



Australian Government

Comcare

GUIDANCE FOR OFFICERS IN EXERCISING DUE DILIGENCE

DISCLAIMER

This guidance is provided by Comcare for the purpose of providing information to officers, managers and supervisors about the due diligence requirements under the *Work Health and Safety Act 2011* (Cth) (WHS Act). The publication is aimed at providing guidance only, as there are a number of different ways to carry out due diligence.

Comcare recommends that users exercise skill and care with respect to use of the information contained in this guidance. This is not a substitute for independent professional advice and users should obtain appropriate professional advice relevant to their particular needs and circumstances.

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GUIDANCE FOR OFFICERS IN EXERCISING DUE DILIGENCE

The WHS Act imposes a specific duty on officers of corporations, the Crown or a public authority in the Commonwealth jurisdiction to exercise due diligence to ensure that the corporation, the Crown or a public authority meets its work health and safety obligations.

Officers determine how the business or undertaking will operate and they make, or participate in making decisions on allocating resources which affect health and safety.

Due diligence in relation to ensuring health and safety is defined for the first time in the WHS Act.

In demonstrating due diligence, section 27 of the WHS Act requires officers 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 (PCBU) 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 minimize 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 WHS Act.

For further information about what is 'reasonable', refer to Safe Work Australia, *Interpretive Guideline—model Work Health and Safety Act—the health and safety duty of an officer under section 27*.

This approach emphasises the corporate governance responsibilities of officers.

The due diligence duties of officers under the WHS Act supports improved leadership that contributes to a safety culture.

SAFETY CULTURE

A safety culture is that part of the overall culture that reflects the values, beliefs and practices of an organization as they relate to health and safety. As described by Patrick Hudson, the safety culture may range from pathological (uninformed and passive) through reactive, calculative (command and control) and proactive to generative (universal involvement, with safety integrated in day-to-day activities).¹

James Reason and others have identified the various elements of a culture that will move an organization forward through these stages of development.²

¹ Paper presented at the RTO HFM Workshop on "The Human Factor in System Reliability – Is Human Performance Predictable?", held in Siena, Italy, 1-2 December 1999, and published in RTO MP-032.

² James Reason, 'Achieving a Safe Culture: Theory and Practice', *Work and Stress*, 1998, Vol 12, No 3, 293–306.

These elements are described by Reason as follows:

- > an informed culture—one in which those who manage and operate the system have current knowledge about the human, technical, organisational and environmental factors that determine the safety of the system as a whole
- > a reporting culture—in which people are willing to report errors and near misses
- > a just culture—a culture of ‘no blame’ where an atmosphere of trust is present and people are encouraged or even rewarded for providing essential safety-related information; but where there is also a clear line between acceptable and unacceptable behaviour
- > a flexible culture—characterised as shifting from the conventional hierarchical mode to a flatter professional structure
- > a learning culture—in which there is the willingness and the competence to draw the right conclusions from its safety information system, and the will to implement major reforms when the need is indicated.

Each of these elements relates to one or more of the availability and sharing of information, the promotion of flexibility and innovation, and supporting honesty and transparency (and through that, avoiding barriers to the free flow of information) through a ‘no blame’ approach.

THE ROLE OF LEADERS

The significance of the role of leaders and how they should be involved in driving health and safety, has been recognised in various measures of an effective health and safety management system. This is reflected in the Australian standard, AS/NZS ISO 45001:2018 (Occupational health and safety management systems - Requirements with guidance for use), which aims to enable organisations to proactively improve work health and safety performance.

This standard provides specific guidance on the role of senior and middle management in safety matters including:

- > the authorisation of the work health and safety policy
- > planning, including the setting of targets and designating responsibilities
- > providing resources
- > reporting, auditing and review
- > incident reporting and rectification.

Effective risk management starts with a commitment to health and safety from those who operate and manage the business or undertaking. You also need the involvement and cooperation of your workers, and if you show your workers that you are serious about health and safety they are more likely to follow your lead.

Not all leaders will necessarily be officers under the WHS Act.

An officer may be criminally liable for a serious or reckless failure to demonstrate due diligence requirements. Penalties apply to individuals.

Consideration needs to be given to who may be an officer. An officer under the WHS Act includes:

...a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of a corporation (business or undertaking)...

That definition of an ‘Officer’ was included to achieve the objectives of the duty, by placing the duty on those who make the key decisions and provide leadership for an organization.

