

Workplace Health and Safety Queensland

Information in this fact sheet relates to the *Work Health and Safety Act 2011* which applies from 1 January 2012.

Due diligence

The *Work Health and Safety Act 2011* (the WHS Act 2011) imposes a specific duty on officers¹ of corporations and unincorporated bodies, such as clubs and associations, to exercise due diligence to ensure that the corporation, club or association meets its work health and safety obligations. The duty requires officers to be proactive in ensuring that the corporation, club or association complies with its duty.²

This is different to the situation existing under the *Workplace Health and Safety Act 1995* (WHS Act), where corporate officers are deemed to be liable for health and safety offences committed by their corporation unless they can show that they exercised proper diligence to ensure that the corporation complied with the WHS Act, or that they were not in a position to influence the conduct of the corporation regarding the offence under the WHS Act.

This duty under the WHS Act 2011 applies whether or not there has been an incident and irrespective of whether the corporation is prosecuted (e.g. a work health and safety inspector may, during a routine audit or inspection, ask a corporate director to produce evidence that the director is meeting his or her due diligence requirements. If satisfactory evidence is not produced, the inspector may issue the director with an improvement notice. If the failure to demonstrate due diligence is serious, reckless or flagrant, the inspector might commence prosecution proceedings against the director).

What is due diligence?

Due diligence in relation to ensuring health and safety is defined for the first time in the WHS Act 2011. In demonstrating due diligence, officers will need to show that they have taken reasonable steps to:

- acquire and update their knowledge of health and safety matters
- understand the operations being carried out by the person conducting the business or undertaking in which they are employed, and the hazards and risks associated with the operations
- ensure that the person conducting the business or undertaking has, and uses, appropriate resources and processes to eliminate or minimise health and safety risks arising from work being done
- ensure that the person conducting the business or undertaking has appropriate processes in place to receive and respond promptly to information regarding incidents, hazards and risks
- ensure that the person conducting the business or undertaking has, and uses, processes for complying with duties or obligations under the WHS Act 2011.

This approach emphasises the corporate governance responsibilities of officers. It is critical to the achievement of positive safety outcomes for senior management to lead the corporate safety agenda.

Demonstrating due diligence

The due diligence criteria listed in the WHS Act 2011 are shown below, with suggestions on how to meet them.

Acquiring knowledge of health and safety issues

This can be met by:

- acquiring up-to-date knowledge of the WHS Act 2011, regulations and codes of practice
- investigating current industry issues through conferences, seminars, information and awareness sessions, industry groups, newsletters
- acquiring up-to-date knowledge of work health and safety management principles and practices
- ensuring that work health and safety matters are considered at each corporation, club or association board meeting.

Understanding operations and associated hazards and risks

This can be met by:

- developing a plan of the operation that identifies hazards in core activities
- ensuring that information is readily available to other officers and workers about procedures to ensure the safety of specific operations that pose health and safety risks in the workplace
- continuously improving the safety management system.

Ensuring that appropriate resources and processes are used to eliminate or minimise risks to health and safety

This can be met by:

- establishing/maintaining safe methods of work
- implementing a safety management system
- recruiting personnel with appropriate skills, including safety personnel
- ensuring staffing levels are adequate for safety in operations
- giving safety personnel access to decision makers for urgent issues
- maintaining/upgrading infrastructure.

Implementing processes for receiving and responding to information about incidents, hazards and risks

This can be met by:

- employing a risk management process

- having efficient, timely reporting systems
- empowering workers to cease unsafe work and request better resources
- establishing processes for considering/responding to information about incidents, hazards and risks in a timely fashion
- measuring against positive performance indicators to identify deficiencies (e.g. percentage of issues actioned within agreed timeframe).

Establishing and maintaining compliance processes

This can be met by:

- undertaking a legal compliance audit of policies, procedures and practices
- testing policies, procedures and practices to verify compliance with safety management planning.

Accessing up to date safety information

As part of due diligence requirements, officers need up-to-date knowledge about safety issues. They must also ensure that their employer and workers have ready access to information that will help them to avoid risks and hazards in the workplace.

Workplace health and safety officers

Employers with more than 30 workers will need to have access to a workplace health and safety officer (WHSO) for the rest of 2011. However, after 1 January 2012 it will no longer be compulsory to employ a WHSO in a Queensland workplace. The *Workplace Health and Safety Regulation 2008* has been amended to extend the appointment of WHSOs until the WHS Act 2011 commences on 1 January 2012.

Advantages of retaining trained safety officers

While WHSOs will no longer be mandated under the WHS Act 2011, Workplace Health and Safety Queensland sees advantages for businesses and undertakings in retaining a trained safety advisor to assist an officer to satisfy their due diligence obligations. Maintaining a role for a trained safety advisor within a business or undertaking will:

- promote a positive work health and safety culture by sending a clear message that health and safety is valued by the business
- support officers in meeting their due diligence requirements
- ensure safety information is updated

- be a cost effective way of demonstrating due diligence.

However, it is important to note the duty to exercise due diligence will always remain with the officer and cannot be outsourced or delegated to a trained safety advisor. Employing a trained safety advisor is only one option to help officers meet their duties.

Training for safety advisor

The voluntary retention of a trained safety advisor is best supported by Vocational Education and Training—accredited training to provide safety officers with a nationally recognised formal qualification³.

It will also be important for trained safety advisors to update their skills and knowledge periodically to ensure they have knowledge of current workplace health and safety legislation and initiatives.

Existing WHSOs will be able to seek recognition of prior learning and undertake bridging training in order to upgrade training in health and safety.

Further information

Further information on workplace health and safety and the new laws is available at www.worksafe.qld.gov.au or by calling the WHS Infoline on 1300 369 915.

1 An officer means an officer within the meaning of section 9 of the *Commonwealth Corporations Act 2001*, i.e. a person who makes, or participates in making, decisions that affect the whole or a substantial part of a corporation, an officer of the Crown or an officer of a public authority (including local government) but not an elected member of a local authority.

2 Under the WHS Act 2011, a 'volunteer association' is not regarded as conducting a business or undertaking, and does not have a duty as an employer under the WHS Act 2011. A 'volunteer association' means a group of volunteers working together for one of more community purposes where none of the volunteers, alone or jointly with other volunteers, employ any person to carry out work for the volunteer association.

3 The VET system currently contains a Certificate III, Certificate IV, Diploma and Advanced Diploma in OHS. The Certificate IV provides the appropriate competency levels for a trained safety officer. Mapping of the Certificate IV competencies against the WHSO course indicates that someone who has already completed the WHSO course would require an additional two days of training to meet the requirements for the Certificate IV course. Several Registered Training Organisations have begun promoting this option to industry.