



## Work health and safety guide

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# Guide to interpretation of Principal Contractor and Roads and Maritime Services' obligations under the Work Health and Safety Act 2011

Guidance to Roads and Maritime Services staff in the **Technical and Project Services Division** on the interaction between safety systems on Principal Contractor sites.

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# 1 Introduction

This document considers the responsibilities and requirements for Roads and Maritime Services in relation to the interaction of Roads and Maritime's work health and safety (WHS) management system and the WHS management systems of principal contractors on construction projects. This situation arises where Roads and Maritime engages another person conducting a business or undertaking as a principal contractor for the construction project and authorises the person to have management or control of the workplace and to discharge the duties of a principal contractor.

The focus of this document is on the duties owed to workers for their health and safety. This document provides a summary description of the legal framework as it applies to Roads and Maritime and the principal contractors. Specific examples are listed with scenarios outlined. In this context, the application of the WHS management systems of Roads and Maritime and of the principal contractors are set out in detail.

## 2 Summary of legal framework

### 2.1 Work Health and Safety Regulation 2017 (NSW)

The term principal contractor (PC) is defined in the [Work Health and Safety Regulation 2017](#) (WHS Regulation). It is a term solely used in the context of 'construction projects' (meaning a project that involves construction work where the cost of the construction work is \$250,000 or more). A person conducting a business or undertaking (PCBU) is a PC either because:

- The PCBU itself 'commissions a construction project' or
- The PCBU has been engaged by a third party who 'commissions a construction project'.

In the Technical and Project Services Division, where Roads and Maritime 'commissions a construction project', it engages a third party PCBU to be the PC for that construction project. Where Roads and Maritime engages a PC for a construction project, Roads and Maritime must authorise the PC to have management or control of project workplaces and to discharge the duties of a PC under the WHS Regulation for that engagement to be effective. If the engagement is not an effective engagement under the WHS Regulation, Roads and Maritime reverts to being regarded as the PC and is required by law to discharge the duties of a PC.

The WHS Regulation requires a PC to prepare, review and maintain a written WHS management plan, including site specific health and safety rules for project workplaces in relation to compliance with their duties as a PC under the WHS Regulation.

As such it is appropriate for the PC's WHS management plan to apply to all workers at sites managed or controlled by the PC. It is standard practice for contractual arrangements between a principal (such as Roads and Maritime) and a PC to reflect this position. In this case Roads and Maritime workers must comply with the requirements of the PC's WHS management system while on a worksite managed or controlled by the PC.

Roads and Maritime requires its workers to comply with Roads and Maritime WHS requirements that continue to apply to their work on a PC worksite, unless to do so would be in breach of the PC's WHS requirements. To minimise any conflict or disparity between RMS and the PC's requirements, Roads and Maritime reviews the PC's proposed WHS management plan before work on site commences.

Currently Roads and Maritime requires contractor's WHS management plans as a minimum meet Roads and Maritime policies and procedures that in any way may apply under to the works under contract. However this is not formally assessed. The WHS management plans are assessed against the NSW government guidelines.

Where a Roads and Maritime worker is working at a workplace other than a workplace managed or controlled by a PC, the Roads and Maritime worker is required to comply with Roads and Maritime's WHS requirements.

## 2.2 Work Health and Safety Act 2011 (NSW)

The [Work Health and Safety Act 2011](#) (WHS Act) imposes several obligations on duty holders to ensure the health and safety of workers and others. This document focuses on the duties owed to workers in WHS.

Often, there is more than one PCBU involved in the relevant work. Where this is the case, more than one PCBU may concurrently have the same duty as another PCBU. In these circumstances, the WHS Act requires each PCBU to consult, cooperate and coordinate activities with all the other PCBUs who have a duty in relation to the same matter to comply with their duties. Each PCBU may have multiple duties.

