



# Fact Sheet

## EMPLOYMENT LAW

### The Work Health and Safety Act 2012 (SA) Due Diligence Provisions

After extensive debate the Work Health and Safety Act 2012 (SA) (WHS Act) came into operation in South Australia on 1 January 2013. The WHS Act and the related Regulations and Codes of Practice replaced the Occupational Health, Safety and Welfare Act 1986 (SA) and Regulations.

The WHS Act imposes a specific duty on officers of a person conducting a business or undertaking (**PCBU**). This duty requires officers of a PCBU to take reasonable steps to undertake due diligence with respect to work health and safety obligations<sup>1</sup>.

Officers of PCBUs should take steps to understand their WHS responsibilities and give consideration to the ways in which they should be discharging their duties.

#### New Provisions

An 'officer' for the purpose of the WHS Act is defined to include the

1. s27(1)

definition prescribed by Section 9 of the Corporations Act 2001<sup>2</sup>.

The effect of this definition is a director or secretary or any person who makes or participates in the making of decisions that affect the whole or a substantial part of a business or undertaking or who have the capacity to affect significantly the financial standing of the business or undertaking, now has a non-delegable responsibility under Section 27 of the WHS Act.

This duty extends to persons who are members of Boards.

Officers of a PCBU are required to undertake due diligence with respect to health and safety matters. Due diligence is defined in Section 27(5) of the WHS Act to include taking reasonable steps to:

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

2. s4

- b. understand the nature of the operations of the business and generally the hazards and risks associated with those operations;
- c. ensure that the PCBU has and uses appropriate resources and processes to eliminate or minimize health and safety risks arising from the work carried out;
- d. ensure that the PCBU has appropriate processes in place to receive and consider information regarding hazards and risks; and
- e. ensure that the PCBU has and implements processes for complying with any duty or obligation arising from the WHS Act.

#### How to demonstrate due diligence

Officers of a PCBU must be proactive in order to discharge their obligations under the WHS Act.

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Generally speaking, an Officer should:

- consider and understand the relevant obligations arising from the WHS Act and acquire an understanding as to the relevant Regulations and Codes of Practice;
- ensure they are familiar with industry trends and issues by attending conferences, seminars and information sessions regarding health and safety matters;
- ensure health and safety matters are considered at board meetings and other relevant meetings;
- ensure the business or undertaking has a plan which identifies hazards within the business;
- ensure procedural information regarding safety matters is readily available to other officers and workers;
- continuously improve the safety management system within the business or undertaking;
- establish and maintain safe work methods and practices;
- implement safety management systems;
- ensure all workers recruited are appropriately qualified for the roles they are to carry out;
- provide safety personnel with access to decision makers;
- continuously improve, upgrade and maintain infrastructure;
- have in place efficient safety and incident reporting systems;
- use key performance indicators to measure safety and identify deficiencies;
- ensure legal compliance audits are undertaken and that policies, procedures and practices are in place to verify compliance; and
- ensure all workers have ready access to safety information and training.



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