For more information on the meaning of an Officer for the purposes of the WHS Act, refer to Comcare’s officer fact sheet and Safe Work Australia’s interpretive guidance on officers.

DUE DILIGENCE—WHERE TO START AND WHAT DOES IT MEAN TO YOU?

Due diligence—in the context of work health and safety—means taking every precaution that is reasonable in the circumstances to protect the health, safety and welfare of all workers and others who could be put at risk from work carried out as part of the business or undertaking. This includes work carried out overseas.

Due diligence is a powerful and proactive management tool that will help to foster the careful and systematic identification and assessment of specific workplace hazards and the establishment of control measures to prevent injuries and illnesses at work.

If you are an officer, due diligence requires you to take reasonable steps to address each of the definition elements for due diligence outlined in section 27 of the WHS Act. Each of the elements is directed at one or more of the elements of a safety culture and the drivers of safe behavior.

The first step requires every person in the workplace to understand and comply with their duties set out in the WHS Act. Due diligence requires officers to be proactive in ensuring that a department, agency, public authority or corporation complies with its duty, including workers working or posted overseas.

The next steps include the need for officers to identify risks to safety, health and welfare in the workplace, including risks identified in the WHS legislation and approved Codes of Practice. Once risks are identified, due diligence requires that you address these risks through a properly functioning and documented health and safety system. The more harmful or serious the potential dangers are, the more you must guard against them to prevent workplace injury and illness. An officer's due diligence obligations in respect to managing workers overseas are identical to those onshore. Some general measures to comply with the WHS Act and demonstrate due diligence include:

- > setting up a well-documented system for identifying, reporting, and responding to all actual and potential hazards in the workplace
- > ensuring safe practices, procedures and controls are in place that are specific to the hazards in your workplace that either meet or exceed the requirements set out in the WHS legislation—including relevant approved Codes of Practice
- > providing ongoing instruction and training to supervisors, managers and workers
- > communicating regularly with workers about foreseeable health and safety hazards
- > allocating adequate time and resources for health and safety, including health and safety committees
- > monitoring and auditing health and safety programs on a regular basis.³

Compliance with each of the elements of due diligence will mean officers have a greater understanding of what is needed to effectively manage health and safety risks. This will enable health and safety to be more readily integrated into broader strategies—permitting a more proactive, rather than reactive approach to be taken.

In complying with each of the elements of the definition of due diligence, officers will demonstrate their interest in health and safety which should have a positive cultural impact (Sherriff, 9). The active involvement of middle managers, supervisors and workers in each of the processes is critical.

³ Barry Sherriff, 'Promoting Effective Health and Safety Leadership – Using the Platform in the model Work Health and Safety Act', In press, Safe Work Australia, 15 April 2011, 9.

HOW DO I KNOW IF I HAVE COMPLIED WITH MY DUE DILIGENCE REQUIREMENTS?

