



A division of  **McILROY IR GROUP**

EMPLOYER ASSIST

WORK HEALTH AND SAFETY – DUTY OF AN OFFICER

HARMONISATION

Model Work health and safety (**WH&S**) were implemented in January 2012 and consist of the *WH&S Act 2011* (Cth), *WH&S Regulations 2011* (Cth), Codes of Practice and a National Compliance and Enforcement Policy.

Currently, all States and Territories (excluding Victoria and Western Australia) have enacted the model WH&S laws (with minor variations).

Despite Victoria and Western Australia not harmonising with the other States and Territories their safety legislation has similar obligations for person's who would be classed as an Officer in accordance with the *Corporations Act 2001* (Cth).

WH&S Act

The WH&S Act sets out work health and safety duties for certain people in the workplace.

DUTY

Under the model WH&S laws, there is a duty to:

- eliminate risks to health and safety, so far as is reasonably practicable; and
- if it is not reasonably practicable to eliminate risks to health and safety, minimise those risks so far as is reasonably practicable.

An Officer of a person conducting a business or undertaking (**PCBU**) must exercise due diligence to ensure the PCBU complies with their duty or obligation under the model WH&S Act.

WHO IS AN OFFICER

An Officer is defined under section 9 of the *Corporations Act 2001* (Cth) and includes (but is not limited to):

- Director or Secretary;
- Corporate decision maker;
- Trustee;
- Person who has the capacity to affect significantly the businesses financial standing; and
- Person whose instructions are followed by directors.

Note: Does not include a partner in a partnership (as they would be considered a PCBU).

DUE DILIGENCE

To exercise due diligence, an Officer must take reasonable steps to:

1. acquire and keep an up to date knowledge of WH&S matters.
2. understand the risks and hazards of the company's operations.
3. ensure appropriate resources and processes are available to eliminate or minimise risks.
4. ensure appropriate processes for obtaining information about incidents, hazards and risks, and responses to them.
5. ensure processes for complying with WH&S duties are implemented.
6. verify the provision and use of WH&S resources and processes.

PRINCIPLES OF DUE DILIGENCE

Revise

- Attend relevant workplaces and inspect operations.
- Revise and critically review safety processes.
- Verify effectiveness of WH&S, resources and processes
- WH&S reporting of incidents, hazards and risks.

Lead

- Provide leadership in business operations.
- Ensure accountability in managing WH&S matters.
- Ensure resources and processes to minimise risks.
- Ensure processes are implemented including training or workers.

Understand

- WH&S obligations.
- Management of WH&S in business.
- Hazards and risks in the business operations.

MEETING THE PRINCIPLES

Physical commitment

- Visit workplace and observe operations.
- Inspect workplace for risks or hazardous operations.
- Attend staff meetings and understand local issues.
- Talk to workers and obtain their feedback.
- Understand the culture of the workplace to identify any complacency in following WH&S procedures.

Be in the Know

- Keep up to date with WH&S legislation.

- Acquire a good understanding of WH&S policies and procedures in the workplace.
- Revise and update knowledge of workplace policies and procedures.
- Request regular updates on workplace incidents and safety concerns.

Resources/processes

- Ensure that appropriate resources are available at workplace for PCBU to minimise or eliminate risks.
- Review current safety processes to meet the WH&S obligations.
- Ensure that the PCBU has appropriate incident reporting or hazard and risk identification processes in place.
- Ensure PCBU implements processes to comply with WH&S obligations.

Review and Verify

- Review internal safety audits, risk assessments and if necessary commission external verification.
- Request internal briefings on safety processes.
- Ensure the reporting systems comply with the legislation.
- Review the responses of the PCBU to WH&S incidents and identification of hazards or risks.

Maximum Penalties for WH&S Act offences

Category	Company	Officer	Individual
One	\$3,000,000	\$600,000 or 5 yrs prison	\$300,000 or 5 yrs prison
Two	\$1,500,000	\$300,000	\$150,000
Three	\$500,000	\$100,000	\$50,000

The Officer duties is one small part of the duties imposed in the WH&S Act and understanding the duties imposed on the various parties under the WH&S Act will assist you in fulfilling your obligations and avoiding potential breaches of the legislation.

Need assistance?

AAAA Employer Assist provides all AAAA members with information and advice on all employment matters, including WH&S. Contact us on **1300 735 306** to discuss any employment issues that arise in your business.