	<p>Both PCBUs agree how they will continue to consult while they both share WHS duties. They will work together to identify and control new or changed WHS risks, changes to labour hire workers' working conditions or tasks and, in the event of a WHS incident occurring, to ensure it is investigated and any learnings are applied.</p> <p>They also agree that Good Catering will consult with the labour hire workers on WHS matters through the induction process and regular team meetings. Event Labour will let workers know they can also raise any concerns directly with Event Labour during their placement with Good Catering.</p> <p>In addition, Good Catering has Health and Safety Representatives (HSRs). Good Catering will inform the labour hire staff in the induction that they may raise health or safety concerns with the HSRs.</p> <p>A final meeting between the two PCBUs at the conclusion of the labour hire workers' placement will give them an opportunity to share ideas on any WHS improvements that could be made for the next festival or event.</p>

Visiting the worksite to assess WHS risks

After their initial meeting, Event Labour is confident Good Catering will provide a safe working environment, but a visit to the workplace during the festival set up will help them to confirm all WHS risks on site have been identified and managed. Event Labour and Good Catering cooperate to set up a time for this to occur with representatives who are trained and competent in WHS.

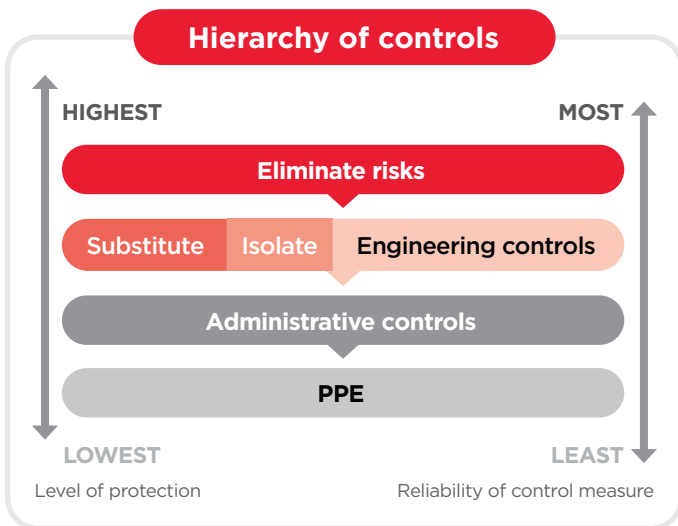
The PCBUs conduct a risk assessment and examine control measures already put in place by Good Catering as well as those by festival organisers (e.g. emergency management plans, crowd control and security arrangements and restrictions on alcohol consumption).



A risk management approach will help the PCBU's eliminate the risks to health and safety, so far as is reasonably practicable, or if that is not possible, minimise those risks so far as is reasonably practicable. To learn more, see the [Management of risks](#) fact sheet.

During inspection, Event Labour discovers labour hire workers must cross a corridor used by festival workers to access a mobile cool room. Both PCBU's assess there is a risk of harm to workers and others. The outward door creates a blind spot, increasing the chance of a collision when the worker exits the cool room.

The PCBU's agree moving the mobile cool room to the side of the marquee would eliminate crossing the corridor. The PCBU's also consult with the festival organiser PCBU. The festival organiser has a duty in relation to the same matter, a duty to the labour hire workers and other attendees of the festival as 'other persons'.



The festival organiser explains the relocation will introduce a trip hazard as the ground around the cool room is uneven. The PCBU's discuss options to eliminate, or at least minimise, these risks. They refer to the hierarchy of controls (HoC) to help rank possible control measures from the highest level of protection and reliability to the least.

To address the risk, the flooring around the marquee will be extended to the cool room to create an even surface (engineering control). Signs warning of an uneven surface will also be erected (administrative control).

Following consultation procedures documented in the WHS Management Plan, Good Catering makes sure workers and HSRs are given an opportunity to provide feedback and are informed of the control measures in place.

Event Labour is now satisfied its workers will be safe during their placement at the festival. But it will revisit the site once the festival has started to make sure the work matches that described by Good Catering and to identify if any new or changing WHS risks arise when workers are performing their work.

Activities during labour hire workers' placement

On day 4 of the event, a labour hire worker contacts Event Labour about the severe thunderstorm front that is predicted for the rest of the week. They are unsure how risks to their health and safety will be managed as the creek that runs alongside the festival site is already at risk of flooding after a week of unusually wet weather. The grounds are especially muddy and slippery. The worker raised their concerns with Good Catering, who advised there are adverse weather procedures in place, but did not explain how the flooding risk would be managed.

In accordance with their agreed consultation arrangements, Event Labour contacts Good Catering about the issue. Good Catering explains it is liaising regularly with the festival organisers about possible control measures. The PCBU's agree over email that Good Catering will keep workers and Event Labour informed of these discussions and pass on feedback from workers or HSRs.

It is also clear to both PCBU's that neither of them included sufficient information on adverse weather processes. Event Labour had presumed this information would be part of Good Catering's training and induction process for workers. Both agree that Good Catering will ensure its training and induction processes includes this information. Event Labour will also modify its pre placement checklist to ensure this hazard is managed before workers commence their placement.



Where multiple people have a duty in relation to the same matter, they must consult, cooperate and coordinate activities. To learn more, see the [Duty to consult, cooperate and coordinate with other duty holders](#) fact sheet.