

## Working with other businesses – Overlapping duties

Ensuring businesses work together for the health and safety of everyone in the workplace is a fundamental part of the design of the Health and Safety at Work Act 2015 (HSWA).

When two or more businesses are working together at the same location or through a contracting chain, they must work together to fulfil their duties of care.

Where those duties overlap, they need to consult, cooperate, and coordinate their activities to meet their health and safety responsibilities to workers and others.

When there are multiple businesses at the same location, each business must do what they can, within their influence and control, to keep workers safe. In these situations, the most effective way to manage workplace health and safety is by working together.

Because businesses have duties to all workers and others affected by their work - not just those they directly employ or engage - they may well have overlapping duties. Ensuring that businesses work together for the health and safety of everyone in the workplace is a fundamental part of HSWA's design.

In general terms, when we talk about businesses working together, we mean that all businesses must, so far as is reasonably practicable, consult, cooperate, and coordinate their activities with other businesses particularly when there are overlapping duties in relation to workplace health and safety. Overlapping duties mean that more than one business has health and safety duties in relation to the same matter.



## Why businesses must consult with each other

Businesses have duties to all workers and others affected by their work - not just those they directly employ or engage.

When the work of two or more businesses overlap, they must communicate, consult, cooperate and coordinate activities to meet their health and safety responsibilities to workers and others.

Consultation between businesses can help you all reach a common understanding and establish clear roles, responsibilities and actions in relation to work health and safety.

By working together, you can avoid unnecessary duplication of effort, for example when providing welfare or first aid facilities. Working together can also help identify and prevent gaps when managing health and safety risks for workers. It will also help businesses reach a common understanding and establish clear roles, responsibilities and actions.

Gaps can happen particularly when:

- there's a lack of understanding about how each businesses' work activities may add to the health and safety risks in the workplace as a whole, or a chain of work activities
- one business assumes the other business is taking care of a particular health and safety issue
- the business who manages the risk is not the business in the best position to do so
  
- businesses do not know what other work is happening and when.

The broader benefits of consultation include:

- helping to ensure working arrangements on shared worksites and in contracting chains run smoothly and efficiently, which in turn can lead to productivity gains
- businesses on a shared worksite or in a contracting chain working together to sort out problems – this will avoid the head contractor or landlord, for example, having to step in and sort out every problem on site or further down the contracting chain.

## What your business needs to do when working with other businesses

More than one business can have a duty in relation to the same matter (overlapping duties). This can occur when there are multiple businesses at the same location, for example:

- Multiple aircraft operating in the same airspace e.g. Westland – Mt Cook/Aoraki and Queensland Milford user groups
- Airport authorities and businesses based at the airport, or
- Helicopter companies conducting flying activity on behalf of tour operators or farmers.

Note that businesses do not need to share a workplace to have overlapping duties.

Businesses with overlapping duties must, so far as is reasonably practicable, consult, cooperate and coordinate activities with other businesses so that you can all meet your joint responsibilities. Businesses do not need to duplicate each other's efforts.

Your business cannot contract out of its duties. However, you can enter reasonable relationships with other businesses to meet your duties. Note that your business still retains the responsibility to meet its own duties.

Businesses should also monitor each other to ensure everyone is doing what they agreed.

## **Working out the extent of your duty**

The extent of your duty to manage risk depends on the ability of your business to influence and control the matter. Where there are overlapping duties, the extent of each business's responsibility to carry out their duties will most likely be different. This will depend on what ability your business has to influence and control the health and safety matter (i.e. the more influence and control your business has over a health and safety matter, the more responsibility you are likely to have).

For example, 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 (and/or plant and structures at the workplace) will have some influence and control over health and safety matters arising from work carried out by another business.
- control over workers: a business will have more influence and control over its own workers and contractors than those of another business.

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

A business with less control or influence may fulfil their responsibilities by making arrangements with the business with the higher level of influence and control.

## Questions to ask during consultation

TOPIC	QUESTIONS
<b>Work activities</b>	<ul style="list-style-type: none"> <li>· What work activities will each business carry out? For example:               <ul style="list-style-type: none"> <li>○ What will each business do?</li> <li>○ How will they do it?</li> <li>○ When will they do it?</li> <li>○ Where will it be done?</li> <li>○ What plant or substances may be used?</li> </ul> </li> <li>· Which workers will be involved in the work activity?</li> <li>· What other people may be affected by the work activity (other than workers)?</li> <li>· How could one business's work activities affect the work of the other businesses?</li> <li>· 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?</li> <li>· How could each business' work activities affect the work environment?</li> </ul>
<b>Health and safety risks</b>	<ul style="list-style-type: none"> <li>· What does each business know about the health and safety risks associated with a work activity they carry out?</li> <li>· How will each business manage (eliminate or minimise) risks associated with a work activity they carry out?</li> </ul>
<b>Other important health and safety information</b>	<ul style="list-style-type: none"> <li>· What information might one business need to provide to another business for health and safety purposes?</li> <li>· How will businesses communicate with workers and others (e.g. site meetings, shared newsletters)?</li> <li>· How will the businesses coordinate their emergency procedures including who will notify CAA HSU/WorkSafe when a notifiable event occurs?</li> <li>· What further consultation or communication might be required to monitor health and safety, or identify changes in the work or environment?</li> <li>· What facilities could be shared (e.g. first aid or sick rooms)?</li> </ul>

## Working with multiple businesses

When multiple businesses are working together, more than one business can have the same duty in relation to work health and safety.

This happens in situations where there are multiple businesses operating at the same location e.g. airports and popular tourist geographic areas such as Fox Glacier).

However, it's worth noting that businesses do not need to share a workplace for there to be overlapping duties. A good example of this would be contracting chains e.g. a hospital and emergency medical service provider.

Businesses with overlapping duties must, so far as is reasonably practicable, consult, cooperate and coordinate activities with other businesses so they can all meet their joint responsibilities.

Businesses don't need to duplicate each other's efforts.

## Can a business contract out of its duties?

A business can't contract out of its duties, but can enter reasonable agreements with other businesses to meet their duties. However, these businesses still retain the responsibility to meet their duties. Each business should have monitoring in place to ensure everyone is doing what they agreed to do.

## Working out the extent of your duty

The extent of the duty to manage risk depends on the ability of each business to influence and control the matter.

The extent of each business's responsibility to carry out their duties will most likely be different.

This will depend on how much a business can influence and control the health and safety matter. Obviously, the more influence and control a business has over the matter, the more responsibility it is likely to have.

There are a number of ways a business can have influence and control over health and safety matters including:

- **control over work activity:** If a business is in control of the work activity, then it may be in the best position to control the health and safety risks.
- **control of the workplace:** The who has control over the workplace (and/or plant and structures at the workplace) will have some influence and control over health and safety matters relating to work carried out by another business.
- **control over workers:** A business will have more influence and control over its own employees and contractors than those of another business.

The business with a higher level of influence and control (and with the greatest share of the responsibilities) will usually be in the best position to manage the risks.

The business with the least control or influence may fulfil their responsibilities by making arrangements with the business with the higher level of influence and control.

The size of the business or its financial resources (e.g. a large company versus a sole trader) is not a factor in its ability to have control or influence over health and safety matters. Simply put, the business with the most financial resources doesn't 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
- agree on the use of shared facilities
- monitor and check how things are going on an ongoing basis.

*The information presented in this document is intended for general use only. It should not be viewed as a definitive guide to the law and should be read in conjunction with the Health and Safety at Work Act 2015 and associated Regulations (where relevant).*