

Attachment B - Sharepoint guidance

WHS and contractors

Directorates and agencies engage contractors with particular skills, expertise and services to support us in delivering services to the ACT community. Contractors can be individuals or people who work for a business we have engaged.

When engaging contractors we cannot 'contract out' our work health and safety (WHS) obligations. Under WHS legislation we are responsible for ensuring the health and safety of everyone in our workplaces – including contractors and visitors.

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- ACTPS WHS and managing contractors policy (add when we have the draft policy)

Roles and responsibilities

Under [ACT Government WHS arrangements](#) directorates and agencies, as well as [senior officers](#), have obligations that are set out in legislation.

When a directorate or agency (known in legislation as a 'person conducting a business or undertaking' or PCBU) hires a contractor to work for them they must consult, cooperate and coordinate with them on WHS matters to ensure we do not put each other at risk of harm.

A directorate or agency is not absolved of responsibilities for managing WHS risks and consulting and communicating about WHS because a contractor is employed by themselves or someone else.

A PCBU has a responsibility to ensure, so far as is reasonably practicable, that the health and safety of workers, visitors and others are not put at risk. Senior officers are responsible for ensuring that the ACT Government meets this responsibility.

Where a directorate or agency engages a contractor, they are required to:

- verify the contractor has the necessary expertise for the work that they claim to have prior to engaging them (eg. licences, registrations, memberships)

- verify the contractor has their own systems in place for carrying out work safely (ask them how they manage WHS, this could also be included in requests for tender documents or other sourcing documents)
- verify the contractor is carrying out work safely as per their own stated procedures so far as it is possible (eg. through a monitoring or verification process in a contractor management system)
- continue to consult, coordinate and cooperate with the contractor to ensure their work (and ours) do not put each other at risk of harm
- provide relevant instruction to the contractor about WHS risks (eg. if you are contracting someone to build a building on your site explain the risks associated with that site such as contamination, chemicals, unusual building materials).

A key determining factor for what is reasonably practicable to do lies in the difference in expertise between the directorate/agency and the contractor— the less expertise a PCBU has in the work of the contractors the less reasonably practicable it is likely to be for them to independently identify WHS risks and hazards for the contractor's work.

For more on WHS obligations and the roles of a PCBU and officer:

- [ACTPS WHS arrangements](#)
- [WHS officer due diligence guidance](#) (see page 3 for more on 'reasonably practicable')
- [Information for officers: understanding your WHS obligations](#)

If you manage contracts

The specific nature of contract management varies from contract to contract. At the simplest level it can involve the verification of services delivered and payment to the contractor. On complex and long-term service delivery contracts, contract management may involve active monitoring of day-to-day activities; negotiation of variations; management of disputes; making payments; and keeping records to provide an audit trail.

Along with performance indicators and standards, arrangements for monitoring and assessment should be set out and agreed in the contract along with any action that would result from non-performance.

You will need to verify the contractor is doing what they said they would do to ensure contractor's WHS systems are current and relevant for the work they are conducting.

You can find additional information on contract management [here](#)

WHS consultation, cooperation and coordination

The objective of consultation is to make sure everyone associated with the work has a shared understanding of what the WHS risks are, who may be affected by them and how they will be controlled. This consultation will determine which health and safety duties are shared and what each person needs to do to cooperate and coordinate activities with each other to comply with their health and safety obligations.

Consultation is important because a directorate/agency should understand the risks from its work activities but may not understand the risks that could be introduced by the contractors working in the workplace. What is an obvious risk to one party may be unrecognisable by the other.

Consultation, cooperation and coordination might include:

- reaching an agreed understanding of expected deliverables and safety expectations
- developing a clear scope of work – break scope down into activities
- clarifying any restrictions on work – e.g. time of day, types of materials, specific tools, licence requirements
- agreeing on the monitoring/review/reporting approach for safety/work activities/deliverables - could be via meetings, audits or some other agreed means
- establishing a contractor register and induction process to know who is in the workplace and when
- agreeing contractor engagement and induction processes and supervision of new contractors in the workplace
- involving health and safety representatives to facilitate communication and involvement
- ensuring evidence of training, instruction and supervision have been provided.

More information:

- [Work Health and Safety \(Work Health and Safety Consultation, Cooperation and Coordination Code of Practice\) Approval 2018](#) (page 27).

If you need to hire a contractor for simple or low risk work

Even if you are just getting someone in to fix a few things you are still required to:

- verify the contractor you are engaging has the relevant expertise for the job
- agree on the scope of work, understand where the work activity may impact your workers and agree on safety controls to be used
- induct the contractor into the workplace

- verify the contractor is carrying out work safely (so far as it is possible). You may not have the requisite expertise to know if what the contractor is doing is safe, or you may not have access to the work area to view their work, but you cannot just ignore the contractor. At the very least you can talk to the contractor for their opinion on how work is progressing and any foreseeable risks.

Construction work

Construction work has a whole level of complexity associated with whether a contract is over \$250,000, who the principal contractor is for the work and the flow on into the contractual chain (as described above).

If you are entering into a procurement for major construction work or managing a construction contract you should refer to [Major Projects Canberra](#).

Information for WHS teams

How the term reasonably practicable applies in relation to contract management

The directorate/agency must do what is reasonably practicable to eliminate or minimise the risks associated with those things over which they have control and must provide the highest level of protection that is both possible and reasonable in the circumstances.

A directorate/agency does not need to take 'every' possible step that it can take, nor does it have to do what could have been done (in hindsight), but rather, whether it was reasonably practicable to have done it. It is not reasonably practicable to affect a matter over which you have no control (termed capacity to control).

Knowledge of hazards and risks also encompasses what the directorate/agency ought to know. This is based on whether a reasonable person in the position of the duty holder would have appreciated or foreseen the risk of the injury or harm to health occurring ([Reilly v Devcon Australia Pty Ltd \[2008\] WASCA 84](#) at [60]).

Reasonable practicability can be discharged by engaging specialist contractors if the PCBU assesses the level of control it has over the activity and consequently understands where their duties lie. The level of trust or familiarity between a PCBU and a contractor should not be seen as an excuse to neglect or fail to check on their performance or credentials. Additionally, if the instructions the PCBU provides to the contractor are incorrect or incomplete, the 'protection' provided by engaging an expert contractor is unlikely to be sufficient.

The level of control

The capacity to exercise influence and control over a relevant matter assists in determining what is reasonably practicable.

‘For control to exist it must contain an element of knowledge, skill and experience and the ability to recognise the need for corrective action and the power to enforce it’ ([Reilly v Devcon](#) at [43]).

The PCBU needs to consider whether it has general control or actual control over the work being performed. The more control or influence over the work, the greater the steps that need to be taken by the PCBU to discharge the duty.

The difference in expertise between the PCBU and the contractor is crucial – the greater the difference, the less ‘reasonably practicable’ it is likely to be for the PCBU to independently identify hazards during the contractor’s work.

A contractual chain

The [SWA fact sheet : WHS duties in a contractual chain](#) provides examples to assist in understanding who has a duty where multiple contractors are engaged.

Put simply, there does not need to be a direct contractual relationship between the PCBU and a worker lower down the chain in order for the PCBU to owe WHS duties to that worker (p3).