



Work health and safety duties

LEGISLATIVE FACT SHEET SERIES

Overview

Part 2 of the model Work Health and Safety (WHS) Act places health and safety duties on a number of persons, such as persons conducting a business or undertaking, officers, workers and other persons at a workplace.

Persons may have more than one health and safety duty and more than one person may have the same duty.

Persons who have a duty in relation to the same matter are required to consult with each other and coordinate activities in relation to the matter. Proper and effective coordination of activities between duty holders can overcome concerns about duplication of effort or no effort being made. Further information about consultation can be found in the Consultation obligations factsheet.



A person conducting a business or undertaking must ensure work health and safety

The person conducting a business or undertaking has a duty to ensure, so far as is reasonably practicable, the health and safety of:

- workers engaged, or caused to be engaged by the person, and
- workers whose activities in carrying out work are influenced or directed by the person, while the workers are at work in the business or undertaking.

The person conducting a business or undertaking also has a duty to ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

These duties include requiring a person conducting a business or undertaking to ensure, so far as is reasonably practicable:

- the provision and maintenance of a work environment that is without risks to health or safety
- the provision and maintenance of safe plant, structures and safe systems of work
- the safe use, handling-including transport-and storage of plant, structures and substances
- the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking
- the provision of, and access to, adequate facilities for the welfare of workers at the workplace, and
- the health of workers and the conditions at the workplace are monitored for the purpose of preventing work-related illness or injury.

There are additional duties for a person conducting a business or undertaking who:

- manages or controls workplaces or fixtures, fittings or plant at workplaces, or
- designs, manufactures, imports or supplies plant, substances or structures; or installs, constructs or commissions plant or structures.

The duties to ensure health and safety require the person conducting a business or undertaking to eliminate the risks to health and safety, so far as is reasonably practicable. If this is not possible, the person conducting a business or undertaking must minimise those risks so far as is reasonably practicable.

What does 'reasonably practicable' mean?

Work health and safety duties, other than duties of officers, workers and other persons at the workplace, apply so far as is 'reasonably practicable'. 'Reasonably practicable' represents what can reasonably be done in the circumstances. This means that the duty holders must satisfy the duties as far as they are reasonably able to, taking into account and weighing up all relevant matters, including:

- the likelihood of the relevant hazard or risk occurring
- the degree of harm that might result from the hazard or risk
- what the person knows, or ought reasonably to know, about the hazard or risk and the ways of eliminating or minimising the risk, and
- the availability and suitability of ways to eliminate or minimise the risk.

Only after assessing these matters can the cost of eliminating or minimising the risk be taken into account, including whether the cost is grossly disproportionate to the risk.

Officers must exercise due diligence

Officers of a person conducting a business or undertaking must exercise 'due diligence' to ensure that the business or undertaking complies with the health and safety duties. The definition of 'officer' under the Commonwealth *Corporations Act 2001* is adopted in the model WHS Act. Under the model WHS Act special provision is also made for 'officers' of public authorities including government departments.

In exercising due diligence, an officer must take reasonable steps to:

- acquire and keep up-to-date knowledge of work health and safety matters
- gain an understanding of the hazards and risks associated with the nature of the operations

- ensure that the business or undertaking has appropriate resources and processes to enable risks to health and safety arising from work carried out as part of the business or undertaking to be eliminated or minimised
- ensure that the business or undertaking has appropriate processes for receiving and considering information about incidents, hazards and risks and responding in a timely way, and
- ensure that the business or undertaking implements processes for complying with its duties and obligations.

This casts a positive duty on officers to be proactive and continuously ensure that the business or undertaking complies with the relevant duties and obligations under the model WHS Act.

The scope of the officers' duty is directly related to the influential nature of their position. A high standard requires persistent examination and care to ensure that the resources and systems of the business or undertaking are adequate to comply with the duty of care required under the model WHS Act. Where the officer relies on the expertise of a manager or other person, that expertise must be verified and the reliance must be reasonable.

Health and safety duties of workers

Workers must take reasonable care for their own health and safety while at work and take reasonable care that their acts or omissions do not adversely effect the health and safety of other persons. This duty being subject to a consideration of what is reasonable, is necessarily proportionate to the control a worker is able to exercise over their work activities and work environment.

Workers must also:

- comply, so far as they are reasonably able, with any reasonable instruction given by the person conducting a business or undertaking that allows it to comply with the model WHS Act and model WHS Regulations, and
- cooperate with any reasonable policy or procedure of the business or undertaking that relates to work health or safety, that has been notified to workers.

Whether an instruction, policy or procedure is 'reasonable' will depend on all relevant factors, including whether the instruction, policy or procedure

is lawful, whether it complies with the model WHS Act and model WHS Regulations, whether it is clear and whether affected workers are able to cooperate.

Duties of other persons at a workplace

Other persons who are at a workplace, for example visitors, must take reasonable care for their own health and safety and take reasonable care that their acts or omissions do not adversely effect the health and safety of others. They must comply with any reasonable instruction given by the person conducting a business or undertaking that allows it to comply with the model WHS Act or model WHS Regulations.

Volunteer duties

The model WHS Act does not apply to 'volunteer associations', that is associations that are wholly constituted by volunteers and do not have any employees attached to their business or undertaking. The model WHS Act prescribes that volunteers are persons who work on a voluntary basis without any kind of remuneration other than out-of-pocket expenses.

Volunteers in other kinds of businesses or undertakings have the same protections as other types of workers under the model WHS Act. While volunteering, volunteers must comply with the same work health and safety duties as other kinds of workers.

Volunteers in 'officer' positions must also comply with officers' duties under the model WHS Act. Volunteers cannot be prosecuted for failure to comply with a health and safety duty, except in their capacity as a worker or 'other person' at the workplace.

Model Work Health and Safety Laws

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