

WORKSAFE POSITION ON OFFICERS' DUE DILIGENCE



Purpose

This position sets out the due diligence duty of officers under the Health and Safety at Work Act 2015 (HSWA). It outlines the standard of care that we expect officers to meet when carrying out due diligence.

Why the need for a positive and robust health and safety culture?

The Independent Taskforce on Workplace Health and Safety saw the need for the regulatory system to provide the right incentives to drive high standards of leadership. A positive and robust health and safety culture begins at the board table and spreads throughout an organisation. All influential stakeholders must be involved and accountable for workplace health and safety. Such a culture can add significant value. It can lead to the organisation having a good reputation for being committed to health and safety, engaged and more productive workers, decreased worker absence and turnover, and workers participating positively in risk management. Also, it can potentially deliver increased economic returns.

What does the law require?

The HSWA creates a positive due diligence duty on an officer. That duty aims to make sure an officer takes appropriate, proactive steps to ensure the Person Conducting a Business or Undertaking (PCBU) complies with the HSWA. The PCBU has the primary duty of care.


Who is an officer?

An officer is a person with a specific role in an organisation. They can be:

- > a director of a PCBU that is a company
- > a partner in a PCBU that is a partnership (in limited partnerships, only general partners are officers)
- > a person in any other entity who holds a position similar to a company director (such as a board member).

The only other people with a due diligence duty are those in senior governance roles in an organisation. This means they must be in a role that can significantly influence how the entity is managed (such as a Chief Executive Officer). A person who only advises or makes recommendations to an organisation's officer is not an officer.

The extent of the officer's duty depends on the type of entity and the officer's role and responsibilities. Also acknowledged is the officer's level of influence in, and control over, managing risk.



What should all officers do about health and safety?

Any volunteer or paid officer of an organisation must exercise due diligence to make sure that the organisation complies with its health and safety duties. An officer's due diligence depends on the size of the business, and on the type of business operations (including the level of risk).

EXERCISING DUE DILIGENCE AND TAKING REASONABLE STEPS AS AN OFFICER

An officer must make sure that the organisation has appropriate systems of work. They must also actively monitor and evaluate how health and safety is managed within the organisation.

What is reasonable depends on the particular circumstances, including the officer's role and how much influence they can exercise. Exercising due diligence as an officer means taking reasonable steps to:

- > continuously learn about, and keep up to date with, work health and safety issues
- > understand the work of the organisation
- > know the risks that workers and volunteers may face when working for the organisation
- > check that the organisation has appropriate resources and processes to eliminate or minimise risks to health and safety, and that these are used
- > check that the organisation has processes in place to communicate and consider information about work health and safety, and to respond to that information
- > check that the organisation has processes in place to comply with any duties and requirements under work health and safety law, and uses them.

RELYING ON INFORMATION FROM OTHERS TO MEET THE DUE DILIGENCE REQUIREMENTS

An officer doesn't have to be an expert in health and safety. An officer may rely on information from others to help them meet their due diligence requirements. Other people might include senior managers, subject matter experts, line managers and supervisors. An officer may also meet the due diligence requirements by being more directly involved in health and safety management and in health and safety governance.

If an officer chooses to rely on others, they must show the reasonableness of that reliance. They must get the knowledge so they can ask the right questions, obtain credible information and advice from appropriate people, and follow up and challenge that information if needed.

In a large business, senior management and frontline workers may have little direct contact. An officer may need to set up structured processes to make sure they meet their due diligence duty. Keeping records will help an officer and a PCBU to track progress and periodically measure the effectiveness of their health and safety management.



What are the duties of a volunteer ‘officer’?

Volunteer ‘officers’ must take reasonable steps to support a health and safety culture, accountability, the allocation of resources for health and safety, and the development of appropriate health and safety policies at an organisation. An officer of a PCBU who is a volunteer still owes the due diligence duty under HSWA, however cannot be prosecuted if they fail to meet the due diligence. See [WorkSafe position on volunteers](#). Where a volunteer organisation employs people to carry out work, its officers must exercise due diligence to make sure it complies with its health and safety duties.

What is WorkSafe’s approach to an officer’s due diligence?

We think that managing health and safety is an important aspect of running a business. However, we don’t want to complicate what the PCBU must do to satisfy the requirements of an officer’s duty of due diligence.

FOCUSING AT THE TOP LEVEL

The HSWA makes it clear that boards must lead from the top to make sure workplaces are, and remain, healthy and safe. To achieve this, a workplace must put strategies in place to improve its health and safety culture. We look to get involved at the top level so we can focus on sector-wide issues. We only get involved where we are able to influence positive change. We will engage with officers when operational information points to systemic failure in the PCBU’s governance which may prevent the PCBU from meeting its duties. Two examples might include failures across multiple sites or a series of incidents over time.

CHECKING HEALTH AND SAFETY GUIDELINES

We expect that before becoming an officer, a person will carefully consider and understand the duties and responsibilities of the officer role. The [Good Governance Practices Guideline for Managing Health and Safety Risks](#) gives practical advice to company directors on how to manage health and safety risk and influence performance in this critical area. The Ministry of Business, Innovation and Employment, and the Institute of Directors, developed the guideline, with input from employer and employee groups.