

Guideline

Contractor Safety Roles, Responsibilities and Relationships

Summary

All South Australian public sector agencies enter into a wide variety of arrangements with contractors, subcontractors and other person's conducting a business or undertaking (PCBU). The purpose of this document is to provide guidance and clarity with regards to the roles, responsibilities and relationships of the various parties to an arrangement as they relate to managing the health and safety of contracted workers.

1. Scope

This guideline and the principles represented apply to the PCBU responsibilities to be discharged by public sector agencies in representing the Crown, and private sector contractors, subcontractors and other stakeholders.

2. Definitions

TERM	DEFINITION
AGFMA	Across Government Facilities Management Arrangements.
Construction Project	A project that involves construction work where the cost of the work is \$450,000 or more as defined in Regulation 293 of the <i>WHS Regulations 2012 (SA)</i> (refer to <i>Appendix A</i> for further detail)
Direct Employer	Under this Guideline, refers to the company under contract or the organisation to carry out works.
PCBU	Persons conducting a business or undertaking. From a South Australian public sector perspective, the Crown is the PCBU and all Government agencies are responsible for discharging the duties of a PCBU, depending on the situation, on behalf of the Crown.
Principal	The PCBU initiating, requesting, or commissioning a Construction Project and representing the interests of the Crown.
Principal Contractor	A Principal Contractor must be appointed for all Construction Projects. The Principal Contractor is either the Principal or another PCBU engaged by the Principal to be the Principal Contractor. The Principal Contractor has management and control of the workplace and must discharge the legislated duties and responsibilities of a Principal Contractor.
Reasonably practicable	Refers to actions that are reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant factors (refer <i>WHS Act, Section 18</i>).
Safe systems of work	Documented safe work procedures including Safe Work Method Statements (SWMS) and activities that ensure workers are inducted, correctly trained, licensed and provided with the appropriate safety equipment.



TERM	DEFINITION
WHS Act	Refers to the <i>Work Health and Safety Act 2012</i> , which is the South Australian Act to provide for the health, safety and welfare of persons at work and for other purposes.
Worker	Any person who carries out work in any capacity for the department and may include employees, contractors or subcontractors, temporary labour hire, outworkers, apprentices, trainees, students gaining work experience, volunteers, and other persons of a prescribed class.
Workplace	Means any place where a Worker works and includes any place where such a person goes, or is likely to be, while at work.
Workplace Manager	Person representing the workgroup who has physical possession and functional day-to-day management and control of that workplace.

3. Background

Under the *Work, Health and Safety Act (South Australia) 2012* (WHS Act), the definition of workers goes beyond direct employees and encompasses others such as contractors or subcontractors and volunteers.

Regardless of whether a worker is directly employed, contracted or subcontracted they will still be owed the full range of duties under the WHS Act including all reasonable actions to ensure that they are provided with **safe systems of work** and **safe workplaces**, and that these systems are **maintained**.

Depending on the situation, some or all of these duties may be owed by different parties including;

- a PCBU that **directly employs** the worker
- a PCBU that **engages** a worker or **causes** that worker to be engaged
- a PCBU that **manages and controls** a workplace in which the work will take place
- a PCBU that is carrying out other works in the workplace that may affect the health and safety of those nearby

From a South Australian public sector perspective, the Crown is the PCBU and all Government agencies are responsible for discharging these duties, depending on the situation and role played, on behalf of the Crown.

The sometimes complex question at the heart of contractor safety management is which party to an arrangement owes a given duty to the worker under that arrangement?

In any contractor arrangement there will be a chain of responsibility comprised of any and all PCBU's involved in commissioning, requesting, managing and carrying out the work. The specific duties owed (some may be shared) will be determined by the PCBU's "place" in the chain.

All PCBU's, regardless of their place in the chain must take whatever steps are **reasonably practicable** to discharge these duties.

Those further removed from the actual work (i.e. those at the "end of the chain") may have less direct influence and control over the work and the workers, however these PCBU's still have important responsibilities in seeking assurance that systems to ensure worker safety and safe workplaces are in place further down the chain and functioning effectively.

4. Determining roles and responsibilities

There are a number of factors that will determine which party or parties owe a particular duty to a worker in a given arrangement, namely:

- Which party or parties has **management and control** of the workplace
- Which party or parties has the authority to **direct and influence** the workers
- What is **reasonably practicable**
- **Contractual** arrangements (as long as they don't contradict the above)

The key to applying these principles (and a legal requirement for all PCBU's with shared duties) is **consultation, coordination and cooperation** between all parties involved.