As set out in the following sections, where Roads and Maritime engages a PC under the WHS Regulation, both Roads and Maritime and the PC have duties to their respective workers. However, Roads and Maritime engages a PC and authorises the PC to have management or control of all relevant workplaces and to discharge the duties of a PC contained in the WHS Regulation. The WHS Regulation requires a PC to prepare, review and maintain a written WHS management plan for project workplaces. This must include site-specific health and safety rules.

As a consequence of this, when Roads and Maritime workers are working at a workplace managed or controlled by a PC, Roads and Maritime workers are required to comply with the requirements of the PC's WHS management plan. So that Roads and Maritime continues to discharge its duties under the WHS Act, Roads and Maritime requires Roads and Maritime workers to comply with Roads and Maritime's WHS requirements when performing work at a workplace managed or controlled by a PC, as they apply to their role, to the extent that those WHS requirements are not inconsistent with the PC's WHS requirements.

The key duties of Roads and Maritime and a PC in relation to any construction project are likely to be as follows:

## PC's duties

### Primary duty of care

The primary duty of care (s19 WHS Act) – to ensure so far as is reasonably practicable, the health and safety of:

- Workers engaged, or caused to be engaged by the PC
- Workers whose activities in carrying out work are influenced or directed by the PC

while the workers are at work in the PC's business or undertaking.

## Roads and Maritime's duties

### Primary duty of care

Roads and Maritime has the same duty as the PC. However, what steps are reasonably practicable for Roads and Maritime to take are likely to be different to the PC. To assist in meeting that duty Roads and Maritime:

- Contractually requires PCs to have and implement a WHS management plan
- Monitors the PC's compliance with its WHS management plan on a regular basis.

However, unlike the PC, Roads and Maritime will not supervise the workers on the construction projects or provide the workers on the construction projects with the training required to safely undertake their work.

Where Roads and Maritime has internal expertise in a particular subject matter, Roads and Maritime may take more steps to assist a PC to eliminate or minimise the risk than another PCBU without that expertise. However, in the context of construction projects, Roads and Maritime will consult with the PC about any such matter and contractually require that PC to manage the risk and relevant control measures.

### PCBU with management or control of a workplace

Duty as a person with management or control of a workplace (s20 WHS Act) – to ensure so far as is reasonably practicable, that:

- the workplace
- the means of entering and exiting the workplace
- anything arising from the workplace,

are without risks to the health and safety of any person.

This duty is different to the primary duty of care in that it relates to a workplace. A 'workplace' is a place where work is carried out for a business or undertaking, and includes any place where a worker goes, or is likely to be, while at work.

### PCBU with management or control of a workplace

If Roads and Maritime has a contractual right to control a workplace where work is being undertaken, in whole or in part, or as a matter of practice, exercises control over a workplace in whole or in part, Roads and Maritime also owes duties as a PCBU with management or control of a workplace.

Roads and Maritime must consider what is reasonably practicable, and this may be different to the PC.

## PC's duties

### WHS Regulation – PC

The additional duties of a PC include:

- Preparing a written WHS management plan for the workplace which includes matters specified in the WHS Regulation, such as:
  - The arrangements in place between any PCBUs at the workplace for consultation, cooperation and the coordination of activities in relation to compliance with their duties under the WHS Act and the WHS Regulation
  - Any site specific health and safety rules, and the arrangements for ensuring that all persons at the workplace are informed of these rules
- Ensuring that the workplace is secured from unauthorised access
- Ensuring signs are installed that shows the PC's name and site office location
- Obtaining safe work method statements before high risk construction work starts
- Traffic management.

### Duty to consult, cooperate and coordinate

The PC engaged by Roads and Maritime has a duty to, so far as is reasonably practicable, consult, cooperate and coordinate activities with Roads and Maritime.

The arrangements for consultation, cooperation and coordination of activities in relation to compliance with the PCBU's duties under the WHS Act and WHS Regulation must be included in a PC's written WHS management plan.

