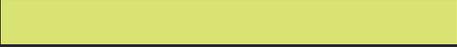


PCBUs working together

**ADVICE WHEN
CONTRACTING**

June 2019



These guidelines are for Persons Conducting a Business or Undertaking (PCBUs) who are sharing a workplace with other businesses, or are working as part of a contracting chain.

They provide advice on how you can meet your duties under the Health and Safety at Work Act 2015 (HSWA), illustrate different contractual relationships between parties, and provide examples of ways you can build health and safety into contract management.

ACKNOWLEDGEMENTS

WorkSafe would like to acknowledge and thank the stakeholders who have contributed to the development of this guidance.

PCBUs working together

KEY POINTS

- You must consult, cooperate and coordinate with other PCBUs when working in a shared workplace, or as part of a contracting chain
- You can't contract out of health and safety duties
- You should always build health and safety into contract management

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1.0

Understanding your duties under HSWA

IN THIS SECTION:

- 1.1** What this guide is about
- 1.2** What you need to know before reading this guide
- 1.3** What WorkSafe expects in contracting situations
- 1.4** Working with other PCBU's

PCBUs must consult, cooperate and coordinate with other PCBUs when they are working in a shared workplace or working as part of a contracting chain.

1.1 What this guide is about

The Health and Safety at Work Act 2015 (HSWA) is the key work health and safety law in New Zealand. A guiding principle of HSWA is that workers and other persons should be given the highest level of protection against harm to their health, safety, and welfare from work risks so far as is reasonably practicable.

Contracting is when a **PCBU**¹ (the contracting PCBU) hires someone else (**the contractor – also a PCBU**) to carry out temporary work under contract. Contractors may be individuals or businesses. Contractors, their subcontractors, and their employees are classed as the workers of the lead contracting PCBU.

Contract types may include:

- projects (such as construction, installation or upgrade work)
- maintenance and repair activities
- service and cleaning contracts.

PCBUs that work together will often share health and safety duties in relation to the same matter. These are called overlapping duties. PCBUs have a duty to **consult, cooperate** with and **coordinate** activities with all other PCBUs they share overlapping duties with, so far as is reasonably practicable.

This guide explains:

- Section 1: How PCBUs can work together to meet shared duties
- Section 2: How to build health and safety into contracting tendering practices.

This guide is for all PCBUs who share overlapping duties with other PCBUs, either in a shared workplace or as part of a contracting chain.

While this guide focusses mainly on contracts that are awarded by tender, the information can be applied to other contracting situations.

¹ PCBU is a 'person conducting a business or undertaking'. They may be an individual, but more often, a PCBU will be a company. The business or undertaking may be commercial or non-commercial in nature. For more information on HSWA, PCBUs and Workers, see our guidance *Introduction to the Health and Safety at Work Act 2015*.

1.2 What you need to know before reading this guide

If you share duties with other PCBUs, what must you do?

You must **consult**, **cooperate** with and **coordinate** activities with all other PCBUs you share duties with, so far as is reasonably practicable.

Where duties are shared, all PCBUs have a responsibility to meet those duties, to the extent that they have the ability to influence or control the matter.

If you're self-employed

If a self-employed person is working for another PCBU (for example, a self-employed welder who is contracted by a labour hire company), they both share duties as a PCBU. If the self-employed person decides how their own work is done and creates and controls risks, they are considered to have the ability to influence or control the matter. However, if a self-employed person is working for another PCBU, and the PCBU decides what they do, and how and when they do it, then that PCBU is considered to have the ability to influence or control the matter.

How can you work out if you share health and safety duties with other PCBUs?

PCBUs that work together, either in a shared workplace or in a contracting chain, will often share health and safety duties in relation to the same matter.

SHARED WORKPLACE

This is where several different contractors are working in the same place, such as a construction site, shopping centre or port. They will not usually share contractual relationships with each other. More than one contractor may control or influence the work onsite.

Example: A concert venue is an example of a shared workplace. There are usually multiple PCBUs, including contractors and subcontractors, working at the venue before, during and after a concert. Although the PCBUs carry out different jobs, they all share health and safety duties.

CONTRACTING CHAIN

This is where several different contractors are all working together on the same project, although not necessarily in the same workplace. Usually, one PCBU will have the most influence and control over the work. These contractors need to enter into reasonable arrangements with each other to make sure that everyone's health and safety duties are met.

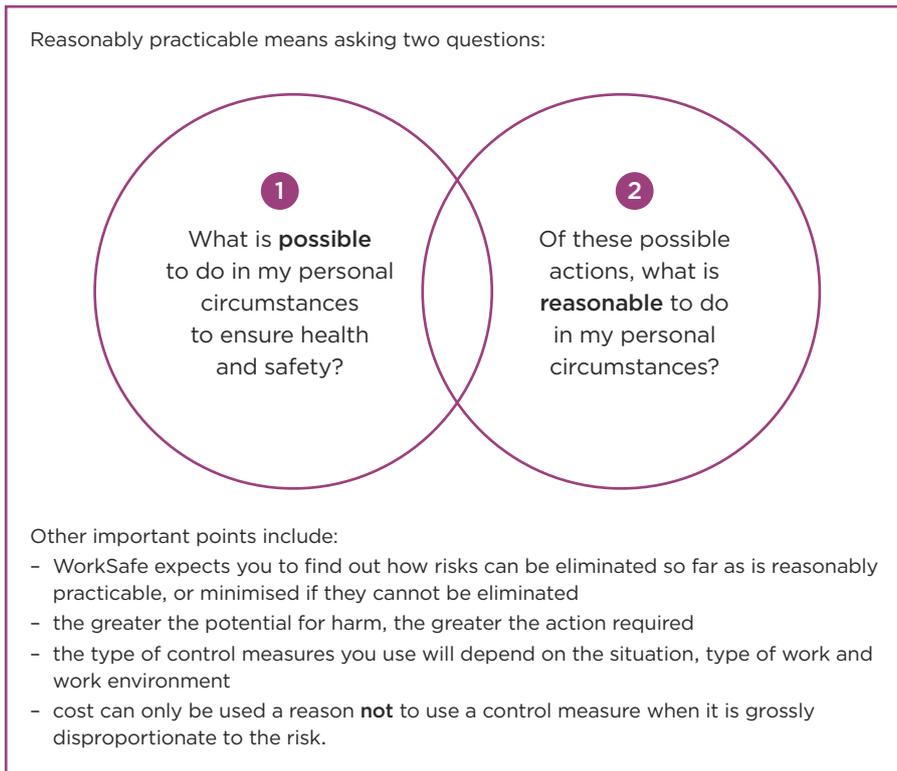
Example: A Hawkes Bay winemaker contracts a harvesting company to harvest grapes from a Blenheim-based vineyard and transport them to the winemaker's Hawkes Bay plant. The harvesting company sub-contracts a trucking company to pick up the grapes once they are harvested and transport them to the Hawkes Bay plant.