In a contracted work arrangement, especially in a complex, multi-stakeholder arrangement, it is critical that communication is clear and consistent and that all parties understand and agree the division of duties and responsibilities.

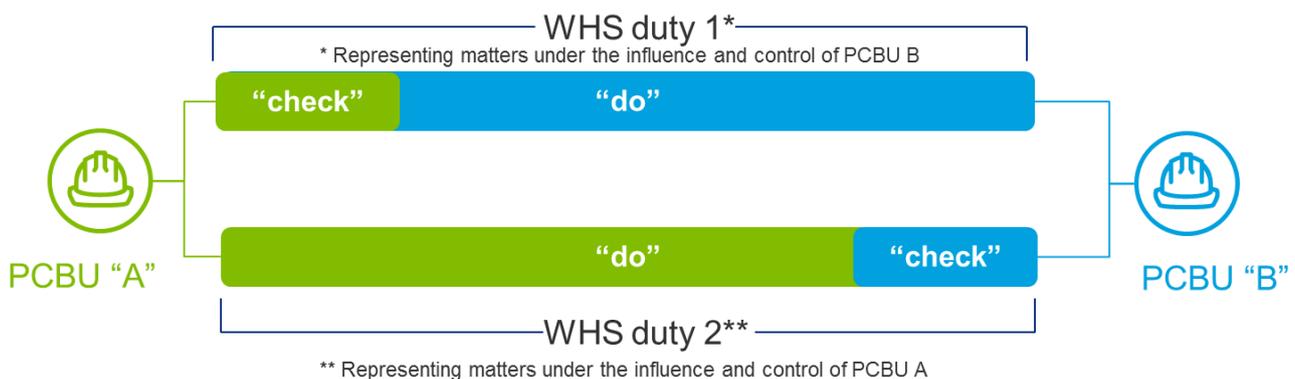
The fact that one party may owe a duty to a worker does not preclude other parties to the arrangement also owing duties in relation to the same matter.

Consider two parties to a contractual arrangement, one a direct employer whose workers will attend the site of the other to carry out contracted works. Both parties owe duties to the worker in relation to provision of safe systems of work and safe workplaces.

However, it is not true to say that both parties have identical responsibilities in relation to these duties. In fact, using the principles described above, it can be demonstrated that each party will bear responsibility for the aspects of these duties that would logically be expected to be within their ability to influence and control, whilst the other party would be responsible for seeking assurance that these responsibilities have been discharged.

It is helpful to think of these arrangements as a "sliding scale" with the slide being moved towards either party between "**do**" (i.e. discharging of the responsibility) and "**check**" (i.e. seeking assurance that the responsibility has been discharged). This concept is illustrated in *Diagram 1* below:

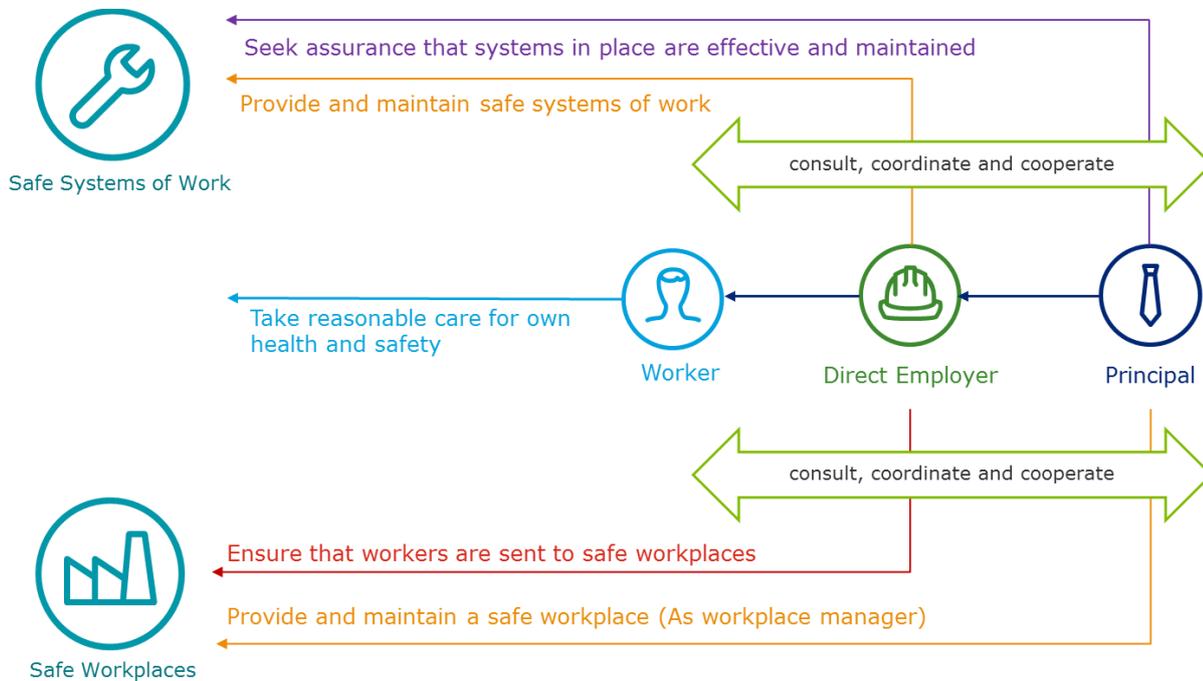
Diagram 1: Sliding scale of influence and control