## Roads and Maritime's duties

### WHS Regulation – PCBU commissioning a construction project

A PCBU that 'commissions a construction project' is the PC for that construction project, unless that PCBU engages another PCBU to be the PC and authorises that person to have management or control of the workplace and to discharge the duties of a PC. That is, if a PCBU who commissions a construction project (e.g. Roads and Maritime) does not engage a third party to be the PC, the PCBU who commissions the project (in this example Roads and Maritime) is the PC.

In the case where Roads and Maritime engages a PC it does so on the basis that Roads and Maritime is commissioning a 'construction project' and the contractual engagement clause between Roads and Maritime and the PC (to be an effective engagement under the WHS Regulation) must:

- Authorise that other PCBU to have management or control of all relevant workplaces where the construction project is being undertaken
- Authorise that other PCBU to discharge the duties of a PC under the WHS Regulation.

### Duty to consult, cooperate and coordinate

Roads and Maritime has a duty to, so far as is reasonably practicable, consult, cooperate and coordinate activities with the PC.

As referred to above, where more than one PCBU concurrently have a duty in relation to the same matters, each PCBU must consult, cooperate and coordinate activities with all the others. It is a reciprocal requirement.

In addition to the PCBU's duties, officers and workers of each of the PC and Roads and Maritime also owe duties under the WHS Act.

### 3 Table of specific examples

Set out below are specific examples where the PC and Roads and Maritime may concurrently have the same duty.

Scenario	What system applies?	Rationale
<p>1. A Roads and Maritime site office is situated within or immediately adjacent to a PC site.</p>	<p>The PC's WHS management system applies. Roads and Maritime's WHS requirements may continue to apply to a Roads and Maritime worker, unless by complying with Roads and Maritime's WHS requirements, a Roads and Maritime worker would be in breach of a PC's WHS requirements.</p>	<p>Roads and Maritime authorises the PC to have management or control of the site. As such, the PC must maintain a WHS management plan for the site which applies to all workers on the site.</p> <p>To discharge its general WHS duties, it may also be appropriate for Roads and Maritime to require its workers to comply with its WHS requirements while on site, provided the workers do not breach a PC's WHS requirements by complying with Roads and Maritime's WHS requirements.</p>
<p>2. There is no permanent Roads and Maritime presence on site: Roads and Maritime personnel, including surveillance officers visit the site occasionally.</p>	<p>Same as for scenario 1.</p>	<p>Same as for scenario 1.</p>
<p>3. A Roads and Maritime site: others visit the site.</p>	<p>Roads and Maritime's WHS management system applies.</p> <p>The third party that attends the Roads and Maritime site may require its workers to comply with its WHS requirements in addition to Roads and Maritime's WHS requirements.</p>	<p>For the purposes of this example, Roads and Maritime is not a PC itself and there is no PC engagement. It is a Roads and Maritime workplace which Roads and Maritime controls. As such, Roads and Maritime in the context of its primary duty as well as its duty as a manager or controller of a workplace sets the applicable site rules.</p>
<p>4. Roads and Maritime's WHS management system is different to the PC's WHS management system (for example, the Roads and Maritime system is more onerous or requires additional steps).</p>	<p>The PC's WHS management system applies. Roads and Maritime's WHS requirements may continue to apply to a Roads and Maritime worker, unless by complying with Roads and Maritime's WHS requirements, a Roads and Maritime worker would be in breach of a PC's WHS requirements.</p>	<p>Roads and Maritime authorises the PC to have management or control of the site. As such the PC must maintain a WHS management plan for the site which applies to all workers on site.</p> <p>To discharge its general WHS duties, it may also be appropriate for Roads and Maritime to require its workers to comply with its WHS requirements while on site, provided that workers do not breach a PC's WHS requirements by complying with Roads and Maritime's WHS requirements.</p> <p>Roads and Maritime currently requires all PCs across the board to comply with Roads and Maritime's WHS policy and procedures as a minimum which decreases the likelihood that Roads and Maritime would have additional or more onerous WHS requirements to the WHS management plan (see section 2.1).</p>

