

## About overlapping duties

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It is a HSWA requirement that farmers work with contractors or other health and safety duty holders when they have the same health and safety duty (overlapping duties). This section explains the concept of overlapping duties.

### How PCBU duties can overlap in a contracting chain

A PCBU may have more than one duty.

More than one PCBU may have the same duty. These are called 'overlapping duties'.

PCBUs that work together can have overlapping duties for a workplace, work activity or person.

PCBUs do not need to have a contract with each other to have the same duties. This can happen in shared workplaces, such as when different contractors work close to each other.

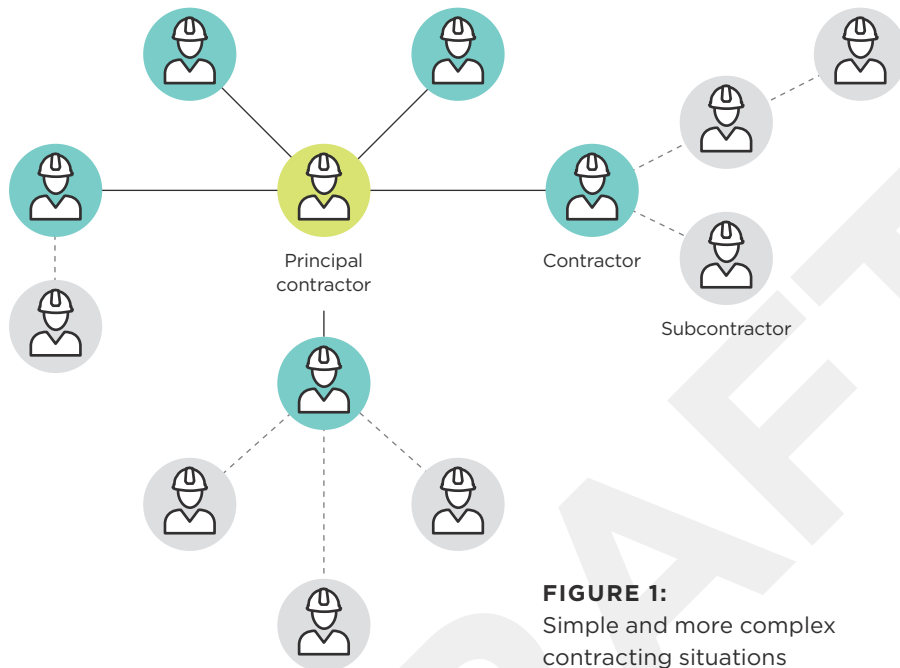
More than one PCBU can have duties in a contracting chain. This happens when contractors and subcontractors provide services to a principal contractor (usually the farmer). This can happen in both simple and more complex contracting chains (Figure 1).

Blue shading is used to denote content based on proposed changes to the Health and Safety at Work Act.

### Simple contracting chain



### More complex contracting chains



**FIGURE 1:** Simple and more complex contracting situations

**EXAMPLE 1**

**Simple contracting chain on a farm**

A farmer hires a fencing company to build a new stock yard on his farm. The fencing company brings on a concrete mixing company to pour a concrete slab. In this scenario:

- the farmer is the contracting PCBU
- the fencing company is the contractor
- the concrete mixing company is the subcontractor.

## How duties can overlap in a shared workplace

Farmers and other PCBUs do not need to have a contract with each other to have the same duties. This can happen in shared workplaces, such as when different contractors work close to each other.