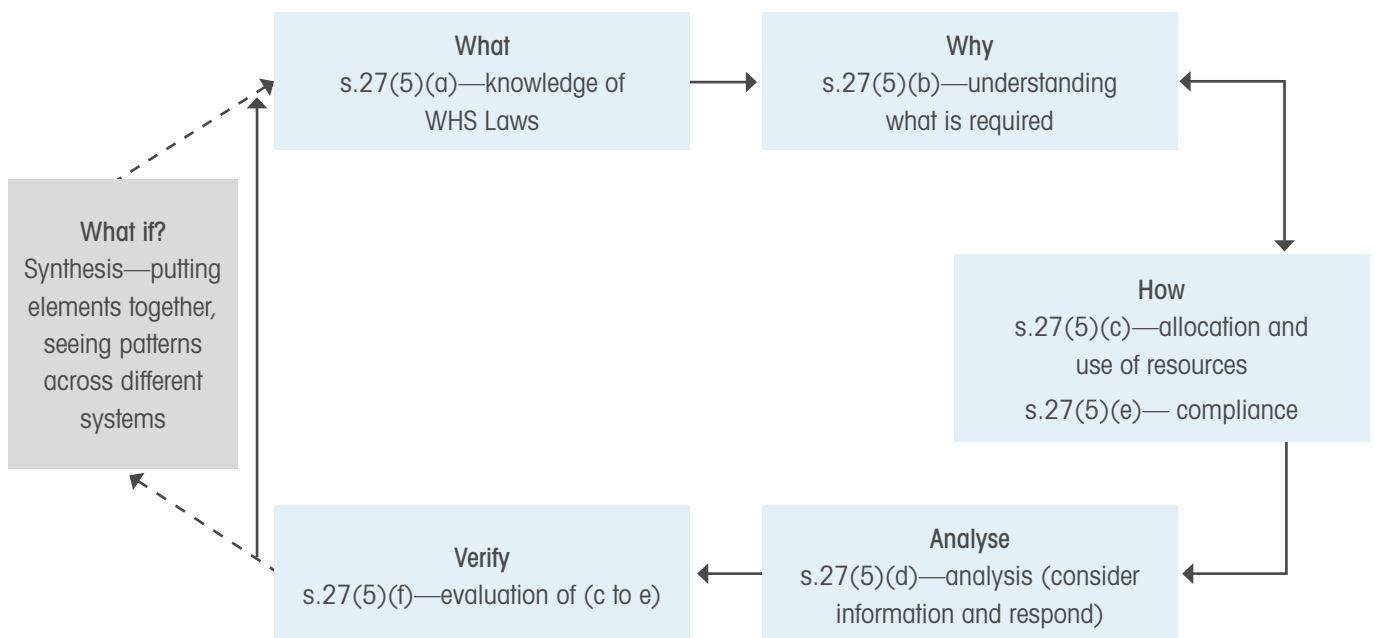
Whether an officer has acted with due diligence depends on whether he or she took all reasonable steps in the particular circumstances. The role an officer performs within a business or undertaking is relevant when considering what may be required to comply with the duty of due diligence—for example, the capacity an officer has to influence decisions and the allocation of resources for work health and safety.

What might constitute due diligence in one case may not hold true in another. This is because each situation and each workplace is unique and would require assessing on an individual basis. This guidance explores each of the elements of due diligence described in the WHS Act but should not be a substitute for carrying out a genuine due diligence procedure.

Officers may meet the due diligence requirements in some respects by proper reliance on information from, and activities of others, while having more direct involvement in health and safety management and governance in other aspects.

To the extent to which an officer does seek to rely on others, the officer must be able to demonstrate the reasonableness of that reliance, which may be demonstrated through the receipt of credible information and advice from appropriate people.

The elements of due diligence in action



CRITICAL REFLECTION

Putting the theory of exercising due diligence into practice requires continual application of:

- > learning
- > understanding
- > implementing
- > refining
- > responding
- > verifying.

Finally, synthesise the information before you by taking a systems thinking approach to due diligence and repeatedly moving through the cycle. Systems thinking leads to experiencing more and more of the interconnections between the parts—seeing the whole including patterns and trends rather than any individual part.

CONTEXT

s.27(5)(a)—up-to-date knowledge

- > WHS Act, Regulations and Codes of Practice
- > Investigating current industry issues
- > Health and safety management principles and practices
- > Regular consideration of health and safety matters at meetings

s.27(5)(b)—understanding

- > Operational plan that identifies hazards in core activities
- > Advice from suitably qualified persons. Ensure information is available to workers about procedures to ensure health and safety
- > Continuous improvement approach to the safety management system

PREVENTION

s.27(5)(c)—resources

- > Establish/maintain safe methods of work
- > Implement/regularly review safety management system
- > Recruit skilled workers and adequate safety personnel
- > Ensure adequate staffing levels for safety in operations
- > Give safety personnel access to decision makers for urgent issues
- > Maintain/upgrade infrastructure

s.27(5)(e)—processes for compliance

- > Legal compliance audit of policies, procedures and practices
- > Testing policies, procedures and practices to verify compliance with safety management planning and WHS legislation

DETECTION AND RESPONSE

s.27(5)(d)—analysis and response

- > Risk management process
- > Timely and efficient reporting
- > Empowering workers to cease unsafe work
- > Process for timely consideration/response to information about incidents, hazards and risks
- > Corrective actions
- > Lessons learnt from failures

REVIEW

s.27(5)(f)—verifying

- > Provision and use of resources
- > Compliance processes

SUGGESTED APPROACHES, IDEAS AND INFORMATION AIMED AT ASSISTING OFFICERS IN DEMONSTRATING A DUE DILIGENCE FRAMEWORK

Section 27(5)(a)—to acquire and keep up-to-date knowledge of work health and safety matters.

HOW DO I ACQUIRE THE INFORMATION I NEED?

As an officer, you must acquire and keep up-to-date knowledge of the work health and safety matters.