5. Basic arrangements

The example scenario which follows (*Diagram 2*) illustrates a simple contractor relationship. The **Principal** is the person initiating, requesting or commissioning the work. The **Direct Employer** is, in this scenario, the company under contract to carry out works. The works themselves will be carried out at a workplace under the management and control of the Principal, and this could be any public sector agency.

Diagram 2: Simple contractor relationship scenario



In relatively simple scenarios such as the one illustrated above, the division of duties is straightforward. The Principal, being the person with management and control of the workplace (i.e. the day-to-day occupant) has the greater share of responsibilities in relation to keeping the workplace environment safe. This would include day to day activities such as ensuring good housekeeping through hazard reporting, electrical testing and tagging, maintaining an accurate asbestos register and so on.

It is important to note, however, that the Direct Employer still has responsibilities in this regard. Even though it is the responsibility of the Principal to maintain a safe workplace, the Direct Employer must consult to seek assurance that their workers are informed of hazards at the workplace that may impact on their safety.

The converse is also true of the provision and maintenance of safe systems of work. The Direct Employer, as the person with the capacity and capability to directly instruct their employees has the greater share of responsibility in this regards. This may entail activities such as ensuring workers are correctly trained and licensed and provided with the appropriate safety equipment.

Just as in the previous example, the fact that these responsibilities must be discharged by the Direct Employer does not absolve the Principal of responsibilities in this regards. The Principal must consult and coordinate with the Direct Employer to seek assurance that such systems are in place and are operating effectively. This might entail such actions as checking that the Direct Employer has appropriate safety systems in place prior to engaging them and inducting workers, reviewing safe work procedures to ensure that appropriate controls are in place and checking that workers have appropriate licensing before work commences.

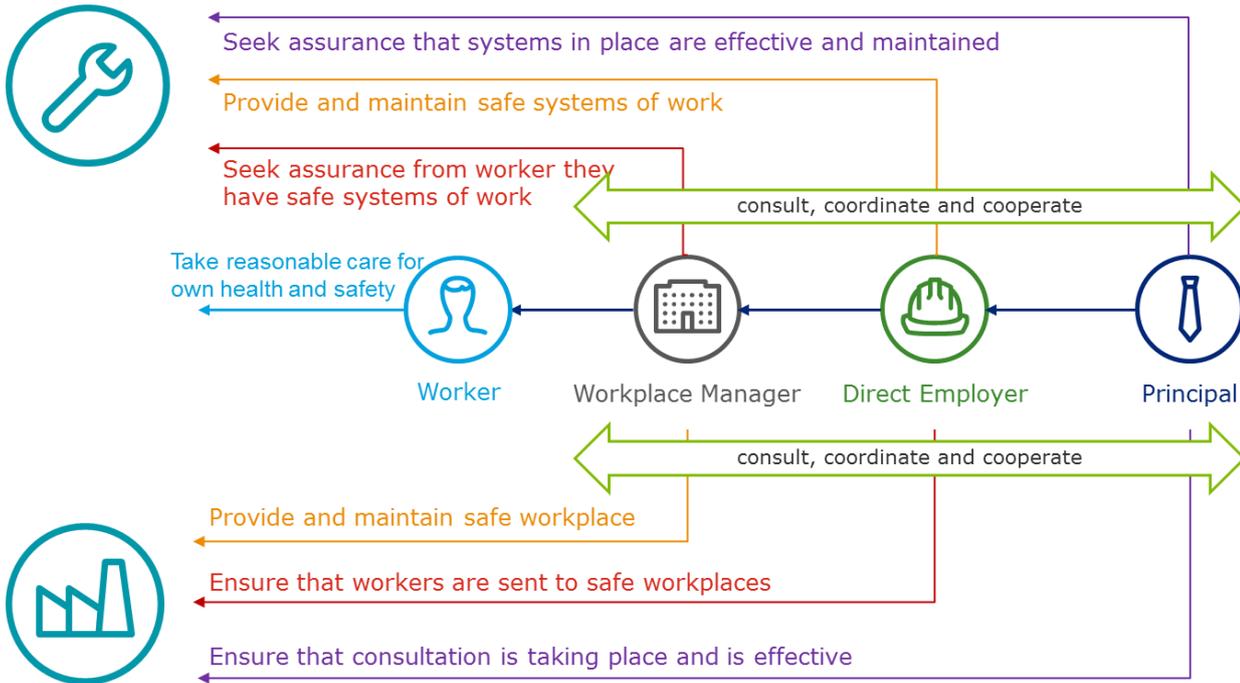
Workers also have duties under the WHS Act to ensure that they take reasonable care for their own health and safety, and ensure they do not negatively impact the safety of others through their acts or omissions.

