

Duty of care in relation to contractors

The owner of an oil recycling company in Auckland, where 24-year-old Jamey Bowring was killed in a tank explosion, has been sentenced to 4½ months home detention, fined \$283,750 and ordered to pay \$128,074 in reparations payments in conjunction with Mr Bowring's employer.

On 15 September 2015, a contract worker provided by Race Works Limited to Salter's Cartage Ltd., Mr Bowring, was undertaking 'hot work' – welding and grinding – on the top of a 96,000 litre capacity tank which was close to empty. The tank exploded throwing Mr Bowring 130 metres into a nearby car yard and killing him.



This case highlights the fact that you are responsible for contractors and employees of contractors while they are working on your site. The Health and Safety at Work Act 2015 is quite clear in defining the PCBU, or business owner, as the person responsible for ensuring the health and safety of workers as follows:

Primary duty of care

- (1) A PCBU must ensure, so far as is reasonably practicable, the health and safety of—
- (a) workers who work for the PCBU, while the workers are at work in the business or undertaking; and
 - (b) workers whose activities in carrying out work are influenced or directed by the PCBU, while the workers are carrying out the work.

Worker, for the purpose of the Act, is defined as:

Meaning of worker

- (1) In this Act, unless the context otherwise requires, a **worker** means an individual who carries out work in any capacity for a PCBU, including work as—
- (a) an employee; or
 - (b) a contractor or subcontractor; or
 - (c) an employee of a contractor or subcontractor;

You are responsible for contractors and their employees while they are working on your site.

It is clearly not enough to “leave it to the contractor because he has the expertise”. You are required to ensure that contractors and their employees follow your safety systems, or if you are relying on their safety systems, that they follow those.

When hiring contractors for any task at your site ensure that you:

- **Ensure all contractors and their employees are inducted**
- **Clearly agree what safety systems are to be followed. If you are relying on the contractor's safety system, verify that it meets your requirements and those of the legislation**
- **Verify their understanding, and competency, to complete the task/s safely**
- **Check that all their equipment is fit for purpose**
- **Supervise, and conduct physical checks, to ensure contractors are completing the task/s in accordance with safe work procedures and/or risk assessments completed.**

Let's work together to keep ourselves and our workers safe.

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