

Due Diligence for Officers in Schools Guide

Background

In July 2008 the Council of Australian Governments (COAG) formally committed to harmonising Australia's health and safety laws, instead of having differing health and safety laws through all states, territories and the commonwealth.

Since then, the new Work Health and Safety legislation has been adopted by all states and territories across Australia except WA and Victoria.

In July 2017 the WA State Government announced that they will proceed with replacing the current OSH legislation with the WHS legislation. The legislation is planned to come in to effect in 2019.

The WHS legislation includes a provision being referred to as the "Positive Due Diligence" obligation for Officers. This provision is new in WA, and it has some significant implications for senior management in schools.

Positive Due Diligence and Schools – Legislative Changes

- The term "Officer" from the Corporations Act will be introduced and anyone within a business or undertaking (e.g. a school) who is considered an "Officer" will have the "positive due diligence obligation" placed upon them. An "Officer" is defined as a person who makes decisions that affect whole or substantial parts of a business or undertaking. Looking at other states where the WHS legislation is already in place, this generally includes the Principal and Senior Managers (e.g. Manager of Corporate Services).
- Essentially, those persons who are considered Officers (which may include; the Principal, Senior Managers, Board Members) must ensure workplace hazards and risks are identified and managed within the school AND pro-actively take steps to inform themselves of the safety management practices and performance within the school. Should an Officer fail to demonstrate due diligence, they can be held personally liable for this and expose both themselves and the school to prosecution.
- An increased penalty regime for the school, officer and individual will apply (see below). Note: A volunteer officer cannot be prosecuted for failing to comply with their officer duties under WHS law. A volunteer officer can however be prosecuted in their capacity as a worker if they do not take reasonable care as a worker

Table 1: New Penalty Regime

Category	Description	New Penalties	Current WA Penalties
1	Reckless or gross negligence causing serious harm to a person or a risk of such harm	<ul style="list-style-type: none"> • Organisation (e.g. school) – \$3 million • Officers - \$600k • Individuals (e.g. worker) - \$300k • Imprisonment – 5 years 	<ul style="list-style-type: none"> • Employers - \$625k • (gross negligence) • Managers /Supervisors \$312,500 • 2 years imprisonment
2	The failure exposes an individual to a risk of death or serious injury or illness	<ul style="list-style-type: none"> • Organisation - \$1.5 million • Officers - \$300k • Individuals - \$150k 	Nil equivalent under current legislation
3	Other breaches	<ul style="list-style-type: none"> • Organisations - \$500k • Officers - \$100k • Workers - \$50k 	Nil equivalent under current legislation

Demonstrating Due Diligence

The table below provides a basic guide of actions an Officer can take to meet their due diligence obligations.

Steps of Due Diligence	Officer Requirements	Example Action
1. Acquire and maintain up-to-date knowledge of WHS matters.	Have Officers kept abreast of changes or emerging risks that are relevant to school operations?	The Principal and other Officers attends briefings to update their knowledge of legal requirements. Subscription to email alerts providing health and safety updates.
2. Acquire and maintain knowledge of the school's main activities and the hazards and risks that emanate from them.	How do Officers personally identify and understand the main hazards and risks of the schools?	A Safety Risk Register is established and reviewed to ensure risks are identified, assessed and controls are implemented and effective.
3. Ensure risk controls are in place, monitored and effective.	How do Officers ensure the school has implemented formal policies and procedures to comply with WHS obligations?	A formal health and safety system is in place that outlines your health and safety policies and procedures. The Principal/Board reviews audits, major incidents and other metrics used to monitor health and safety performance.
4. Ensure adequate resources are provided to manage health and safety.	Have Officers ensured that resources have been allocated so that the risks of the school can be managed to legislated and reasonably practicable standards?	A competent person (e.g. Health and Safety Advisor/Consultant) is appointed to oversee the management of Health and Safety. The school has a budget for health and safety to cover required resources/actions (e.g. provision for training, audits)

<p>5. Ensure appropriate processes are in place for reporting WHS issues and responding in a timely manner.</p>	<p>Have the Officers ensured there are processes in place for hazard and incident reporting?</p>	<p>A formal reporting/incident resolution procedure is in place to enable the Principal and Senior Managers to receive, investigate and review incidents in a timely manner.</p>
<p>6. Ensure the school verifies that the health and safety controls (e.g. processes, resources) have been implemented and are effective at reducing risks to workers.</p>	<p>Do the Officers formally review the school's health and safety management to ensure it has been implemented and is effective?</p>	<p>An annual safety audit is done to verify your system is implemented and effective and a plan developed to address deficiencies.</p>

How to Prepare for the Due Diligence Obligation

- Conduct training sessions for your senior management to ensure they understand what the due diligence obligation means.
- Review your governance structures, ask the question – are the current processes effective in providing your Officers with information on your school's health and safety management performance?

References

The Essential Guide to Work Health and Safety for Volunteers, Safe Work Australia
https://www.safeworkaustralia.gov.au/system/files/documents/1703/volunteers_guide.pdf

Work Health and Safety Bill 2014, WA State Government (Refer Section 27)
https://www.commerce.wa.gov.au/sites/default/files/atoms/files/work_health_and_safety_bill_2014.pdf