Even though the winemaker, the harvesting company and the trucking company don't share the same workplace, they still have to work together to meet all their health and safety duties.

Examples of possible common shared duties are listed in Table 1.

WHAT IS THE DUTY?	WHAT IS THE REQUIREMENT?
<p>Primary duty of PCBUs</p> <p>Section 36 Health and Safety at Work Act 2015</p>	<p>You must ensure, so far as is reasonably practicable, that the health and safety of workers and other people are not put at risk by your work. This is called the 'primary duty of care'.</p> <p>This means ensuring, so far as is reasonably practicable:</p> <ul style="list-style-type: none"> - the health and safety of workers while they are at work (including contractors, subcontractors and their workers) - the health and safety of workers whose work activities are influenced or directed by you (eg a franchise company whose franchise requirements influence or direct the workers of the franchisee) - that the health and safety of other persons are not put at risk by the work of your business or undertaking (eg a visitor to the workplace, or members of the public who could be affected by your work). <p>For the other duties - see our guidance: Introduction to the Health and Safety at Work Act 2015</p>
<p>Managing risk</p> <p>Section 30 Health and Safety at Work Act 2015</p>	<p>You must, so far as is reasonably practicable, eliminate risks that arise from your work. If the risk cannot be eliminated, you must minimise it, so far as is reasonably practicable.</p> <p>You must comply to the extent to which you have, or would reasonably be expected to have, the ability to influence and control the matter to which the risk relates.</p> <p>For more information on managing risk, see our guidance: Identifying, assessing and managing work risks</p>
<p>Worker engagement, participation and representation</p> <p>Part 3 Health and Safety at Work Act 2015</p>	<p>You must ensure, so far as is reasonably practicable, that workers can raise concerns and express their views on work health and safety matters and that those views are taken into account.</p> <p>You must also have practices that provide reasonable opportunities for workers to participate effectively in improving work health and safety on an ongoing basis.</p> <p>For more information on worker engagement, participation and representation, see our guidance: Worker engagement, participation and representation</p>
<p>Notification</p> <p>Section 56 Health and Safety at Work Act 2015</p>	<p>If a notifiable event occurs, you must notify WorkSafe as soon as you become aware of the event.</p> <p>For more information on the notification duty, see our website: Notifiable Event</p>
<p>First aid</p> <p>Health and Safety at Work General Risk and Workplace Management Regulations 2016</p>	<p>You must ensure that your workers have access to adequate first aid equipment, facilities for the administration of first aid and trained first aiders. If you share a workplace with other PCBUs, you can coordinate sharing first aid resources with them.</p> <p>For more information on first aid requirements, see our guidance: Workplace first aid</p>
<p>Emergency plans</p> <p>Health and Safety at Work General Risk and Workplace Management Regulations 2016</p>	<p>You have a duty to prepare, maintain and implement an emergency plan at your work. You must consult, cooperate and coordinate with other PCBUs that you share overlapping duties with to coordinate emergency procedures.</p> <p>For more information, see our guidance: Emergency plans</p>

TABLE 1:
Common shared duties



1.3 What WorkSafe expects in contracting situations

There can be several different levels in a contracting situation; either in a shared workplace, or in a contracting chain. Figure 1 shows an example of how a contracting situation could look, including a lead PCBU, a lead contractor, contractors, subcontractors and their workers.

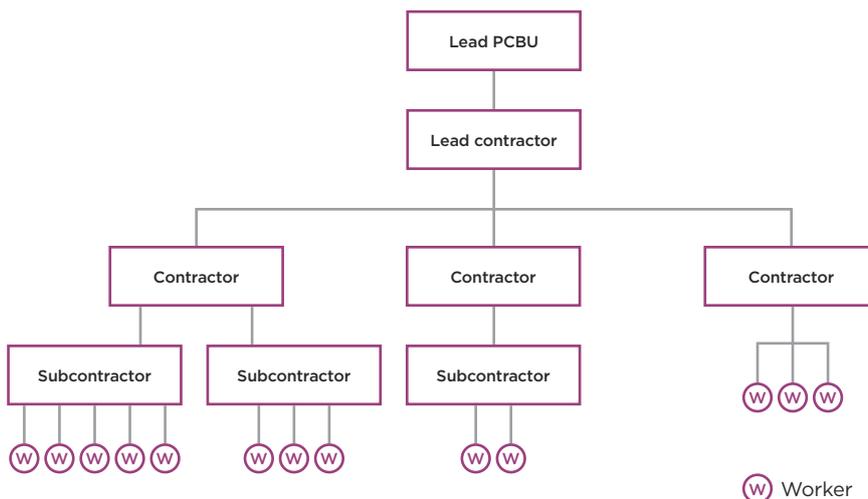


FIGURE 1:
Example of a contractual agreement

LEVEL IN CONTRACTING CHAIN	WHAT WORKSAFE EXPECTS FROM THIS PCBU
Lead PCBU Example: The owners of a large mall that is being refurbished	<ul style="list-style-type: none"> - To be a health and safety leader - To set clear health and safety expectations and incorporate these into contracts with contractors - To work with designers to eliminate risks so far as is reasonably practicable, or minimise risks if they cannot be eliminated - To choose the best contractors and site managers for the job using prequalification, not simply choosing them based on cost - To check health and safety records of potential contractors - To put clear and effective reporting procedures in place so they can be confident all duties are being met - To set up a clear framework for information sharing for the duration of the project
Lead contractor Example: A project management company	<ul style="list-style-type: none"> - To possibly act as site manager – this would include being on-site at all times, and having an overview of the site - To hold high health and safety expectations of the contractors that they hire - To choose the best contractors for the job using prequalification, not simply choosing them based on cost - To check health and safety records of potential contractors - To be in charge of inductions on-site - To be in charge of communication about health and safety at the start of each day (eg toolbox talks) - To coordinate and communicate the on-site rules and procedures to everyone who accesses the work site - To work with subcontractors to create a health and safety plan - To monitor their workers and/or subcontractors they hire - To put clear and effective reporting procedures in place so they can be confident all duties are being met - To make sure they have all of the required information from the lead PCBU - To make sure, so far as is reasonably practicable, that the health and safety of workers and other people are not put at risk by their work <p>The lead contractor will likely have the most influence and control over the workplace.</p>
Contractor (working as a PCBU) Example: A large welding company	<ul style="list-style-type: none"> - To hold high health and safety expectations of the subcontractors that they hire - To choose the best subcontractors for the job using prequalification, not simply choosing them based on cost - To check health and safety records of potential subcontractors - To monitor their workers and the subcontractors they hire - To ensure that their workers and the subcontractors they hire have all of the relevant information, and are aware of the onsite rules and procedures, inductions, toolbox talks, safety plans and reporting procedures - To ensure, so far as is reasonably practicable, that the health and safety of workers and other people are not put at risk by their work
Subcontractor (working as a PCBU) Example: A self-employed welder	<ul style="list-style-type: none"> - To ensure, so far as is reasonably practicable, that the health and safety of workers and other people are not put at risk by their work - To monitor their workers and the subcontractors they hire - To ensure that their workers and the subcontractors they hire have all of the relevant information, and are aware of the onsite rules and procedures, inductions, toolbox talks, safety plans and reporting procedures - To work closely with other contractors, including the lead contractor, to help manage risks