This can be met through:

- > acquiring up-to-date knowledge of the WHS Act, WHS Regulations and approved 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 meetings.

This may include:

- > knowledge that is
 - technical—legal obligations
 - situational—what is happening and what it means
 - strategic—what should the PCBU be doing and why
- > from
 - senior managers
 - subject matter experts
 - managers/supervisors
 - workers.

Systems of work, including consideration of the resources and other requirements for the work to be done, will be more likely to provide for health and safety if they take into account relevant information. This is aided by input into the decision making process by all who are involved in managing, supervising and undertaking the work. Consultation obligations in the WHS legislation, including the relevant Codes of Practice are aimed at ensuring that contribution of information.

Ideally, the flow of information should be a continuous process, with information volunteered rather than only provided when it is sought during formal consultation and incident reporting processes.

Information then needs to be:

- > gathered
- > analysed
- > reported.

Section 27(5)(b) - 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 operations.

This can be met by:

- > developing a plan of the operations 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.

DO I CONFIDENTLY UNDERSTAND THE RISKS AND HAZARDS OF THE BUSINESS OR UNDERTAKING? WHY DO WHAT WE DO?

There may be times when the officer's knowledge of work health and safety and the circumstances in their workplace mean that further expertise may be required to control the risks. For example:

- > during periodic reviews of operations of the business
- > when developing and implementing systems for the long term management of work health and safety
- > when planning to modify the work premises, plant, substances or materials for use at work
- > before introducing changes to work practices and systems of work
- > when establishing new operations or projects
- > when a hazardous exposure or incident, injury or illness etc. indicates that risk control measures are inadequate
- > when managing complex issues related to psychological health such as bullying and stress
- > when working overseas.

Officers may meet the due diligence requirements in some respects by proper reliance on information from, and on the activities of others, while having more direct involvement in health and safety managements and governance in other aspects.

To the extent to which an officer does seek to rely on others, the officer must be able to demonstrate the reasonableness of that reliance, which may be demonstrated through the receipt of credible information and advice from appropriate people.

OFFICER CONSIDERATIONS

As an officer you should consider whether:

- > the right structure is in place for the business or undertaking
- > the right people are in the right place
- > there are effective means for information flow and advice
- > the right information is available at the right time
- > there is a proactive as well as responsive approach to managing work health and safety
- > there is clear designation of responsibility and accountability
- > there is system for regular verification and correction of work health and safety policies and practices
- > there is active engagement across the organisation regarding health and safety matters—lead from the top.

OFFICER ACCOUNTABILITY

An officer may not be exercising due diligence if he or she accepts or does not respond to work health and safety incidents or concerns. If an individual lacks the authority to fix a problem, that individual should escalate information regarding that problem in a timely manner to those who are in a position to fix it.

Example—action to ensure that significant issues with the health and safety performance of a contractor, of which they are aware, is properly addressed.

Due diligence requires taking positive action to solve problems and manage hazards.

Don't just report it if you have the ability and authority to fix it.

Section 27(5)(c)—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.

HOW DO WE PROTECT OUR HEALTH AND SAFETY?

A key element for you to consider in meeting your due diligence obligations, is risk management and ensuring there are appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information. This can be met by:

- > establishing/maintaining safe methods of work
- > implementing a safety management system
- > ensuring appropriate resources for health and safety are available and used.

MANAGE THE RISK

Risk management is an integral part of good management practice and an essential part of good corporate governance. In order for WHS risk management to be effective, it should be part of an organisation's culture. Ideally WHS risk management should not be seen as a separate activity. Rather, it should be embedded in an organisation's processes and practices. Refer to the Safe Work Australia guide—*How to manage work health and safety risks* for further information on managing health and safety risks.

Risk management is an important part of any health and safety prevention program and the success of such programs depends on successful implementation of risk management.

To exercise due diligence, officers must develop, implement and review a safety management plan to identify possible workplace hazards and carry out the appropriate corrective action to prevent accidents or injuries arising from these hazards.

Hazard identification, risk assessment and risk control at workplace level may be defined as the systematic application of management policies, procedures and practices to the four-step process of:

- > identifying hazards
- > assessing and analysing the risks
- > controlling the risks
- > monitoring and reviewing the risk management process.

Are there effective controls in place?