6. More complex scenarios

In the example scenario below (*Diagram 3*), the **Principal** has engaged the **Direct Employer** to deploy a **Worker** to a workplace where a third party **Workplace Manager** has day-to-day management and control of that workplace.

This is somewhat similar to a shared services arrangement such as the Across Government Facilities Management Arrangements (AGFMA), whereby the **Principal** would be represented by DPTI Asset Management, **Direct Employer** is Spotless or DPTI Facilities Services who engage a contractor, **Workplace Manager** is the client agency representative with management and control of the workplace, and the **Worker** is a subcontractor (e.g. plumber, electrician, carpenter).

Diagram 3: Complex contractor relationship scenario



In this example, similarly to the previous one, the greater share of specific duties falls on the party who has the capacity to influence and control and whom would be reasonably expected to have those duties. The method for ensuring that these processes are effective is through effective communication (**consultation, coordination and cooperation**) with all parties.

For this scenario, the Principal has the greater share of responsibility to ensure a Direct Employer with adequate WHS capacity and capabilities is engaged. The Principal must seek assurance from the Direct Employer that safe systems of work are provided and are adequate, and that safe systems of work are maintained. The Principal must also monitor the effectiveness of safety systems and controls and ensure that all parties are adequately consulted.

The Direct Employer will have the greater share of responsibility for the provision and maintenance of safe systems of work and must check to ensure workers are being sent to safe workplaces.

The Workplace Manager, being the person with management and control of the workplace, has the greater share of responsibilities in relation to keeping the workplace environment safe and to ensure that all workers at the workplace are safe.

The situation may be further complicated where the site is under lease from a building owner (usually private sector entity) and there is a building manager responsible for the 'base building' (common areas, lifts, toilets, internal core and external structure). Where work is commissioned by a building manager on the base building, the building manager will have the greater share of responsibilities and capacity to influence and control the work. The building owner must ensure that the building is appropriately maintained and the tenant or agency Workplace Manager is consulted on any issues that may impact the safety of workers and others.

However, for work being undertaken on the leased tenancy and commissioned and contracted through an AGFMA arrangement, the specific roles and duties as described in *Diagram 3* prevail.

Alternatively, for work that is commissioned and contracted directly by the agency and is **not** through an AGFMA arrangement, the role of Principal and Workplace Manager and subsequent responsibilities and duties as described in *Diagram 3* will be with that agency.

In all instances it is the responsibility of the Workplace Manager with management and control of the workplace on the day the work is being undertaken to check who is accessing the workplace, the work to be undertaken and to induct the worker to site. A site risk exchange between the contractor and the Workplace Manager on the day the work undertaken must be done to ensure work by the contractor, or the functions at the site do not create unnecessary risk or hazards to all parties.

The contracted worker is responsible for ensuring that they are appropriately skilled and licensed to undertake the work and that they follow established safe systems of work. They are required to liaise with the agency Workplace Manager at the workplace so as to exchange information concerning hazards arising from the planned work or of inherent risks in the workplace and how these will be safely managed.

To formalise the risk exchange between the contracted worker and the Workplace Manager for the type of risks and hazards identified and the measures to manage them, it is recommended that the details are documented. A sample *Form – Contractor Safety – Site Risk Exchange* (Attachment A) or equivalent should be used to document the exchange.