TABLE 2: What WorkSafe expects from PCBUs

Example: Safe Smash, a famous rock band from the USA, is performing at a sports stadium in Wellington for one night only. There are multiple PCBUs (including contractors) working to ensure the concert runs smoothly, and they all share health and safety duties.

There are two lead PCBUs in this shared workplace situation: the event promoter (Music Masters) and the venue management (Extreme Venues Ltd).

Some of the PCBUs and contractors working to set up the concert include:

- Music Masters (Geoff is the manager)
- Extreme Venues Ltd (Julie is the manager)
- Best Snacks Daily (food - Jamal is the manager)
- Bright Lights (lighting - Susie is the manager)
- Beatz Sound Crew (sound - Wiremu is the manager)
- Super Clean Services (cleaning - Jack is the manager)
- Ultra Security Ltd (security - Tatiana is the manager)
- In A Row (temporary seating - Deepali is the manager)

Some of these PCBUs and contractors also have their own workers and subcontractors. Each PCBU has to work with the others to make sure everyone is meeting their health and safety duties.

1.4 Working with other PCBUs

We recommend that you make a record of any discussions you have, and agreements you reach around how work will be carried out.

There are four main points to remember about overlapping duties:

- You have a duty to **consult, cooperate** with and **coordinate** activities with all other PCBUs you share overlapping duties with, so far as is reasonably practicable.
- You **can't contract out** of your health and safety duties, or **push risk onto others** in a contracting chain.
- You can enter **into reasonable agreements** with other PCBUs to make sure that everyone's health and safety duties are met.
- The more **influence** and **control** your business has over a workplace or a health and safety matter, the more responsibility you are likely to have.

These points are explained in more detail below.

You must consult, cooperate and coordinate with other PCBUs

You must, so far as is reasonably practicable, consult, cooperate and coordinate with other PCBUs that you share health and safety duties with.

Consulting, cooperating and coordinating can avoid you unnecessarily duplicating each other's efforts, and help prevent any gaps in managing health and safety risks.

Some ways that you can meet this duty and avoid gaps include (but aren't limited to):

- planning ahead by thinking through every stage of the work
- thinking about how the work could affect other PCBUs and the public
- identifying the risks that need to be managed
- consulting with other PCBUs to agree on how those risks will be managed
- consulting with other PCBUs to decide who is best placed to manage each risk, and
- clearly defining roles, responsibilities and actions, so that everyone knows what to expect.

Example: First aid

Several different PCBUs, including contractors and their workers, are working at the sports stadium in Wellington to prepare for the Safe Smash rock concert. They are located in different parts of the stadium, and working on different jobs. All the PCBUs have a duty to ensure that workers and other people at the workplace have access to first aid facilities and equipment, as well as trained first aiders.

Extreme Venues Ltd nominates Julie to organise a meeting with the other PCBUs and contractors before any work starts, to discuss the best way to meet the first aid duty. All the PCBUs and contractors state that as well as fully equipped first aid kits, they all have at least one trained first aider in their teams who will be onsite every day. Julie is satisfied with this, but as a representative of a lead PCBU she decides to:

- check that the first aid qualifications of the workers are up-to-date
- make sure that the venue provides equipment for more serious injuries or illnesses, such as a defibrillator
- make sure that every morning at the daily activity briefing, the PCBUs discuss who the first aiders are for that day and how they can be contacted if needed.

This is an example of one PCBU consulting, cooperating and coordinating with other PCBUs, to ensure workers and other people at the workplace have access to first aid facilities, first aid equipment and trained first aiders.

Example: Noise

Geoff (the representative for the event promoter Music Masters) and Wiremu (the representative for the sound company Beatz Sound Crew) are discussing the activities planned for the day, and any risks that the work may create. Wiremu tells Geoff there will be a sound check and workers may be exposed to loud noise levels. Geoff and Wiremu identify this as a risk, and agree to work together to eliminate or minimise this risk so far as is reasonably practicable.

Wiremu explains to Geoff that the sound check is compulsory, so the risk can't be completely eliminated. To minimise the risk of hearing damage for workers and other people in the area, Geoff:

- asks Wiremu to carry out the sound check at lunch time, when most people have left the venue to have their lunch
- asks Wiremu to send warning announcements over the loudspeaker 15 minutes before, 5 minutes before and 1 minute before the sound check is carried out, so that workers have time to leave the immediate area if possible
- provides each of the contractors with a written notice of the time of the sound check the day before, so that they can ensure as many of their workers are off-site as possible at the time
- provides adequate hearing protection for any workers or other people that are unable to leave the immediate area when the sound check is carried out (having checked with Wiremu what the correct class of hearing protection to provide would be).

This is an example of one PCBU consulting, cooperating and coordinating with other PCBUs to minimise risks to health and safety, so far as is reasonably practicable.

Example: Worker engagement, participation and representation (WEPR)

PCBUs have a duty to, so far as is reasonably practicable, make sure that workers' views on health and safety matters are asked for and taken into account. They must also have clear, effective and ongoing ways for workers to suggest improvements or raise concerns on a day-to-day basis. Multiple PCBUs, including contractors, are working to prepare the stadium for the concert, and it takes several days beforehand to get everything ready. Geoff and Julie (as representatives of the lead PCBUs) decide that every morning before the day's work starts, they will hold a daily activity briefing with all the contractors working onsite that day. In this daily briefing, Geoff and Julie will discuss with contractors and workers:

- the work activity planned for that day
- health and safety risks and the best ways to manage these cooperatively
- which first aiders are onsite that day and how they can be contacted.