Scenario	What system applies?	Rationale
<p>5. Requirements for pre-employment medical tests (or checks) prior to coming on site where a Roads and Maritime worker would not be 'employed' by the PC but may be on secondment.</p>	<p>If these requirements form part of the PC's WHS management plan, or other contractual arrangements regarding the secondment, the Roads and Maritime worker must comply with these requirements</p>	<p>It is not common for a PC to make a request for pre-employment medical checks unless the worker is performing safety critical work. However, such a requirement may be included in the WHS management plan or a PC may say that such a pre-employment medical check is a reasonably practicable step to ensure that the Roads and Maritime worker is fit to perform the duties that she/he will be performing while on a site managed or controlled by the PC.</p> <p>As making such a request may introduce other issues (eg industrial issues), if this requirement forms part of a PC's WHS management plan, Roads and Maritime consults with the PC whether such tests need to be undertaken for all Roads and Maritime workers, and if so, what tests are required. The purpose of this is to explore alternative ways for the PC to be satisfied that Roads and Maritime workers are fit without undertaking these tests or at least seek to limit the tests. This is an example of how the duty to consult, cooperate and coordinate activities with other duty holders may apply in practice.</p>
<p>6. Requirements for drugs and alcohol testing, and in particular, how a breach of a PC's WHS requirements by a Roads and Maritime worker is managed at the site, and by Roads and Maritime.</p>	<p>The PC's WHS management system applies and Roads and Maritime's <a href="#">Drugs and alcohol procedure</a> also applies (see scope of the Roads and Maritime <a href="#">Drugs and alcohol procedure</a>)</p>	<p>Roads and Maritime's <a href="#">Drugs and alcohol procedure</a> provides that a breach by a Roads and Maritime worker of the <a href="#">Drugs and alcohol procedure</a> at a site not managed or controlled by Roads and Maritime is a breach of Roads and Maritime's <a href="#">Drugs and alcohol procedure</a> and will be investigated (see sections 1.10 and 2.7).</p>
<p>7. Site inductions on PC worksites.</p>	<p>The PC's WHS management system, including in relation to inductions, applies.</p>	<p>Roads and Maritime authorises the PC to have management or control of the site. As such, the PC must maintain a WHS management plan for the site which applies to all workers on site.</p> <p>It is possible for the PC to engage a third party to provide the induction. This may be appropriate where it is contemplated by the WHS management system, the third party is suitably qualified and trained to perform this work and the PC has provided the third party with all necessary information to adequately give the induction training.</p> <p>Roads and Maritime should consider whether it is the holder of any information that would be relevant for the PC to include in its induction training as part of the duty to consult, cooperate and coordinate activities with other duty holders.</p>

## 4 Assurance

It is necessary and desirable for Roads and Maritime to seek assurance from a PC at the pre-contract stage that the PC WHS management plan at site level meets Roads and Maritime's WHS requirements as a minimum. The rationale for this is provided in scenario 4 in the above table.

Where Roads and Maritime has identified WHS risks and ways to eliminate or minimise those risks and recorded these in its own WHS management systems, Roads and Maritime requires a PC to comply with these WHS requirements as a minimum, unless through consultation, the parties agree that there is a valid WHS reason to depart from these WHS requirements.

During the construction phase Roads and Maritime WHS audits (integrated audits) and surveillance also provide assurance. The audits and surveillance provide evidence of conformance to the PC's WHS management plan, site arrangements and conditions, and any Roads and Maritime relevant requirements (eg G2, G22 and G10 contract specifications).

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## Feedback

Contact WHS Branch with feedback on this document at [onermsms@rms.nsw.gov.au](mailto:onermsms@rms.nsw.gov.au)