7. Summary key principles

Table 2: The following provides additional commentary on the key principles as outlined in this guideline.

	Direct Employer	Workplace Manager	Principal
Has management and control over....	Workers deployed (with safe systems of work including documented procedures, training etc.)	Entry/exit to the workplace Physical condition of the workplace (in conjunction with building owner)	Ensuring engagement of contractors with adequate safety system, by defining safety requirements and monitoring performance against them
Responsible for	Directly hires, fires and deploys workers Can direct workers to attend training (if directly employed) or ensure that workers are trained (if subcontracting)	Controlling who has entry to the site Maintaining current risk and hazard information related to the physical environment, work groups etc. and ensuring all workers are inducted to site and aware of hazards that may impact the work being undertaken	As the principal causes the workers to be engaged , they have responsibilities in regards to ensuring that workers are provided with safe systems of work and sent to safe workplaces. The specifics of those responsibilities are defined by those matters over which the principal could reasonably be assumed to have influence and control .
Duties	Action: Directly engage and deploy workers to designated locations Duty: Ensure that workers are not being sent into unsafe workplaces Action: direct work activities of workers Duty: Provide and maintain safe systems of work	Action: Has physical possession of the workplace on a day-to-day basis Duty: Maintain the safety of the physical environment and ensure the safety of all workers at the workplace as far as it could be reasonably expected that the agency has management and control	Action: Cause workers to be engaged on behalf of the PCBU Duty: Seek assurance that contractors are carrying out their duties. Seek assurance that safe systems of work are provided and adequate, and that safe systems of work are maintained.

8. Example roles

Table 3: The following outlines indicative examples of parties who have responsibilities under the identified roles for scenarios where contractors are engaged to do work:

Scenario	Direct Employer	Workplace Manager	Principal
AGFMA (maintenance, breakdown, works <\$450k)	Spotless and Contractors or DPTI Facilities Services Contractors	Onsite Workplace Manager may include: SA Heath sites – Strategic Asset Manager, Director of Nursing Schools – School Principal, Business Manager Kindergarten – Director SAPOL sites – Duty Sergeant DPTI – Depot Supervisor, Section Manager	DPTI – AGFMA
AGFMA construction works (\$450k - \$1.0m)	Principal Contractor and Subcontractors	Appointed Principal Contractor (for construction site) <i>Plus</i> Agency Workplace Manager at sites with ongoing operational functions	DPTI – AGFMA
Major Construction Project - Building/Road/Rail (construction works >\$450k)	Principal Contractor and Subcontractors	Appointed Principal Contractor	DPTI – Transport Project Delivery or DPTI – Road and Marine Services or DPTI – Building Projects
Other Agency Commissioned Works (construction works <\$450k on agency owned assets)	Contractor and Subcontractors	Government Agency: Local Workplace Manager, Agency Asset or Facilities Manager DPTI Infrastructure: Field Services, Rail Infra Mtc, Road and Marine Assets	Delegated Government Agency Representative DPTI – Road and Marine Services or DPTI – Transport Project Delivery or DPTI - AGFMA

9. References

- *Work Health and Safety Act (SA) 2012*
- *Work Health and Safety Regulations (SA) 2012*
- Safe Work Australia Code of Practice: Construction Work 2013
- Safe Work Australia Code of Practice: Work Health and Safety Consultation, Co-operation and Co-ordination 2011

10. Document Amendment Record

Date	Version	Revision description
22 September 2017	1.0	New document
2 November 2017	2.0	Minor grammatical edits
6 February 2018	3.0	Agreed changes to reflect consultation with external agencies
8 July 2019	4.0	Changes to table 3 to reflect current DPTI organisation structure
Document Review Schedule		1 Yearly

11. Attachment A: Sample Form – Contractor Safety – Site Risk Exchange

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Form 7 – Contractor Safety – Site Risk Exchange



1. Basic information (to be completed by Contractor and Site Representative) – Contractor and Agency/Client to retain a copy of Form			
Contractor name (Contractor completing form)	Contracting company		
Site Representative name (Site Rep completing form)	Agency/Client		
Job details	Reference no.	Date	
	Location		
Description of work			