At the end of each daily activity briefing, all PCBUs, contractors and workers will agree on their actions for that day.

This is an example of all PCBUs consulting, cooperating and coordinating with other PCBUs to minimise risks to health and safety, so far as is reasonably practicable.

You can't contract out of health and safety duties

If you are sharing a workplace with other PCBUs, or working together in a contracting chain, you are likely to share overlapping duties. Each PCBU in the contracting chain should be aware of overlaps and manage risks that are appropriate and reasonably practicable for them to control.

You cannot:

- contract out of your health and safety duties, or
- push risk down the contracting chain to another PCBU.

You are not only responsible for your own workers; your responsibility also extends to workers whose work you influence and direct, and other people at the workplace. This includes supporting those people to meet their health and safety duties, and not passing on or increasing risk through your arrangements with them.

WorkSafe expects PCBUs at the top of a contracting chain to be leaders in encouraging good health and safety practices throughout the chain. We also expect them to use sound contract management processes.

These processes may include:

- choosing competent contractors
- exchanging information
- planning and monitoring carefully
- doing post-contract reviews.

Example: Hazardous substances

In preparation for the Safe Smash concert, Extreme Venues Ltd contracts Super Clean Services to clean the stadium and seating. The Extreme Venues Ltd representative, Julie, instructs Super Clean Services to use the cleaning agents that are stored in the stadium's maintenance cupboard. However, she fails to pass on the instructions for usage of the chemicals to Jack (the representative from Super Clean Services), and Jack fails to follow this up with her. As a result, the workers from Super Clean Services don't know they need to dilute the cleaning agents before using them. A worker is splashed with the cleaning agent while carrying out her work and develops a chemical burn.

When Jack reports this incident to Julie, she says that it was his responsibility to pass the usage instructions onto his workers, and that it was nothing to do with her. Extreme Venues Ltd attempts to push the risk down the chain to Super Clean Services. However, both Extreme Venues Ltd and Super Clean Services share the duty to protect the health and safety of workers and others. This includes ensuring the safe handling of substances.

Some things that Julie could have done to meet her duty include:

1. Before awarding the contract to Super Clean, Julie should have checked that their workers were trained to use and handle the substances they would be using at the venue. She could have asked what sort of training they received, including the classes of substances they are trained to use.
2. Asking workers if they were provided with personal protective equipment (PPE), and had access to appropriate first aid facilities.
3. Providing the relevant information ahead of time, including safety data sheets.
4. Checking the containers the hazardous substances were stored in were labelled correctly.

This is an example of both PCBUs failing to meet their duties, with the larger PCBU trying to push the blame onto a smaller PCBU.

You can enter reasonable agreements with other PCBUs

You can't contract out of your health and safety duties. However, you can enter reasonable agreements with other PCBUs that you're working with, to make sure everyone's duties (including yours) are met. Usually, the PCBU who has the greatest ability to influence and control the work or workplace will have the most responsibility.

These agreements can be documented in contracts between the PCBUs. PCBUs must monitor each other, to make sure each PCBU continues to do what was agreed. WorkSafe may check that these arrangements are working well, and consider enforcement action if PCBUs are not meeting their health and safety duties.

Example: Notifying WorkSafe

Multiple PCBUs, including contractors, are preparing for the Safe Smash rock concert in Wellington. PCBUs have a duty to notify WorkSafe when:

- a death occurs as a result of work
- a notifiable illness or injury occurs as a result of work
- a notifiable incident occurs as a result of work.

Geoff (the representative from Music Masters) and Julie (the representative from Extreme Venues Ltd) hold a meeting with all the PCBUs involved in preparing for the concert, before the work begins. To make sure that the notification duty is met, they decide to nominate one PCBU to notify WorkSafe if a notifiable event happens. After consulting with each other, they all agree that Extreme Venues Ltd is the most appropriate PCBU to notify WorkSafe in the case of a notifiable event, because they have the most influence and control over the workplace. Extreme Venues Ltd would then inform the other PCBUs that a notification had been made to WorkSafe.

The other PCBUs should check with Extreme Venues Ltd, in the event of a notifiable event, that the notification has been made. If Extreme Venues Ltd has not notified WorkSafe within 48 hours, another PCBU should notify.

This is an example of several PCBUs entering a reasonable agreement with each other to ensure that the notification duty to WorkSafe is fulfilled.

You must carry out your duties to the extent you have the ability to influence or control the matter

The extent of your responsibility to meet your health and safety duties will likely be different to other PCBUs you share duties with. This will depend on what ability they have to influence and control the health and safety matter.

The more influence and control you have over a health and safety matter, the more responsibility you are likely to have. There are three ways you can have influence and control over health and safety matters:

CONTROL OVER WORK ACTIVITY	CONTROL OF THE WORKPLACE	CONTROL OVER WORKERS
A PCBU in control of the work activity may be in the best position to control the health and safety risks.	A PCBU in control over the workplace , including plant and structures, has some influence and control over health and safety matters.	A PCBU has more influence and control over its own workers and contractors than those of another PCBU.

TABLE 3:
Ability to influence and control

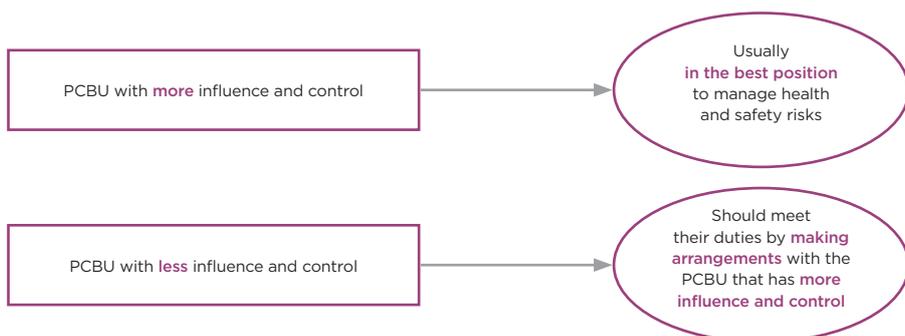


FIGURE 2:
Responsibilities of PCBUs

The size of the PCBU, or its financial resources, does not automatically equate to its ability to influence and control health and safety matters. You need to consult, cooperate and coordinate with other PCBUs to make sure everyone is meeting their health and safety duties.

