

Overlapping duties

Ensuring businesses work together for the health and safety of everyone in the workplace is a fundamental part of HSWA's design.

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.

Why businesses need to consult

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.

By consulting with each other, you can avoid unnecessary duplication of effort (eg when providing welfare or first aid facilities).

Consultation helps prevent any gaps in managing work health and safety risks. It will also help businesses reach a common understanding and establish clear roles, responsibilities and actions.

Where can gaps happen?

Gaps can happen when:

- there is a lack of understanding about how the work of each business may add to the health and safety risks in the workplace as a whole or in 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 one in the best position to do so
- businesses do not know what other work is happening and when.

What are the benefits of consultation?

The broader benefits of consultation include:

- helping to ensure working arrangements on shared worksites and in contracting chains run smoothly and efficiently, leading to potential productivity gains
- businesses on a shared worksite or in a contracting chain needing to work 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.

Questions to ask during consultation

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

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 at the same location (eg construction sites, shopping centres and multi-tenanted buildings).

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 (eg forestry work).

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 (eg 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).