2. High risk task information (to be completed by Contractor) - Identify high risks/hazards associated with the job you will be doing			
2.1	Work at heights (greater than 3m)	<input type="checkbox"/> No (go to 2.3)	<input type="checkbox"/> Yes (go to 2.2)
2.2	List controls in place to prevent falls		
	List controls in place to prevent falling objects from striking others		
2.3	Confined space PERMIT REQUIRED	<input type="checkbox"/> No (go to 2.5)	<input type="checkbox"/> Yes (go to 2.4)
2.4	Name of person signing confined spaces permit (controls must be listed on the permit and in place before work commences)		
2.5	Hot work (welding etc.) PERMIT REQUIRED	<input type="checkbox"/> No (go to 2.7)	<input type="checkbox"/> Yes (go to 2.6)
2.6	Name of person signing hot work permit (controls must be listed on the permit and in place before work commences)		
2.7	Asbestos - Have you consulted the site asbestos register?	<input type="checkbox"/> Yes (go to 2.8)	
2.8	Are there asbestos containing materials (ACMs) in the area where you will be working?	<input type="checkbox"/> No (go to 2.10)	<input type="checkbox"/> Yes (go to 2.9)
2.9	Is it possible that you will disturb the asbestos, (e.g. drilling or cutting through ACMs)?	<input type="checkbox"/> No (go to 2.10)	<input type="checkbox"/> Yes DO NOT PROCEED with work. Contact your supervisor
2.10	Are there other high risk construction work tasks being undertaken? (Refer to list on reverse side of Form)	<input type="checkbox"/> No (go to 3.1)	<input type="checkbox"/> Yes (go to 2.11)
2.11	Do you have Safe Work Method Statements (SWMS) or other safety documentation for the high risk construction tasks you will be undertaking?	<input type="checkbox"/> No DO NOT PROCEED with work. Contact your supervisor	<input type="checkbox"/> Yes (go to 2.12)
2.12	Have you advised the site representative you have SWMS or other safety documentation for the high risk construction tasks you will be undertaking?	<input type="checkbox"/> No Advise Site Rep you have the necessary SWMS	<input type="checkbox"/> Yes (go to 3.1)

3. Other task-related risks (to be completed by Contractor)	
3.1	Identify possible risks to others from the work that you will be doing (e.g. fumes, noise, dust, falling objects, chemicals) and list control measures to manage these risks (e.g. barricades, signage)
Risks/Hazards	Controls in place

4. Site-related risks (to be completed by Site Representative)	
4.1	Has the contractor advised you of the high risk construction tasks being undertaken and that they have SWMS or other safety documentation? <input type="checkbox"/> No Confirm with Contractor they have SWMS <input type="checkbox"/> Yes
4.2	Identify possible risks to contractors and others (e.g. vehicle or foot traffic, presence of dangerous chemicals etc.) and list control measures to manage these risks (e.g. barricades, signage). If site is unattended, see Note below.
Risks/Hazards	Controls in place

Note: If site is unattended, then contractor should follow these steps:

- Contact site representative by phone to complete this section verbally (contractor to record response from Site Representative on this form); or
- If unable to contact Site Representative complete Site Related Risk Assessment (4.2) above and proceed with work **if safe to do so**

High Risk Construction Work

(as defined under Work Health and Safety Regulations 2012, Chapter 6, Part 1, Regulation 291)

High risk construction work means construction work that:

- (a) involves a risk of a person falling more than 3 metres; or
- (b) is carried out on a telecommunication tower; or
- (c) involves demolition of an element of a structure that is load-bearing or otherwise related to the physical integrity of the structure; or
- (d) involves, or is likely to involve, the disturbance of asbestos; or
- (e) involves structural alterations or repairs that require temporary support to prevent collapse; or
- (f) is carried out in or near a confined space; or
- (g) is carried out in or near—
 - (i) a shaft or trench with an excavated depth greater than 1.5 metres; or
 - (ii) a tunnel; or
- (h) involves the use of explosives; or
- (i) is carried out on or near pressurised gas distribution mains or piping; or
- (j) is carried out on or near chemical, fuel or refrigerant lines; or
- (k) is carried out on or near energised electrical installations or services; or
- (l) is carried out in an area that may have a contaminated or flammable atmosphere; or
- (m) involves tilt-up or precast concrete; or
- (n) is carried out on, in or adjacent to a road, railway, shipping lane or other traffic corridor that is in use by traffic other than pedestrians; or
- (o) is carried out in an area at a workplace in which there is any movement of powered mobile plant; or
- (p) is carried out in an area in which there are artificial extremes of temperature; or
- (q) is carried out in or near water or other liquid that involves a risk of drowning; or
- (r) involves diving work.