Example: Emergency planning

PCBUs must prepare an emergency plan for their workplace. Extreme Venues Ltd is the PCBU with the most influence and control over how the stadium is set up during the Safe Smash concert, and so must carry out their duties to the extent that they have the ability to influence and control the matter.

For example, they:

- make sure exit points are clearly marked, easy to access and wide enough to allow crowds of people through
- make sure clearways are easily accessible and clear for emergency services
- make sure that ambulance or other first aid services are in attendance at the venue.

For the night of the concert, Ultra Security are contracted by Extreme Venues Ltd, and they have several responsibilities. Some of these include:

- patrolling the stadium
- closely monitoring the crowd for signs of disorderly or dangerous behaviour
- keeping pathways, exits and clearways open and clear
- notifying emergency services if needed.

These responsibilities are recorded in the emergency plan. On the night of the concert, Ultra Security has the most influence and control over the crowd in the event of an emergency, because they are on the ground and will be in the best position to respond in the first instance. Julie from Extreme Venues Ltd discusses these points with Ultra Security the day before the concert, making sure that everyone knows their responsibilities. She also monitors the situation during the concert by staying in touch with Ultra Security.

This is an example of two PCBUs carrying out their health and safety duties, to the extent that they have the ability to influence and control the matter.

For more information on overlapping duties, see our guidance:
[Overlapping duties](#)

2.0

Building health and safety into contract management

IN THIS SECTION:

- 2.1 Scoping the work
- 2.2 Pre-qualifying the contractor
- 2.3 Choosing a contractor
- 2.4 Awarding the contract
- 2.5 Monitoring the contract
- 2.6 Post-contract review

Lead PCBUs should follow these steps when building health and safety into contract management.

2.1 Scoping the work

At the beginning of any project, think about health and safety before work starts. This is a crucial first step to choosing the best contractors for your job.

You need to be satisfied that the contractors you choose are able to carry out the work in a safe and healthy manner. You should check that they:

- are competent, and
- are qualified to carry out the work.

Examples of how you might satisfy yourself of this could include considering whether they (if they are well established) have a good health and safety record and (if they are not well established) whether they can otherwise demonstrate competency to carry out the work in a healthy and safe manner.

Thinking about health and safety during the tendering process

Throughout the tendering process you must share information with your potential tenderers. This may involve:

- talking to them about what outcomes you want
- the potential tenderers explaining to you how these could be achieved
- talking about what the risks are, and how they will be managed.

The nature of the contract, including the type of work and the level of risk involved, will affect the procedures required. You should consider the broader health and safety implications and give advice on the safety standards to follow.

Pre-tendering

Before going out for tender, you may wish to carry out preparatory checks and information-sharing, including pre-qualification of potential tenderers. However, pre-qualification is not compulsory.

At this stage, think about:

- the work covered by the contract, and potential health and safety risks
- how health and safety issues will be included in the tender documents
- what health and safety information should be provided to potential tenderers
- whether potential tenderers will be expected to submit a health and safety plan
- how you will assess the health and safety capability of potential tenderers.

Looking at the health and safety management of potential tenderers at the pre-tendering stage emphasises the importance of health and safety. It also means that only contractors with appropriate health and safety practices will be invited to tender for the contract.

2.2 Pre-qualifying the contractor

Pre-qualification is used to establish a shortlist of potential tenderers, looking at the general ability and competence of contractors for the work. You can use this process to help determine how well contractors manage health and safety. It asks potential tenderers to demonstrate an effective health and safety management system, and asks them for information on managing specific risks. You can also use pre-qualification as an opportunity to assist and support contractors to improve their health and safety practices.

The level of detail required for pre-qualification should be appropriate for the type of project, taking its size and complexity into account.

If you choose not to use pre-qualification, health and safety information will still need to be requested and examined in the later stages of the tender.

Information shared in pre-qualification

Appendix 1 shows the type of information that could be requested in a pre-qualification questionnaire. Health and safety information gained (along with information on financials, credit ratings, contract performance and technical information) can be used to develop a profile of potential contractors. Remember that supporting documentation will need to be provided as evidence that good health and safety procedures are in place and are being carried out.

You should encourage tenderers to provide specific answers to your questions, especially when the questionnaire relates to health and safety.

If contractors pass the pre-qualification, they may be placed onto a list of preferred tenderers. Approval may be restricted to certain tasks or occasional activities, depending on the type of work.

Using the pre-tender information

Information gained from pre-tender questionnaires may be recorded and, after the contract has been signed, used to develop and implement a health and safety plan (this is completed by the chosen contractor). It may also be used for selecting future contractors for contracts not requiring a tender process.

2.3 Choosing a contractor

During the tendering stage (whether or not pre-qualification has been used), you should:

- describe potential health and safety risks
- collect information from tenderers on how they intend to manage specific work risks related to the contract. This information should be combined with that from the pre-qualification process.

If pre-qualification has not been used, you also need to gather information from tenderers that will help you assess their competence for the job. Look at their health and safety records to give you an idea of their performance in this area in the past.

Tender documents

You should provide an 'information for tenderer' document to potential tenderers that includes health and safety information. The purpose of this document may include:

- bringing health and safety to the forefront of the project
- making sure potential tenderers are fully aware of the health and safety requirements

- understanding how potential tenderers will manage contract-specific health and safety risks
- providing a benchmark against which to measure tender applications
- providing a basis for the chosen contractor's health and safety plan.

WHAT TO INCLUDE IN TENDER DOCUMENTS

Each 'information for tenderers' document will be different as the information it contains will depend on the size and nature of the project, and the types of risks involved. The health and safety information included should be tailored to the specific contract, and the needs of those receiving the information. However, there are some common points that should be included in an 'information for tenderers' document. Figure 3 illustrates these points.



FIGURE 3: What to include in tender documents

Health and safety information for tenderers can be included in tender documents in a variety of ways. It could be:

- included as part of the specifications for a project
- presented as a separate health and safety document
- a documented discussion with potential contractors, for smaller jobs.

The information should be appropriate to the project, so that health and safety requirements are built into the tender documents in some form. They should address health and safety from the beginning of the process, clearly defining and acknowledging the health and safety requirements throughout the tendering and awarding process.

The information in the tender documents should mainly come from you. Designers and technical experts can also provide supplementary information about known health and safety risks.

See Appendix 2 for an example of an 'Information for tenderer' document that could be adapted for your use. You should use a form like this one to record job details, including related health and safety risks, as preliminary information for contractors.