### EXAMPLE 2

#### Duties in a shared workspace

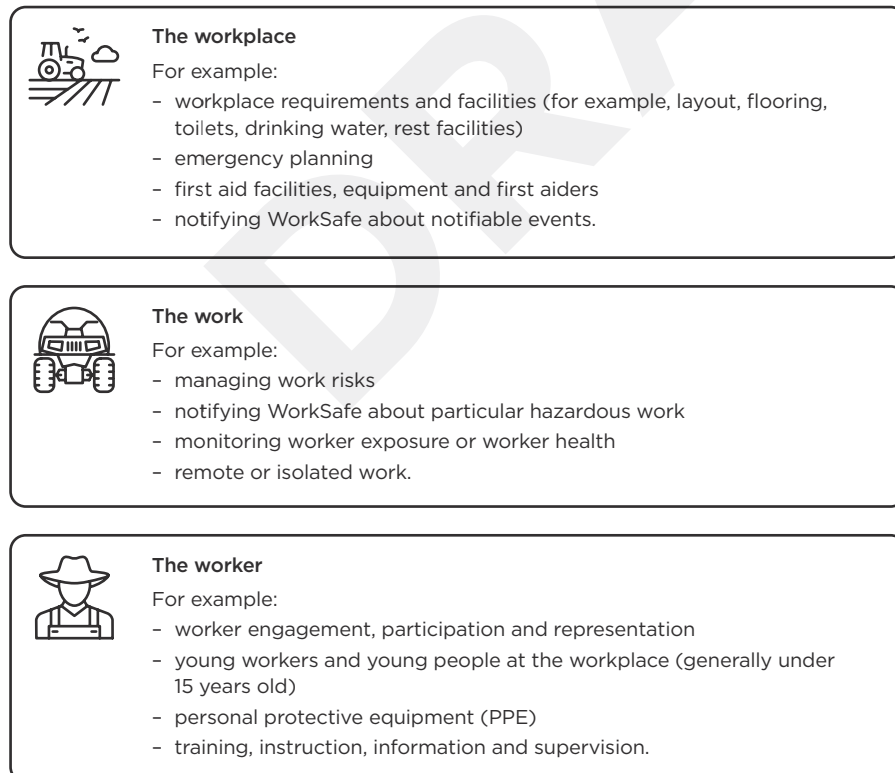
A farmer hires a forestry company to harvest the trees on his small forestry block on the farm. The forestry company brings their subcontractor to do the tree felling.

- The farmer is the contracting PCBU.
- The forestry company is the contractor.
- The self-employed contractor, who is doing the tree felling, is the subcontractor.

When the work is carried out on site, these three PCBUs have overlapping health and safety duties while they are sharing their workspace on the farmland.

## Examples of health and safety duties that may apply to multiple PCBUs

Figure 2 shows examples of duties that more than one PCBU may have in a contracting chain or in shared workplaces.



**FIGURE 2:**  
Examples of duties that more than one PCBU may have

Other legal duties may also apply. For example, if the work involves substances hazardous to health (for example, welding fumes), hazardous substances, or work under raised objects or falling objects.

Small and large PCBUs can have different legal duties.

### Small PCBUs (less than 20 workers)

Small PCBUs are only required to meet specified HSWA duties in relation to critical risks, including sections 36–43 (excluding section 36(3)(e)) and regulations 9, 15(2), and 19 of the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016.

When complying with other duties, small PCBUs must manage critical risks first.

### Large PCBUs (20 or more workers)

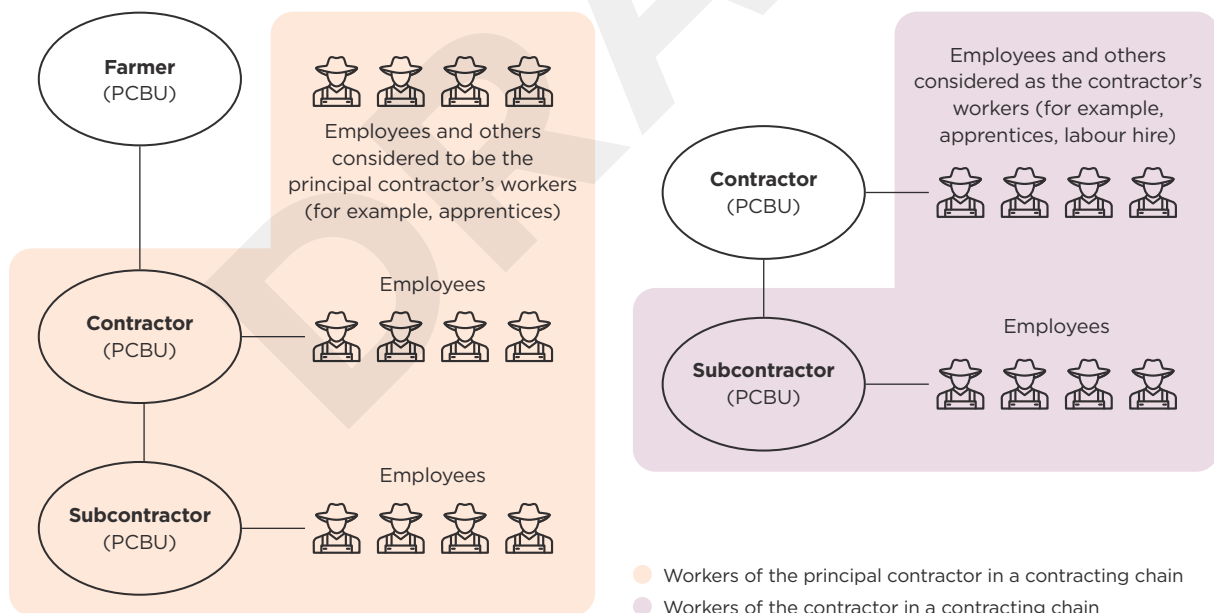
Large PCBUs must manage both critical and other risks, but are required to give priority to critical risks.

