

Guidelines

WHS Due Diligence Obligations

Complying with Section 27, Duty of Officers, Work Health and Safety Act 2011

Officer's Function

The function of an officer or the Board is not the doing, rather one of review and oversight of how the company is performing overall. An officer or the Board should, for example, ask the following types of questions:

- What do we have in place to make sure what needs to be done is actually getting done?
- Do we have enough resources?
- Do we have enough people?
- What are the hazards and risks on the upcoming project? What are we doing to manage them?
- We have been told we have never built this type of structure before. What is involved with this project? What are we taking on?
- What are the best practice industry standards for managing the risks on this project?
- How are we applying lessons learnt from previous projects?
- How will we be monitoring the effectiveness of our control measures?

If an officer is only relying on trusting people to do their job, the officer is not discharging their due diligence duty.

Due Diligence Duty

Section 27(5) in the *Work Health and Safety Act 2011* (WHS Act) specifies what **due diligence** includes.

In this section, due diligence includes taking reasonable steps to:

a) acquire and keep up-to-date knowledge of work health and safety matters; and

Examples may include:

- Demonstrate an understanding of current WHS issues (including the issuance of enforcement notices, incidents, and injuries) involved with their company.
- Demonstrate an understanding of general standards and requirements relating to WHS issues involved with their company.
- Demonstrate an understanding of the need to take a systemic approach.
- Demonstrate an understanding of new codes of practice and the impact on the company e.g. demonstrate an understanding that there are new psychosocial and silica codes of practice; being told what these codes are about and how it affects the safety of their business; and asking what the business is doing as an organisation to make sure the company meets and exceeds industry standards.



- b) **gain an understanding of the nature of the operations of the business or undertaking of the person conducting the business or undertaking and generally of the hazards and risks associated with those operations; and**

Examples may include:

- Demonstrate an understanding of the hazards and risks for their company.
- Demonstrate that an officer does not just go to a WHS meeting on a regular basis but holds a genuine understanding of the hazards and risks.
- Demonstrate that not just one officer attends the WHS meeting on a regular basis, but all of the officers are kept informed about the meetings and the outcomes of the meetings e.g. discussed as evidenced in the minutes of the Board meeting.

- c) **ensure that the person conducting the business or undertaking has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking; and**

Examples may include:

- Demonstrate they have a system that is effective.
- Demonstrate they have people to implement the system.

- d) **ensure that the person conducting the business or undertaking has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information; and**

Examples may include:

- Demonstrate the business has processes for responding to incidents, hazards and risks.
- Demonstrate the business has a mechanism for responding to past failures and lessons learnt.
- Demonstrate the officers are knowledgeable about new things in industry and better ways to manage WHS issues associated with their operations.
- Demonstrate the officers are kept informed of WHS issues (including the issuance of enforcement notices, incidents, and injuries) in a timely way.
- Demonstrate the officers know the business has a process to close out issues in a timely way.

- e) **ensure that the person conducting the business or undertaking has, and implements, processes for complying with any duty or obligation of the person conducting the business or undertaking under this Act; and**

Example—

For paragraph (e), the duties or obligations under this Act of a person conducting a business or undertaking may include—

- ***reporting notifiable incidents***
- ***consulting with workers***
- ***ensuring compliance with notices issued under this Act***
- ***ensuring the provision of training and instruction to workers about work health and safety***
- ***ensuring that health and safety representatives receive their entitlements to training.***

Examples may include:

- Demonstrate how the officers ensure compliance with notices, including that the officers understood the contraventions and made sure the company complied with the notices e.g. discussed as evidenced in the minutes of the Board meeting.

This does not need to be evidence of understanding every word in the notice, rather demonstrate they have a process for knowing compliance was achieved (this cannot just be trusting their people).

- Demonstrate how the officers are overseeing compliance with notices if they do not discuss it at the Board meeting.
- Due diligence duties are not met by trusting that it has happened. Due diligence duties are about reviewing and ensuring the company is meeting its obligations. Officers are actively taking steps to ensure compliance has occurred and considering the process.
- Demonstrate the officers understand the seriousness of a breach of the WHS Act.
- Compliance with a non-contested notice or a notice that is upheld under review confirms that an inspector has formed a reasonable belief that there has been a contravention of the WHS Act (for an improvement notice and for a prohibition notice that there was risk of serious injury or illness to a person).
- Officers treat the issuance of a notices seriously because notices are reflective of failing to comply with the legislation.
- Demonstrate that officers are seeing trends in notices and/or incidents, and the Board discusses what the company did.
- Demonstrate officers are discussing what the company is doing to make sure it does not continue to have repeat incidents.
- Demonstrate officers are seeking information about how the company compares to other companies doing the same work - should they be doing more, and how are they responding to this.

f) verify the provision and use of the resources and processes mentioned in paragraphs (c) to (e).

Verification is critical to due diligence duties.

Examples may include:

- Demonstrate what officers are actively doing to audit their company to hold them to the standard they say they are going to meet.
- If officers are just accepting the safety manager's word, that is only trust, which is not meeting their duty. They must be seeking qualitative or quantitative information to confirm the performance of the company.
- Demonstrate how the officers are auditing the company's WHS system e.g.:
 - is the company getting the safe work method statement before the high-risk construction work is being done
 - are all the WHS issues being closed out that should have been closed out.
- Demonstrate how the officers actively follow up and require some form of additional information that tasks in all the policies and procedures have been carried out.
- Most of the time audits can be carried out internally, however sometimes audits should be carried out by external auditors. The company has to consider what is appropriate in the circumstances. Officers should be aware of the auditing processes and high-level outcomes. Officers might not need to know individual auditing results. However, they should understand what the company is auditing and why.
- Demonstrate how the officers require the company to provide verification of their processes.



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