



# DUE DILIGENCE & OFFICERS WHS DUTIES

Australia's harmonised WHS legislation places duties on Officers of organisation's to demonstrate due diligence. With WHS management needing to be driven 'from the top', this Info Sheet provides information for Officers to meet their obligations.

## Harmonised WHS legislation

On 1 January 2012 the harmonised work health and safety (WHS) legislation was implemented in Australia. By 2013 all states and territories except Victoria and Western Australia had adopted the legislation, which contains obligations for four duty holders; Officers, persons conducting the business or undertaking (PCBU), workers and others.

For more information on the harmonised WHS legislation, go to [Safe Work Australia](#).

## Officers Duties

Officers must exercise 'due diligence' to ensure that the person conducting the business or undertaking (PCBU) complies with their duties and obligations under the WHS Act. There are personal penalties for Officers who fail to comply with their duties, which may result in imprisonment or fines of up to \$300,000.

Section 27 of the WHS Act requires that Officers:

- Acquire and have upto date knowledge on WHS matters
- Understand the business and associated hazards and risks
- Ensure the 'PCBU' has resources and processes to eliminate or minimise risks
- Ensure a timely response to hazards and incidents
- Ensure a process for legal compliance
- Verify the 'PCBU' used the resources and processes identified above

Officer's duties are proactive, which means that the Officer must take action to meet their obligations. Regulatory action can be taken against officers even in the absence of a workplace incident or accident.

## PBCU Duties

WHS duties for the PCBU provide the broad framework and foundation for managing health and safety at work. The duties combine primary duties which are applicable to all PCBU's and further duties which are applicable where certain work activities are undertaken by the business or organisation. Refer to the Kitney Info sheet 'PCBU's and WHS Duties' for further information.



### TIPS TO ENSURE OFFICERS DUE DILIGENCE IS MET

#### TIP #1

Read up on Officers duties, PCBU duties and WHS due diligence

#### TIP #2

Identify who the Officers are (or could be) for your organisation and ensure they are aware of this

#### TIP #3

Provide an Officer's due diligence briefing and prepare a Due Diligence Action Plan

#### TIP #4

Ensure the organisation's WHS management system is comprehensive and effective

#### TIP #5

Schedule WHS management in Board & Executive Meetings

## Who is an Officer?

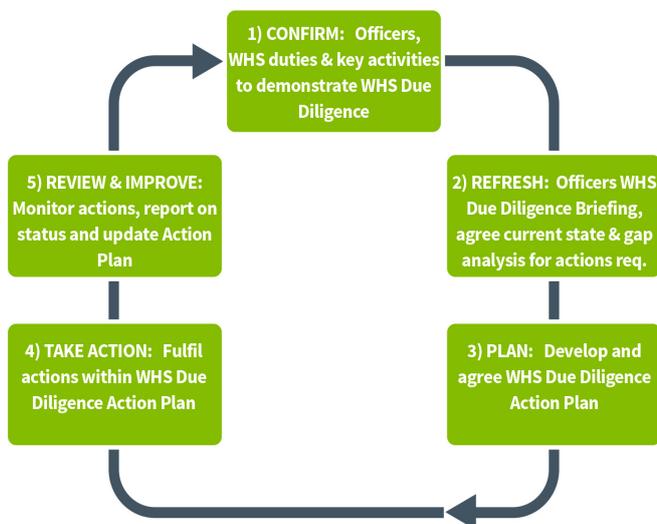
Under the WHS Act 2011, an Officer means:

- An Officer within the meaning of Section 9 of the Corporations Act 2001 (of the Commonwealth) other than a partner in a partnership; or
- An officer of the State, Commonwealth or another State within the meaning of section 247; or
- An officer of a public authority within the meaning of section 252; (other than an elected member of a local government acting in that capacity).

Who may be deemed an Officer may differ between organisations, however business owners, directors, 'C' level executives (i.e. CEO's, CFO's, COO's, Legal Counsel) and senior executives are generally considered officers. It is recommended an organisation identifies who may be considered an officer, so these persons can be proactive in taking action to meet their obligations.

## Meeting Due Diligence

For Officers to demonstrate due diligence a combined approach of governance, personal action, organisational and operational management is required. Officers should identify actions they will take and fulfil these within their wider role and other duties. The PCBU should then ensure organisational and operational WHS management across the business, through the management system and processes.



## Due Diligence Action Plan

A Due Diligence Action Plan can detail the actions Officers and the organisation will take to ensure due diligence is met. This can be managed by the Officers or included in the organisation's WHS management system. To ensure it is comprehensive, actions should be mapped against each element of the Officers duties in section 27 of the WHS Act.

## 5 ACTIONS TO ENSURE OFFICERS DUE DILIGENCE IS MET

- 1
- 2
- 3
- 4
- 5

## SUPPORT FROM KITNEY

### Consultancy Services:

Health and safety, quality and environmental services delivered by professionals: [www.kitney.com](http://www.kitney.com)

- General consultancy
- Manuals & systems
- Audits & reviews
- Events & training

### Kitney Toolkit:

Health and safety, quality and environmental resources: [www.toolkit.kitney.com](http://www.toolkit.kitney.com)

- Manuals & systems
- Toolkits
- Individual documents

Free to access Info Centre: [www.toolkit.kitney.com/info-centre](http://www.toolkit.kitney.com/info-centre)

- Info sheets
- Online self-assessments
- Videos

This document is provided for users in Australia who are working under the harmonised Work Health and Safety legislation. We aim to provide content that is correct but make no representations about its suitability, timeliness, completeness and accuracy, or that of anything contained on any linked web-site. We accept no liability for any loss, damage or consequence resulting directly or indirectly from the use of any content provided. The content is provided "as is" without any expressed or implied warranty. To the extent that liability cannot be completely excluded, by accessing this content you agree that your remedy is limited to the amount of money that you paid to us for the content, even if that amount was zero. This document is not professional advice, should you require professional advice please contact us regarding the provision of consultancy services. Links to websites are inserted for your convenience and do not constitute endorsement of material on those sites, or of any associated organisations, products or services. You use links at your own risk. Published by Kitney Occupational Health & Safety Pty Ltd.