### PCBUs can have duties for the same workers

As shown in Figure 3, under HSWA:

- contractors and their employees are considered workers of the farmer
- subcontractors and their employees are considered workers of both the farmer and the contractor.

Also, a person self-employed as a sole trader can be a worker as well as a principal contractor, contractor or subcontractor.



**FIGURE 3:** Workers for farmers, contractors and subcontractors

## What must farmers and contractors do if they have overlapping health and safety duties?

When farmers and contractors have the same health and safety duty, each PCBU must, so far as is reasonably practicable cooperate with each other. This means to:

- consult with each other
- cooperate with each other
- coordinate their activities.

These requirements apply to all PCBUs that have the same duty. However, PCBUs do not always have the same obligations.

### Small PCBUs (less than 20 workers)

Small PCBUs are required to cooperate with other PCBUs for critical risks.

Small PCBUs may choose to cooperate in relation to risks other than critical risks.

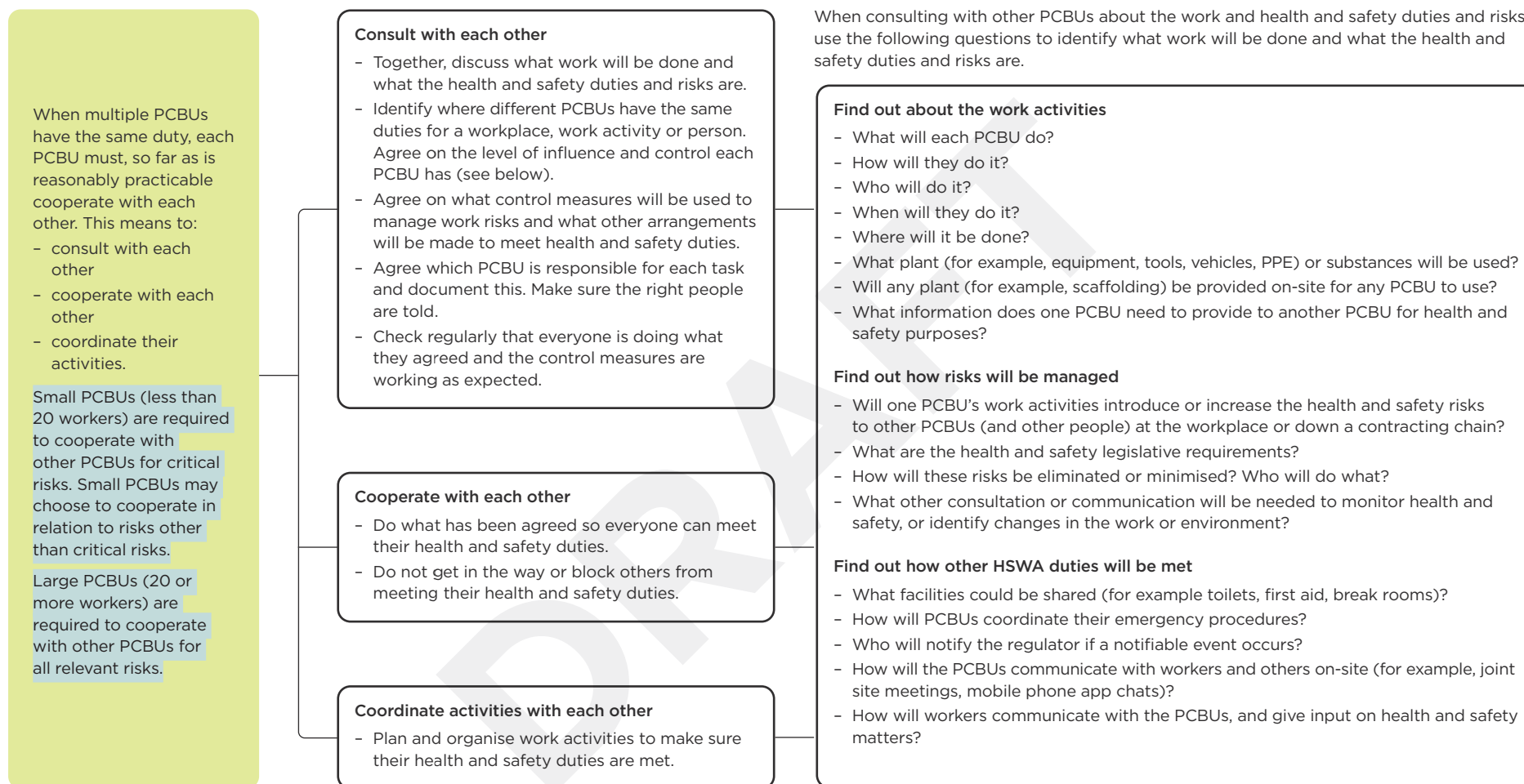
### Large PCBUs (20 or more workers)

