

## BULLETIN

# Due diligence

The Work Health and Safety (National Uniform Legislation) Bill 2011 (the Bill) imposes a specific duty on officers<sup>1</sup> of corporations and unincorporated bodies such as clubs and associations to exercise due diligence to ensure that the corporation, club or association meets its work health and safety obligations. The duty requires officers to be proactive in ensuring that the corporation, club or association complies with its duty.<sup>2</sup>

This is different to the situation existing under the *Workplace Health and Safety Act 2008*, where corporate officers are deemed to be liable for health and safety offences committed by their corporation unless they can show that they exercised proper diligence to ensure that the corporation complied with the Bill, or that they were not in a position to influence the conduct of the corporation regarding the offence under the Bill.

This duty under the Bill applies whether or not there has been an incident and irrespective of whether the corporation is prosecuted. For example, a work health and safety inspector may, during a routine audit or inspection, ask a corporate director to produce evidence that the director is meeting his or her due diligence requirements. If satisfactory evidence is not produced, the inspector may issue the director with an improvement notice. If the failure to demonstrate due diligence is serious, reckless or flagrant, the inspector might commence prosecution proceedings against the officer.

### What is due diligence?

Due diligence in relation to ensuring health and safety is defined for the first time in the Bill. In demonstrating due diligence, officers will need to show that they have taken reasonable steps to:

- acquire and update their knowledge of health and safety matters
- understand the operations being carried out by the person conducting the business or undertaking in which they are employed,

and the hazards and risks associated with the operations

- ensure that the person conducting the business or undertaking has, and uses, appropriate resources and processes to eliminate or minimise health and safety risks arising from work being done
- ensure that the person conducting the business or undertaking has appropriate processes in place to receive and respond promptly to information regarding incidents, hazards and risks
- ensure that the person conducting the business or undertaking has, and uses, processes for complying with duties or obligations under the Bill.

This approach emphasises the corporate governance responsibilities of officers. It is critical to the achievement of positive safety outcomes for senior management to lead the corporate safety agenda.

### Demonstrating due diligence

The due diligence criteria listed in the Bill are shown below, with suggestions on how to meet them.

### Acquiring knowledge of health and safety issues

This can be met by:

- acquiring up to date knowledge of the Bill, proposed regulations and codes of practice
- investigating current industry issues through conferences, seminars, information and awareness sessions, industry groups, newsletters
- acquiring up to date knowledge of work health and safety management principles and practices

- ensuring that work health and safety matters are considered at each corporation, club or association board meeting.

### **Understanding operations and associated hazards and risks**

This can be met by:

- developing a plan of the operation that identifies hazards in core activities
- ensuring that information is readily available to other officers and workers about procedures to ensure the safety of specific operations that pose health and safety risks in the workplace
- continuously improving the safety management system.

### **Ensuring that appropriate resources and processes are used to eliminate or minimise risks to health and safety**

This can be met by:

- establishing/maintaining safe methods of work
- implementing a safety management system
- recruiting personnel with appropriate skills, including safety personnel
- ensuring staffing levels are adequate for safety in operations
- giving safety personnel access to decision makers for urgent issues
- maintaining/upgrading infrastructure.

### **Implementing processes for receiving and responding to information about incidents, hazards and risks**

This can be met by:

- employing a risk management process
- having efficient, timely reporting systems
- empowering workers to cease unsafe work and request better resources
- establishing processes for considering/responding to information about incidents, hazards and risks in a timely fashion
- measuring against positive performance indicators to identify deficiencies (for example, percentage of issues actioned within agreed timeframe).

### **Establishing and maintaining compliance processes**

This can be met by:

- undertaking a legal compliance audit of policies, procedures and practices
- testing policies, procedures and practices to verify compliance with safety management planning.

### **Accessing up to date safety information**

As part of due diligence requirements, officers need up to date knowledge about safety issues. They must also ensure that their employer and workers have ready access to information that will help them to avoid risks and hazards in the workplace.

### **Further information**

Visit [www.worksafe.nt.gov.au](http://www.worksafe.nt.gov.au) for more information on workplace health and safety and the new laws or call NT WorkSafe on 1800 019 115.

<sup>1</sup> An officer means an officer within the meaning of section 9 of the Commonwealth Corporations Act 2001, i.e. a person who makes, or participates in making, decisions that affect the whole or a substantial part of a corporation, an officer of the Crown or an officer of a public authority (including local government) but not an elected member of a local authority.

<sup>2</sup> 2 Under the WHS Act 2011, a 'volunteer association' is not regarded as conducting a business or undertaking, and does not have a duty as an employer under the WHS Act 2011. A 'volunteer association' means a group of volunteers working together for one of more community purposes where none of the volunteers, alone or jointly with other volunteers, employ any person to carry out work for the volunteer association.