Tender review, evaluation and choosing a contractor

You should evaluate and assess all tender submissions. Make sure that potential contractors:

- have complied with the tender documents
- have complied with the health and safety requirements for the project
- are competent to carry out the contract.

ASSESSING HEALTH AND SAFETY COMPETENCE

You should give full and careful consideration to the information gained from tenderers at the pre-qualification/tendering stages. This will help you assess the level of competence that each potential contractor holds, and judge their capability where this is critical to health and safety. Ask a competent person for advice if you're unsure about the competence of potential contractors.

Compliance with health and safety requirements must be a precondition to any tender being successful. Address any deviations before accepting the tender.

KEY CONSIDERATIONS WHEN CHOOSING A CONTRACTOR

There are several things you should look at when choosing a contractor. Table 4 illustrates some of the key considerations you might take into account, but is not a complete list as each contracting situation will differ.

Cost may be a factor that you consider, but you should never prioritise this over health and safety. You have a duty to manage risks so far as is reasonably practicable. Don't choose a contractor based on cost alone.

KEY CONSIDERATIONS

- Past performance/experience in health and safety
 - Experience in the type and complexity of work to be carried out
 - Resources to carry out the work safely
 - How health and safety risks will be eliminated/minimised
 - Accreditation under health and safety management programmes
 - Health and safety certificates of competence issued by training institutions or similar
 - Compliance with relevant standards, where applicable
 - Policies and procedures, including whether they have effective WEPR practices in place
 - Organisation and arrangements (including assignment of responsibility for health and safety issues, and worker engagement, participation and representation)
 - Subcontractor selection and management
 - What information, training and supervision is provided to workers
 - What performance standards are planned and set
 - Risk assessment processes
 - Accident reporting, recording and investigation methods
 - Performance monitoring processes
 - Review methods
-

TABLE 4:
Key considerations
when choosing
a contractor

SUBCONTRACTORS

You should also closely monitor the selection of subcontractors. If your project has specific health and safety requirements, such as a permit-to-work system or high hazards, you can nominate subcontractors yourself to ensure they are competent to carry out the work. You can assess the competence of individuals by looking at their training, qualifications and past experience. Contractors should seek approval from you before subcontracting any work other than that indicated in the tender.

If your contractors tender for or select their own subcontractors, they must provide potential candidates with information about the project, the site, existing health and safety plans, and any other relevant information. Most of this information will be relayed from the pre-qualification and/or tendering materials you've supplied to the lead contractors. Contractors who are hiring their own subcontractors must make sure that they have enough information to ensure site-specific provision for health and safety in their own tendering documents.

EVALUATION

You should ensure that:

- tenders are assessed by competent people, with skills and knowledge relevant to the health and safety requirements of the project
- tender evaluation includes adequate consideration of health and safety requirements
- enough time is allocated to assess the health and safety requirements of tenders
- the proposed schedule for the project would not pose a risk to health and safety
- the health and safety performance of potential contractors is adequately assessed
- all tenders are thoroughly reviewed, benchmarking the potential contractor's health and safety competence against tender requirements.

2.4 Awarding the contract

Once you have chosen your contractor/s, you should start sharing information with them straight away. The lead contractor should develop a contract-specific health and safety plan, and give this to you as soon as possible. Use the plan to monitor the health and safety performance of the contractor for the duration of the project. It may also be included in health and safety documentation and/or the written contract.

Before choosing your contractor, you can hold post-tender meetings with potential contractors to assess whether they are competent in managing health and safety.

We recommend that you make a record of any discussions you have, and agreements you reach around how work will be carried out.

Documentation

Health and safety requirements should be documented, and become part of the written contract. These requirements may include:

- managing project-specific risks
- conforming with standards
- coordination and reporting requirements
- other project-specific information.

Briefing the contractor

You must make sure that your workers, contractors and their workers, and others, are provided training, information, instruction and supervision to protect them from risks to health and safety arising from the work. This may include induction training regarding the site or type of work, and the opportunity to ask about health and safety risks. The type of training needed will be unique to each project, the worksite and the type of work being carried out.

If you're sharing information with your contractor, you can use a job registration form. This form can work as a collaborative tool between lead PCBUs and their contractors, to assess the risks associated with the work and decide on the control measures to be put in place.

See Appendix 3 for an example of a job registration form that could be adapted for your use. The type and number of questions will depend on the nature of each individual project, and the example form should only be used as a guide.

Information sharing

Effective information sharing between you and your contractors is essential at all stages of a project.

Table 5 illustrates some key points that could be included in information shared between parties involved in a project.

KEY POINT	EXPLANATION
Nominated contacts for the lead PCBU and contractors	Representatives nominated should: <ul style="list-style-type: none"> - have a suitable level of knowledge for the role - hold a level of authority in the organisation - be well resourced - be available to carry out the role effectively.
Planning and running of joint meetings	Joint meetings should: <ul style="list-style-type: none"> - be regular - be held in a way that allows free and open exchange of information - incorporate health and safety issues - be documented in writing.
Procedures for reporting risks	For effective risk management and reporting, there should be: <ul style="list-style-type: none"> - efficient information transfer between the PCBU and the contractors - clearly designated reporting lines.
Notifiable work	You must notify WorkSafe before you carry out certain types of work, such as asbestos removal. You should: <ul style="list-style-type: none"> - be aware of any work notification requirements - make sure your contractors comply with these requirements.
Accident and incident reporting	You should make sure that: <ul style="list-style-type: none"> - all accidents and incidents are reported to you, including near-misses - you have a reasonable agreement with your contractors about how accidents and incidents will be reported.

TABLE 5:
Key points to include
in information sharing

2.5 Monitoring the contract

You, or someone you nominate, should monitor the contract for its duration. This includes:

- monitoring the performance of contractors and subcontractors, including their health and safety performance
- monitoring work conditions and practices
- bringing unsafe conditions or practices to the attention of the contractors
- making sure that unsafe conditions or practices are managed.

The person monitoring the contract should be appropriately trained to carry out the monitoring.

Actions when monitoring a contract

Monitoring a contract is part of your overlapping duty to consult, cooperate and coordinate with the other PCBUs that you share duties with. Monitoring the contract can include (this list is not exhaustive):

- managing the PCBU/contractor relationship
- making sure all parties are aware of their roles and responsibilities throughout the contractual framework
- taking overall responsibility for the control and coordination of the contract
- holding regular meetings to review health and safety performance
- carrying out regular inspections, as appropriate

- raising issues that require attention by the contractor
- investigating and responding to accidents and incidents
- recording health and safety progress for use in future contracting situations
- regularly reporting to the contractor on performance
- carrying out a post-contract review.