Large PCBUs are required to cooperate with other PCBUs for all relevant risks.

Figure 4 shows how to consult, cooperate and coordinate with other PCBUs.

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## PCBUs must consult, cooperate and coordinate when they have overlapping health and safety duties

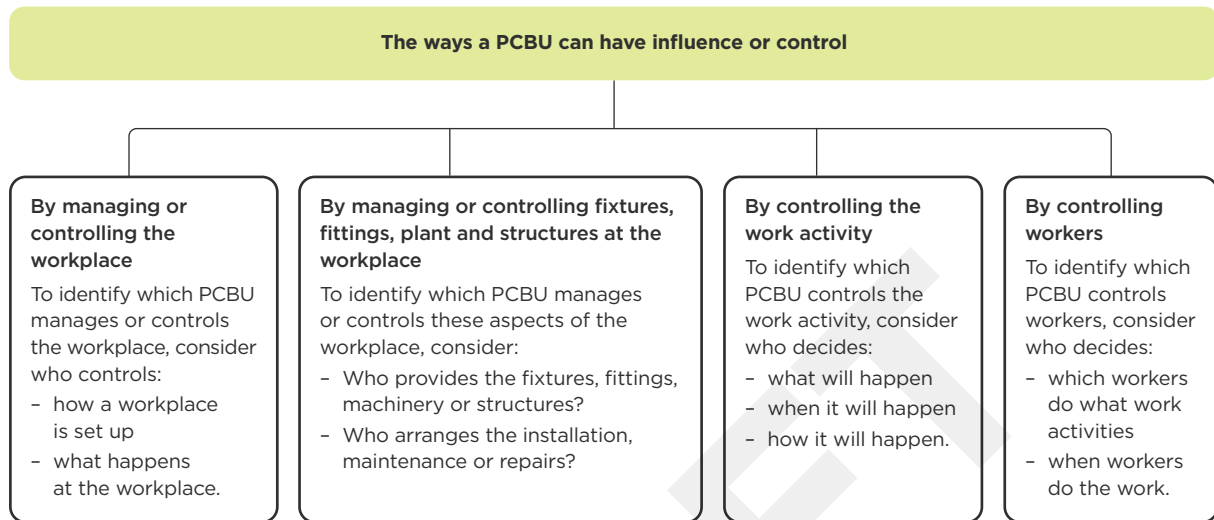


**FIGURE 4:** How to consult, coordinate and cooperate with other PCBUs

## Responsibilities depend on influence and control

A PCBU with the most influence and control is likely to be in the best position to deal with the matter.

Figure 5 shows how to work out the level of influence and control each PCBU has. The level of influence and control can change as the work progresses.



**FIGURE 5:** How PCBUs can have influence and control

## PCBUs can work together to manage responsibilities, but they still have duties

Each PCBU is still responsible for meeting their own duties.

Duty holders may not transfer health and safety duties to others.

PCBUs of different sizes may enter into agreements or contracts that set out how they will work together.

These arrangements can require small PCBUs to cooperate on all relevant risks, provided that they do not limit or remove duties under HSWA.