- > How do you know if all hazards and risks have been identified and assessed?
- > Are risks controlled using all reasonably practicable means?
- > Have you evaluated any residual risk?
- > Have all systems, policies and procedures been effectively implemented that apply to the operations of the business or undertaking?
- > What technology is in place for work health and safety, is it sufficient, does it need updating or reviewing?
- > How effective are the controls? Have they been tested?

The benefits of appropriate resources and processes to eliminate or minimize risks include:

- > workers, middle and senior management have a heightened awareness of risks within their work environment
- > risks are identified, assessed and controlled in accordance with the legislative requirements of the WHS Act
- > risk management becomes a part of the organisational and corporate culture
- > a reduction in the severity and incidence of workers' compensation claims, leading to a reduction in associated premiums and hidden costs (such as loss of worker morale, loss of productivity, etc)
- > costs of replacing absent injured workers and the loss of productivity.

ELEMENTS TO CONSIDER IN EXERCISING DUE DILIGENCE

As an officer you should be aware that existing corporate governance structures and processes may not meet due diligence requirements under the WHS Act.

You should ensure there is:

- > an appropriate structure, with clear charters and key performance indicators to provide for effective communication and accountabilities
- > reporting processes for timely, accurate information to officers
- > processes in place to provide confidence as well as accurate, up-to-date reliable information about health and safety matters to meet duties and obligations under the WHS Act
- > means for ongoing advice and decision making (delegations)
- > auditing and other processes for verification of compliance
- > documentation demonstrating due diligence activities.

DO YOU KNOW YOUR BUSINESS AND PEOPLE?

What is your organisational structure e.g. leadership team and worker demographics?

- > Who are the management team—what are their strengths, weaknesses and skills in managing risk?
- > Have you assigned appropriate accountability to authorized and skilled delegates?
- > Do you know your business operating risks?
- > Do you understand the activities you have substantial influence or control over for the whole or substantial part of the business or undertaking?
- > What other influences may impact on work health and safety—for example financial, safety culture, deadlines and business expectations?
- > Do you have effective consultative arrangements and understand your workers? For example who works for you? What do they do? Do you have contractors as workers? Do you have technical or high risk workers? Do you have workers located overseas?
- > Do you know who your health and safety representatives and champions for health and safety are?

WHAT ABOUT LEAVE AND ACTING ARRANGEMENTS FOR OFFICERS?

Will another person be acting in your role?

Will that person have the same responsibility and decision making powers e.g will they be an officer?

If they are an officer, do they have all the information they need to exercise due diligence?

If your decision making responsibility is transferred to another officer, do they have all the information to assist them to exercise due diligence?

Are all relevant managers and supporting workers aware of the change?

Section 27(5)(d)—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.

SO WHAT DOES THE INFORMATION TELL US ABOUT OUR HEALTH AND SAFETY?

Measuring health and safety performance provides an insight into management, investment and resourcing decisions. As part of due diligence requirements, officers are required to ensure that 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 can be met by:

- > employing a risk management process
- > having efficient, timely reporting systems
- > empowering workers to cease unsafe work and to 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, the percentage of issues actioned within agreed timeframes).

Officers should:

- > be accountable for the implementation, verification and review of any change management processes
- > ensure health and safety is integrated into business planning and does not get downgraded based on competing priorities, profit margins, and lack of resources
- > promote and encourage regular discussion of health and safety at all levels of the business to ensure officers and workers can achieve outcomes based on open communication, consultation, negotiation and agreement
- > establish and promote fair and equitable workplace participation and issue resolution processes
- > encourage early intervention for incidents and accidents.

To assist officers in measuring health and safety performance, they should critically evaluate:

- > systems of work
- > governance and accountability
- > the implementation of policies and procedures
- > the measuring of behaviour, and the monitoring of attitudes
- > indicators of organisation health—for example, staff surveys, workforce planning, attendance management, etc.

Investing in hazard and incident reporting systems won't reduce injuries and premiums unless the information is received in a timely manner and properly analysed. Research shows that human factors significantly contribute to 80 to 90 per cent of all incidents. It is therefore important to have a reporting and tracking system that methodically analyses risk with a specific focus on human factors and breaks down general risks into specific risks.

Having clear, effective and workable reporting processes will enable the PCBU to meet its obligations, including notifying the regulator according to the requirements of the WHS laws.

An open reporting culture makes it safe to admit, report, and learn from incidents.

As an officer, you should encourage a reporting culture with clear reporting lines and communication options that does not seek to place blame or punish those who report incidents, near misses and hazards. Establishing an open reporting culture within your organisation will demonstrate to your workers a no blame culture report a near miss, accident or injury or where there has been a failure to adhere to policy or procedure.

