



## OFFICERS

April 2016

The Health and Safety at Work Act 2015 has now come in to effect and as many of you will be aware, this has created a lot of media attention and conflicting information as a result. The new Act refers widely to the term 'reasonably practicable' and I encourage all business to keep this in mind when managing health and safety in their businesses. Keep calm, continue to work through identifying and managing hazards and risks in your workplace and, most importantly, bring health and safety in to the day to day operations of your business to ensure health and safety is carried out in a practical and effective way that fits your business. Make it something you do every day rather than stopping and 'doing' health and safety. Don't overcomplicate it.

There has been a lot of discussion recently about those in senior positions who may be held personally liable and ultimately responsible for health and safety. The Act has brought with it a new term of an 'officer'. This newsletter describes those persons, who they are and what their duties are in regards to health and safety.

### OFFICERS - DEFINITION

**An Officer is any person who is:**

- A director of a company
- A partner of a company
- A board member
- Any person who holds a position comparable to a director in a body corporate or an unincorporated body
- Any person who exercises significant influence over the management of the business or undertaking (eg. Chief Executive)

Section 18 of HSW Act 2015 states the meaning of an Officer

As a general rule, an officer is a person that holds a very senior leadership position and has the ability to significantly influence the management of the business or undertaking.

### WHERE CAN I FIND MORE INFORMATION?

The *Good Governance Practices Guideline for Managing Health and Safety Risks* gives practical advice to company directors on how to manage risk and influence performance

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### WHO IS NOT AN OFFICER?

- A person who advises or makes recommendations to senior leadership
- H&S Managers
- Team leaders
- Line Managers
- Site Managers
- Supervisors
- Health and Safety Representatives
- Foreman
- Workers

### IS THERE ONLY ONE OFFICER IN A BUSINESS?

No, there can be multiple officers in a business such members of the board, the director and CEO etc.

### WHO IS EXEMPT?

Volunteer officers (next page), members of school boards of trustees, members of local or community boards, elected members of local authorities.

### FAILURE TO COMPLY:

The maximum penalty for a serious breach of the due diligence is imprisonment for up to 5 years and/or a fine of up to \$600,000. Note: these fines are non-insurable.

## OFFICERS – WHAT ARE THEIR DUTIES?

Every officer has a duty that is related to their ability to influence the management of the business, this is because they are the ones with the ability to make policies and investment decisions which affect the health and safety of workers. Under the HSW Act, all officers must exercise care, diligence and skill, that a reasonable officer would exercise in the same circumstances, relevant to the nature of the business and their position in the business.

**Due Diligence** includes taking reasonable steps:

- ❖ to acquire, and keep up to date with knowledge of health and safety
- ❖ to gain an understanding of the nature of the operations and of the hazards and risks associated with the operations
- ❖ to have available for use, and use, appropriate resources and processes to eliminate or minimize risks to health and safety (this includes hazard/risk management and the controls of hazards)
- ❖ to have appropriate processes for receiving and considering information about hazards, risks and incidents, and for responding in a timely way to that information
- ❖ to have implemented processes for complying with the duties and obligations of the PCBU under the Act
- ❖ Verify the provision and use of the resources and processes described above (documenting the process)

Essentially, the officer is responsible for making sure the PCBU has an understanding of the hazards and risks in the business and to keep up to date with health and safety knowledge while managing risks and incidents using an appropriate and effective hazard management process and system. This is a personal due diligence on officers of a PCBU, to ensure the company complies with H&S obligations and duties.

## VOLUNTEER OFFICERS

Officers who are volunteers (e.g. unpaid board members) have a duty to ensure the PCBU complies with its duties and obligations however, they are exempt and cannot be held liable if they fail in their due diligence duty. This immunity ensures that voluntary participation at a leadership level is not discouraged.

Volunteer officers may be prosecuted as 'other persons' if they fail to take reasonable care for their own, or another person's health and safety while at the workplace, or fail to comply with reasonable instruction about health and safety given by the PCBU as they will still have the duty of a 'worker' (Newsletter #3 described the definition of a worker)

Please take note here going back to newsletter #1 regarding volunteer associations for community purposes who do not employ any person – they do not have duties under the HSW Act as they are not a PCBU.

## I AM AN OFFICER, HOW CAN I MEET MY DUE DILIGENCE?

- ✓ put strategies in place to improve health & safety culture in the organization
- ✓ Review H&S performance at senior management level, use data & relevant information
- ✓ seek advice from managers or experts in the organization
- ✓ engage with workers & encourage participation from workers
- ✓ Determine your company's health & safety policy & strategy
- ✓ Create targets that will enable the board to track the organizations performance in implementing strategy & policy
- ✓ Decide how to structure the board/senior management so H&S has appropriate focus & expertise
- ✓ Apply a performance review process encompassing H&S for CEO & managers
- ✓ Ensure you have a fit-for-purpose H&S management system
- ✓ Ensure you have the resources for the development, implementation & maintenance of the system
- ✓ Understand risks in your organization
- ✓ Ensure these risks are being managed!!
- ✓ Investigate all incidents & ensure corrective actions are implemented to prevent reoccurrence
- ✓ Ensure emergency plans are in place & communicated
- ✓ Ensure processes are in place to consult, cooperate & coordinate with other organizations
- ✓ Ensure all workers are trained and competent
- ✓ Carry out audits and reviews
- ✓ Record actions you are carrying out
- ✓ Manage your contractors
- ✓ Recognize & celebrate success