



Work health and safety (WHS) due diligence duty of company officers in Queensland

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Under the [Work Health and Safety Act 2011](#) (Qld) (**WHS Act**), an officer has a duty to exercise due diligence to ensure the person conducting a business or undertaking (**PCBU**) complies with its [health and safety duties](#). This includes ensuring workers and other persons are protected from hazards and making sure the PCBU has suitable safe work systems in place.

Who is an 'officer' under the WHS Act?

Under the WHS Act, a company director or company secretary is an 'officer'.

A person who makes decisions that affect the whole or a substantial part of a company's activities or has the capacity to significantly affect its financial standing can also be deemed to be an officer (even without being formally engaged to undertake that role).

The duty of officers to exercise due diligence under the WHS Act

The due diligence duty is aimed at achieving and sustaining compliance by the PCBU, which requires the active involvement of its officers.

Section 27(5) of the WHS Act provides that due diligence involves an officer taking “reasonable steps”:

1. to acquire and keep up-to-date knowledge of WHS matters;
2. to gain an understanding of the nature of the operations of the business or undertaking of the PCBU and generally of the hazards and risks associated with those operations;
3. to ensure that the PCBU 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;
4. to ensure that the PCBU has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information;
5. to ensure that the PCBU has, and implements, processes for complying with any duty or obligation the PCBU has under the WHS Act; and
6. to verify the provision and use of the resources and processes referred to in paragraphs (c) to (e).

The above list is not exhaustive, and there may be other ways an officer can show they have exercised due diligence in the circumstances.

What is reasonable will depend on the particular circumstances, including the role and influence able to be exercised by the individual officer.

Practical steps to comply with the WHS duty to exercise due diligence

Compliance with the duty to exercise due diligence requires officers to take an active and inquisitive role in work health and safety.

What might constitute due diligence in one case may not hold true in another. This is because each situation and each workplace is unique and requires assessment on an individual basis.

There are, however, some general measures to comply with the WHS Act and demonstrate due diligence, including:

- setting up a well-documented system for identifying, reporting, and responding to all actual and potential hazards in the workplace;
- ensuring safe practices, procedures, and controls are in place that are specific to the hazards in your workplace that either meet or exceed the requirements set out in the WHS legislation, including relevant approved Codes of Practice;
- providing ongoing instruction and training to supervisors, managers and workers;
- communicating regularly with workers about foreseeable health and safety hazards;
- allocating adequate time and resources for health and safety, including health and safety committees;
- monitoring and auditing health and safety programs on a regular basis.

An officer does not have to do everything themselves. They may rely on information and specialist advice from others, and on the expertise of others. But reliance without exercising independent judgment is not enough to satisfy the duty.

To the extent to which an officer may rely on others, the officer must be able to demonstrate the reasonableness of that reliance, which may be demonstrated through the receipt of credible information and advice from appropriate people.

Penalties for breaching the due diligence duty under the WHS Act

Penalties for breaching the due diligence duty are dependent on the category of the conduct associated with the breach. There are three categories under the WHS Act.

OFFENCE	MAXIMUM PENALTY
Category 1 (section 31): Negligent or reckless conduct	\$600,000 fine or 5 years imprisonment
Category 2 (section 32): failure to comply with duty – exposure to risk or death / serious injury	\$300,000 fine
Category 3 (section 33): failure to comply with duty	\$100,000 fine
Note: a breach of an officer's duty is not a necessary element to prove the offence of industrial manslaughter	

**Penalties current as of November 2024.*

If an officer fails to exercise due diligence, a penalty can be imposed on the officer as an individual. A penalty can be imposed on an officer irrespective of whether the PCBU is also convicted of an offence.

Need help from a WHS lawyer?

If you are a director or officer or believe that you may be deemed to be an officer, it is crucial that you take positive steps to fulfil your due diligence duty under the WHS Act. Directors must take a proactive approach towards work health and safety. One way this can be achieved is by obtaining advice from experienced WHS lawyers.

We have significant experience in advising and representing officers charged with serious offences under the WHS Act. Our strong technical knowledge of the WHS law and an intimate understanding of criminal procedure, enables us to provide clear and practical advice and robust representation.

Contacting Gilshenan &Luton WHS Lawyers

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