2.6 Post-contract review

When the work has been completed, you should review the quality of the work against the job specification and the performance of the contractors. You should consider, among other things:

- how well the contractor fulfilled the health and safety plan
- how well the contractor managed health and safety while completing the work
- any improvements that could be made
- whether the contractor is suitable for future contracts.

Appendices

IN THIS SECTION:

Appendix 1: Pre-qualification questionnaire – example

Appendix 2: Information for tenderer form – example

Appendix 3: Job registration form – example

Appendix 4: Glossary

Appendix 1

Pre-qualification questionnaire

Example

1. Key information

Tender title:

Business information

Number of workers in your business:

Corporate structure:

A summary of experience relevant to the work being tendered for:

References:

Key personnel

Name:

Qualifications:

Experience of nominated person representing the lead contractor:

Key workers on the project:

Their health and safety qualifications:

2. Details and procedures

Insurance and accident compensation

Public liability insurance held:

Accreditation in injury prevention programmes:

Compliance with standards

Provide evidence that you are complying with the appropriate health and safety standards:

Associations and/or memberships

Provide details of any trade or employers' associations or health and safety organisations that you belong to:

Health and safety experience

Worker engagement, participation and representation practices in your organisation:

Safety records such as accident and risk registers:

Relevant hazard information: (such as Safety Data Sheets)

Where necessary, also supply records for the last five years of health and safety interventions, such as:

Fatalities:

Lost days from injury to workers:

Accidents resulting in environmental damage or pollution:

Notices, warnings or prosecutions by WorkSafe:

Pre-qualification questionnaire

Policy

Written health and safety policies:

How these policies are communicated to workers:

Subcontractors

Subcontractors that will be used on this project, and which tasks they will carry out:

Your assessment of their competency:

Whether health and safety was considered in their selection:

Induction programmes for new subcontractors:

Procedures for controlling the safety performance of subcontractors:

Organisation

How the work will be supervised:

Who will be responsible for supervision:

Arrangements

Provide an outline of the procedures in place to ensure a safe system of work. Include details on.

Documented work practices and safety instructions, including how often they are audited:

Procedures for maintaining plant, equipment, structures and vehicles in a safe condition:

Personal protective equipment supplied to workers:

Information, training and supervision

Health and safety training and information that managers/supervisors receive:

Health and safety information, instruction, supervision and training that workers receive:

Induction programmes for new workers:

Health and safety representatives in your organisation:

Emergency procedures

Provide details of your emergency procedures and planning.

Roles and responsibilities in an emergency:

Emergency training that workers receive:

Emergency drills that have been carried out in the last 12 months:

Planning and setting performance standards

Provide details on planning and setting performance standards for complex or high-risk projects:

Risk assessment

Formal risk assessments that you have carried out in the past

Systems to identify and assess risks to health and safety:

Procedures to manage risks to health and safety:

Accident investigation

Procedures for investigating accidents and near-misses:

Procedures for notifying WorkSafe when a notifiable event occurs:

Procedures for notifying the lead PCBU when an accident occurs:

Hazardous substances

Any hazardous substances used while carrying out the work:

Safety Data Sheets for the hazardous substances:

Compliance certificates for required sites:

Which workers are certified handlers of hazardous substances:

Plant and equipment

Provide details on procedures for inspecting, testing, examining and maintaining plant and equipment to a safe standard for use, as well as the records that show this:

Health monitoring

Provide details on any health monitoring of workers with regards to specific risks relating to the work:

Measuring and improving health and safety

How performance is assessed:

Safety meetings and committees:

Safety inspections or audits:

3. Review

Provide details on what happens to the results of checks, investigations and audits.

Completed by

Name:

Contact details:

Date: DD / MM / YEAR

Signed:

Appendix 2

Information for tenderer

Example

1. Key information

Tender title:

Reference number:

Description of project

Describe the nature and extent of the project.

Location:

Type of work:

Timetable:

Performance standards:

Other details:

Outline the design of the project so that tenderers are aware of all the health and safety issues involved. This may include information on the project beyond the scope of the work being tendered for.

Site/place of work

Describe the site/place of work with regard to location and relevant issues, including factors.

Provision of services:

Existing or coinciding uses:

Adjacent premises:

Access and traffic systems and restriction:

Ground condition:

Atmospheric conditions:

Underground services:

Drains:

Overhead lines or cranes:

Machinery or vehicles:

Work at heights:

Electrical or chemical risks:

Materials/equipment to be used

List any particular materials or equipment that could present health and safety risks: (includes things like flammable or toxic substances, or heavy/bulky items)

2. Specific information

Identified risks to health and safety

Describe the health and safety risks likely to be associated with the job under tender. Risks described may not necessarily be part of the tender itself:

Work processes

Welding/hot work:

Electrical work:

Confined spaces:

Working at height:

Proximity of overhead wires or cranes:

Excavation:

Demolition:

Special requirements

Access for the public:

Positioning of the site access and exit points:

Location of unloading or storage areas:

Temporary site accommodation:

Restrictions on working hours:

Vehicle access:

Difficult or restricted access to the work area:

Permits to work:

Special requirements for hazardous substances or work environments:

Emergency procedures:

Provision of barriers or signs:

Any required health monitoring:

Design information or specification documents

Available: Yes No

Provided: Yes No

Detail the relevant information that is available to the tenderer:

Drawings

Available: Yes No

Provided: Yes No

Detail the drawings that you have prepared for the tender, as well as any pre-existing drawings, plans, specifications or other documents that are relevant.

Provided with invitation to tender: Yes No

Project-specific rules

Specific rules related to the project:

Any overlaps with the lead PCBU’s activities:

Emergency procedures

Describe the emergency procedures for the site/place of work, and rules for emergencies that the tenderer must follow:

3. Contact details

Describe the process for liaison and coordination for health and safety: (include a delegate for multi-employer site meetings as appropriate)

Include a procedure for dealing with design changes after the work has started:

Detail the responsibilities for notifying work or reporting accidents or serious harm to WorkSafe:

Provide details of how the work methods are supervised, and who will be responsible for supervision:

Name of tenderer’s contact:

Contact details:

Completed by

Name:

Contact details:

Date: DD / MM / YEAR

Signed:

Appendix 3

Job registration

Example

1. Responsibilities

Example: The senior manager with responsibility for health and safety, the names of those responsible for different aspects or areas of work activity, agreed lines of communication etc:

