SafeWork NSW

Officer Due Diligence

Quick Reference Guide

Due Diligence

In the context of the *NSW Work Health and Safety Act 2011* (the 'WHS Act'), **due diligence** means an **officer** of a Person Conducting a Business or Undertaking (PCBU) **taking all reasonable steps** to ensure the PCBU complies with its WHS obligations.

These officer obligations are set out in section 27 of the WHS Act.

Who is an 'Officer'

In NSW, an officer under the WHS Act is generally a person who makes or participates in making significant decisions that affect the whole or a substantial part of a business or undertaking, or who has the capacity to significantly affect the financial standing of the PCBU.

Examples of an "officer" of a PCBU would often include Board Members, the Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Director, Company Secretary, certain Executive and senior management, and Receivers / Administrators / Liquidators.

Volunteers (e.g. members on a volunteer board of a PCBU) can also be officers and must exercise due diligence, but cannot be prosecuted for due diligence failures, only for failing in their duties as workers.

For more detailed information please visit **safework.nsw.gov.au**.

WHS Duty of an Officer

Core Obligations / 'Duties' of an Officer

Section 27(5) states that due diligence includes an officer to take reasonable steps:

1. *to acquire and keep up-to-date knowledge of work health and safety matters.*
   - You should understand what the WHS Act requires and the strategies and processes for elimination or minimisation of hazards and risks so far as is reasonably practicable.
2. *to gain an understanding of the nature of the operations of the business or undertaking of the person conducting the business or undertaking and generally of the hazards and risks associated with those operation.*
   - Getting advice from a suitably qualified person may be required to gain a general understanding of the hazards and risks associated with the operations of the business or undertaking.
3. *to ensure that the person conducting the business or undertaking 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.*
   - You should have an understanding of what is needed for health and safety, making decisions about procedures and resources and ensuring that they are used.
4. *to ensure that the person conducting the business or undertaking has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information.*
   - This should include the reporting of incidents and emerging hazards and risks, identifying if any further action is required to eliminate or minimise the hazards or risks so far as is reasonably practicable and ensuring steps are taken by the PCBU to take reasonably practicable steps.
5. *to ensure that the person conducting the business or undertaking has, and implements, processes for complying with any duty or obligation of the person conducting the business or undertaking under this Act.*
   - The section provides examples which are noted below–other examples include that the PCBU complies with licensing and registration obligations, union right of entry requirements and the duty to consult, co-operate and co-ordinate activities with other duty-holders.
6. *to verify the provision and use of the resources and processes referred to in paragraphs 3 to 5.*
   - This makes it clear that 'ensure' should include active verification, for example through inspection or auditing processes, that the resources and processes are in place and are being used.

What is 'reasonably practicable'

Section 18 of the WHS Act states:

In this Act, reasonably practicable, in relation to a duty to ensure health and safety, means that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters including:

(a) the likelihood of the hazard or the risk concerned occurring, and

(b) the degree of harm that might result from the hazard or the risk, and

(c) what the person concerned knows, or ought reasonably to know, about:

  (i) the hazard or the risk, and

  (ii) ways of eliminating or minimising the risk, and

(d) the availability and suitability of ways to eliminate or minimise the risk, and

(e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

Potential Consequences of Non-Compliance

1. **Legal & Financial Penalties:** Officers can face fines or, in serious cases, criminal charges for failing to comply with their WHS duties.
2. **Personal Liability:** Duties are non-transferrable, and officers have personal accountability for failures in certain circumstances.

Practical Steps for Officers

A quick action checklist on how to demonstrate due diligence daily:

1. Ask questions and stay informed
   - Regularly seek updates on WHS performance and incident reports.
2. Undertake relevant WHS Training
   - Acquire and keep knowledge current with refresher courses, briefings on new hazards/regulations.
3. Review Risk Registers and Safety Plans
   - Ensure management is proactively identifying and addressing risks.
4. Set WHS KPIs and follow up
   - Embed safety targets into corporate objectives and monitor results.
5. Document decisions and actions
   - Keep records of minutes, resource allocations, and improvement initiatives.

Next Steps & Continuous Improvement

- **On-going review:** Set periodic reviews schedule of WHS Strategies, KPIs, and Policies.
- **Feedback Mechanisms:** Encourage and maintain a culture of reporting and open communication regarding hazards or near-misses.
- **Timely Action:** Ensure mechanisms are in place to manage risk-led responses to incidents.

Self-Assess

Officers can complete (or revisit) the Due Diligence Self-Assessment Tool to gauge current compliance and level.