



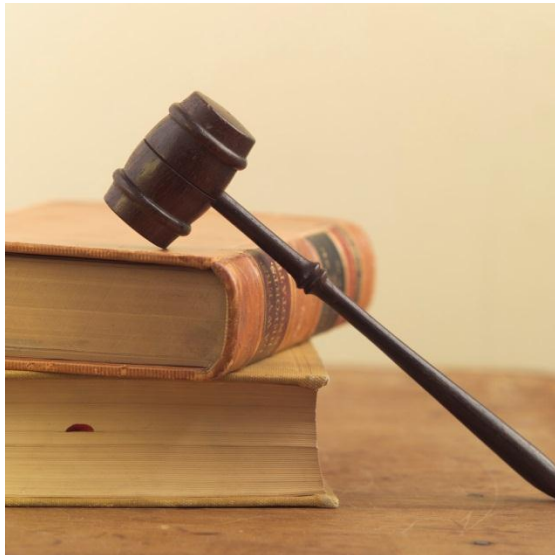
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Due Diligence for Directors and Officers

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Occupational Health and Safety has always been a matter regulated by the individual states rather than the Commonwealth. The result is that each state, (including the NT and ACT), has their own OHS legislation. In addition, the Commonwealth also has its own legislation covering the safety of Federal employees.

However, with the harmonisation of safety legislation we can look forward to more consistency across state boundaries.



As of 1 January 2012, all but four states have implemented the model Work Health and Safety legislation, and have accepted a core set of codes of practice, with more to come.

Victoria has announced a delay of implementation until January 2013, and South Australia, Tasmania, and Western Australia are all, as of January 2012, delaying implementation until after further consideration.

None the less, it is worthwhile considering the section of the model act (and now legislation in NSW, Queensland, ACT and Northern Territory) that deals with the responsibilities of Officers. Officers will be defined in accordance with the federal Corporations Act, and therefore these obligations apply directly to owners and operators, directors and boards.

Directors and Officers should get competent legal advice on their legislative obligations, applicable to their particular circumstances. This article is a general alert only, and is focussed on the implications that the model act may have for a company's OHS programme.

Directors and Officers Obligations

The model act places an obligation on Officers to "exercise due diligence to ensure that the person conducting the business or undertaking complies" with their obligations under the act.

What is Due Diligence?

The model act provides a useful amplification of the due diligence responsibilities of Officers, which can be summarised as follows: "In this section, due diligence includes taking reasonable steps to:"

- a) Acquire up-to-date knowledge of work health and safety matters;
- b) Gain an understanding of the nature of operations and hazards of the business;
- c) Ensure that appropriate resources and processes are available and used;
- d) Ensure that there are appropriate processes for receiving and considering information on incidents, hazards and risks, and responding in a timely way;



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- e) Ensure that the person conducting the business has and implements processes for compliance; and
- f) Verify the provision and use of the resources and processes detailed.

Implications for the OHS Programme

Meeting these obligations will require that organisations take a company specific approach. However, if you are a Director or Officer of a company, or are advising senior management, now would be good time to review your organisation's Occupational Health and Safety programme to ensure that you have adequate systems and procedures in place to meet these obligations.

Acquire Up-to-date knowledge

Has your organisation appointed or retained the services of someone who can provide adequate OHS advice to your senior management? Does your training programme include training for your Directors and Officers, especially in their OHS obligations? Is there an executive with specific responsibility to acquire current information from such sources as your employer's association, the OHS authority websites, and available media?

Understanding the Nature of Hazards

To assist senior management in understanding the nature of the hazards and operations of the organisation, the following systems can be implemented:

- Regular reports on accidents and incidents e.g. a monthly OHS report;
- Conduct hazard inspections, and report the results to senior management;
- Conduct OHS management system audits, both internal and external, and table the reports at board meetings;

- Conduct risk assessments for high risk activities;
- Maintain a risk register, detailing the risk assessments conducted, and highlighting outstanding controls.
- Prepare risk assessments for all industry specific risks including: plant and equipment, manual handling, use of hazardous substances, deliveries, service work, construction site work and potential emergencies.



Appropriate Resources & Processes

To meet the requirement to provide adequate resources, consider the need for the following OHS management systems:

- OHS Consultation;
- Adequate provision of financial resources;
- Training for staff at all levels;
- Adequate staff levels;
- Adequate provision of competent supervision; and
- Properly maintained plant & equipment.

Receiving & Considering Information

Board meetings and senior management meetings should document the receipt of safety reports, and OHS should be a standing agenda item.



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Ensure that there is a regular (e.g. monthly) reporting system on such basic data as the number of compensable injuries, days lost, and first aid attendances, by department or branch, for the month, and year to date.

Require departmental or branch heads to include an OHS narrative and report in with their regular reports to the board. The report should not be confined to statistics, but include information on consultation, training, initiatives undertaken and goals achieved.

Has & Implements Processes for Compliance

Senior management should always be advised if there is a notifiable incident, i.e. an accident or incident that has to be notified to the regulatory authorities. Senior management should require specific notification and feedback on compliance with any improvement or prohibition notices issued to the organisation whether by regulatory authorities or employee Health and Safety Representatives.

Verify Implementation

Senior management can verify implementation of the OHS programme by ensuring the conduct of OHSMS audits; reviewing inspection reports; establishing OHS KPI, objectives or targets for their managers. In addition, senior management can require their subordinates to provide feedback on hazard reports and performance against objectives.

Document Control

Having an effective document control procedure is a valuable tool to ensure that the current policies and procedures are being used, are adequately documented,

and that records are retained for future reference.

The obligations on Officers are onerous, but in most jurisdictions do not represent a radical change to the existing requirements. The model act does spell out these obligations clearly, however, and provides a useful standard to measure an organisation's current OHS management system against.

Chris Jones Risk Management provides a wide range of Occupational Health and Safety services and training, including:

- ✓ OHS Audits – SafetyPlan; SafetyPlan Gold; AS 4801
- ✓ OHS programme implementation
- ✓ Risk Assessments
- ✓ OHS culture surveys
- ✓ Consultation training
- ✓ OHS training for management and supervisors

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