2. Hazardous conditions

- Roof work
- Entry into ductwork
- Noise
- Falling objects
- Overhead working
- Confined spaces
- Other:
- Isolation of services
- Dangerous machinery
- Excavation/demolition
- Electrical work
- Heavy items

3. Work equipment

- Ladders/access equipment
- Welding/cutting equipment
- Lasers
- Machinery
- Lifting equipment
- Other:
- Grinding equipment
- Portable electrical equipment
- Vehicles
- Powder powered tools
- Pneumatic equipment

4. Materials/substances

- Asbestos
- Toxic substances
- Adhesives/sealants
- Compressed gasses
- Explosives
- Corrosives
- Other:
- Ionising radiation
- Epoxy materials
- Flammable substances
- Solvents
- Irritant substances
- Substances that can create vapours or fumes

5. Request to use lead PCBU's services

- Electricity
- Compressed air
- Transport
- Trucks
- Water
- Waste disposal
- Other equipment:
- Other:
- Forklift
- Steam
- First aid
- Scaffolding/access equipment
- Lead PCBU's personnel or services

Are there any other special risks:

Is a permit to work required:

6. Site arrangements

To be explained and agreed

- Hours of work
- Emergency procedures
- Site boundaries
- First aid facilities
- Other:
- Vehicle restrictions
- Accident/incident reporting
- Permits to work

At the job registration stage, contractors should also provide evidence of relevant risk assessments, health and safety plans, safe systems of work and competence of workers.

Appendix 4: Glossary

TERM	LEGAL DEFINITION (AS NOTED) OR BRIEF EXPLANATION
Contractor	A PCBU who carries out temporary, work under contract.
Control measure	Is a way of eliminating or minimising risks to health and safety.
Duty holder	Means a person who has a duty under HSWA. There are four types of duty holders – PCBUs, officers, workers and other persons at workplaces.
Hazard (section 16 of HSWA)	Includes a person's behaviour where that behaviour has the potential to cause death, injury, or illness to a person (whether or not that behaviour results from physical or mental fatigue, drugs, alcohol, traumatic shock, or another temporary condition that affects a person's behaviour).
Health and Safety at Work Act 2015 (HSWA)	HSWA is the key work health and safety law in New Zealand. A guiding principle of HSWA is that workers and other persons should be given the highest level of protection against harm to their health, safety, and welfare from work risks as is reasonably practicable.
Notifiable event (section 25 of HSWA)	Means any of the following events that arise from work: a. the death of a person b. a notifiable injury or illness, or c. a notifiable incident.
Other person at workplace	Examples of other persons include workplace visitors and one-off volunteers at workplaces.
Overlapping PCBU duties	Means when more than one PCBU has the same health and safety duties in relation to the same matter.
PCBU (section 17 of HSWA)	<ul style="list-style-type: none"> a. means a person conducting a business or undertaking: <ul style="list-style-type: none"> i. whether the person conducts a business or undertaking alone or with others, and ii. whether or not the business or undertaking is conducted for profit or gain, but b. does not include: <ul style="list-style-type: none"> i. a person to the extent that the person is employed or engaged solely as a worker in, or as an officer of, the business or undertaking ii. a volunteer association iii. an occupier of a home to the extent that the occupier employs or engages another person solely to do residential work iv. a statutory officer to the extent that the officer is a worker in, or an officer of, the business or undertaking: a person, or class of persons, that is declared by regulations not to be a PCBU for the purposes of HSWA or any provision of HSWA.
Plant (section 16 of HSWA)	Includes: <ul style="list-style-type: none"> a. any machinery, vehicle, vessel, aircraft, equipment (including personal protective equipment), appliance, container, implement, or tool, and b. any component of any of those things; and anything fitted or connected to any of those things.
Reasonably practicable (section 22 of HSWA)	<p>In relation to the duties of PCBUs (set out at sections 36 – 43 HSWA), means that which is, or was, at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters, including:</p> <ul style="list-style-type: none"> a. the likelihood of the hazard or the risk concerned occurring b. the degree of harm that might result from the hazard or risk, and c. what the person concerned knows, or ought reasonably to know, about: <ul style="list-style-type: none"> i. the hazard or risk ii. ways of eliminating or minimising the risk, and d. the availability and suitability of ways to manage the risk, and e. after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk. <p>For more information on the concept of 'reasonably practicable', see WorkSafe's fact sheet <i>Reasonably Practicable</i>.</p>
Risk	Risks arise from people being exposed to a hazard (a source of harm).

TERM	LEGAL DEFINITION (AS NOTED) OR BRIEF EXPLANATION
Structure (section 16 of HSWA)	Means anything that is constructed, whether fixed, moveable, temporary, or permanent; and includes: <ol style="list-style-type: none"> i. buildings, masts, towers, frameworks, pipelines, quarries, bridges, and underground works (including shafts or tunnels), and ii. any component of a structure; and part of a structure.
Subcontractor	A PCBU hired by a contractor to carry out temporary, paid work under contract.
Worker (section 19 of HSWA)	Means an individual who carries out work in any capacity for a PCBU, including work as: <ol style="list-style-type: none"> a. an employee b. a contractor or subcontractor c. an employee of a contractor or subcontractor d. an employee of a labour hire company who has been assigned to work in the business or undertaking e. an outworker (including a homemaker) f. an apprentice or a trainee g. a person gaining work experience or undertaking a work trial h. a volunteer worker, or i. a person of a prescribed class. A constable is: <ol style="list-style-type: none"> i. a worker, and ii. at work throughout the time when the constable is on duty or is lawfully performing the functions of a constable, but not otherwise. A member of the Armed Forces is: <ol style="list-style-type: none"> i. a worker, and ii. at work throughout the time when the member is on duty or is lawfully performing the functions of a member of the Armed Forces, but not otherwise. A PCBU is also a worker if the PCBU is an individual who carries out work in that business or undertaking.
Workplace (section 20 of HSWA)	a. means a place where work is being carried out, or is customarily carried out, for a business or undertaking, and b. includes any place where a worker goes, or is likely to be, while at work. In this section, place includes: <ol style="list-style-type: none"> a. a vehicle, vessel, aircraft, ship, or other mobile structure; and any waters and any installation on land, on the bed of any waters, or floating on any waters.

Disclaimer

This publication provides general guidance. It is not possible for WorkSafe to address every situation that could occur in every workplace. This means that you will need to think about this guidance and how to apply it to your particular circumstances.

WorkSafe regularly reviews and revises guidance to ensure that it is up-to-date. If you are reading a printed copy of this guidance, please check worksafe.govt.nz to confirm that your copy is the current version.

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