You should consider how you as an officer can encourage and support a reporting culture that assists in assessing the risk and hazards to the business as it applies to work health and safety.

Encouraging workers to report near misses and other incidents allows for appropriate and timely remedial or preventive action to be put in place in line with due diligence requirements.

You will have a clearer picture of the overall business hazards/risks where effective local reporting procedures are in place that support business policies or procedures and which comply with WHS legislation. Having clear, effective and workable reporting processes will enable the PCBU to meet its obligations.

Do your managers and workers believe that they can approach you and discuss issues and concerns in relation to work health and safety in the workplace, and do they believe you will take action on matters raised?

Section 27(5)(e)—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 the WHS Act.

HOW DO YOU ENSURE THAT COMPLIANCE IS BEING MET?

Part of the due diligence requirements of an officer includes ensuring that processes implemented comply with specific duties and obligations under the WHS Act. These include incident reporting, consultation with workers and ensuring the provision of training and instruction to workers about work health and safety.

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.

The PCBU, through its officers should:

- > have effective WHS policies, practices, and procedures in place
- > document that the PCBU conducts workplace safety audits, identifies hazardous practices and conditions and make the necessary changes to correct these conditions
- > provide workers with information to enable them to work safely (in appropriate languages)
- > provide the appropriate training and education to workers so that they understand and carry out their work according to the established policies, practices, and procedures
- > monitor the workplace and ensure that workers are following the policies, practices and procedures. Written documentation and procedures for progressive disciplining for breaches of safety rules is considered a part of meeting due diligence requirements.

For the purposes of the WHS Act requirements, the duties or obligation of a PCBU do include:

- > reporting notifiable incidents
- > consulting with workers
- > consulting with other PCBUs
- > ensuring compliance with notices issued under the WHS Act
- > ensuring the provision of training and instruction to workers about work health and safety
- > ensuring that health and safety representatives receive their entitlements to training.

OFFICER CONSIDERATIONS

As an officer, consider:

- > how you consult and communicate with your managers, WHS advisers and workers
- > the processes and procedures you have in place allow for you to hear and see what is happening at the coal face of your business
- > what other methods may be suitable for you to ensure that you are aware of, and involved with, the health and safety aspects of your business—this could be through management committees, WHS committees, regular reporting processes, inspections.
- > how you cooperate and coordinate activities with other duty holders
- > whether you comply with licensing and registration obligations.

Section 27(5)(f)—to verify the provision and use of the resources and processes as they apply to:

- (c) 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.
- (e) 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.

HOW DO I KNOW THE SYSTEMS, POLICIES AND PROCEDURES ARE HELPING TO PROTECT THE HEALTH AND SAFETY OF OUR WORKERS?

The scope of your duty as an officer is directly related to the influential nature of your position. Continuous examination and care is required to ensure that the resources and systems of the business or undertaking are adequate to comply with the duty of care required under the WHS Act. This also requires officers to ensure that accountabilities are working effectively. Where you rely on the expertise of a manager or other person, that reliance must be reasonable and relevant independent enquiries and examination should be undertaken by the officer.

It is necessary to measure and evaluate safety performance to enable you to verify the effectiveness of systems, policies and procedures in line with:

- > the business structure
- > reporting
- > technology
- > training and information
- > auditing
- > documentation
- > consultation.

During the planning stage, procedures for measurement and evaluation of the system should be developed. These procedures should provide information to you, as an officer, on:

- > persons responsible for the monitoring and evaluation process
- > systems developed for the measurement of WHS performance—for example, a work health and safety information system, which records the number of incidents and accidents, number of hazard inspections and their results per year, etc
- > testing methods specific to your agency (for example testing the Emergency Control Organisation via a fire drill, or personal monitoring for employees involved in hazardous operations)
- > audit tools to be used, such as WHS-specific audit tools and internally developed audit methods.

It is important to evaluate and verify health and safety systems, policies and procedures that are in place are working effectively and to consider opportunities for improvement.

As a leader you should be prepared to learn from safety incidents. Understanding the reasons for the safety incident and taking the necessary steps to address the events leading to the incident will result in improved, safer outcomes for all workers.

A PREVENTABLE TRAGEDY

The Colombia shuttle explosion could have been avoided if warnings from NASA engineers about a previous foam block incident (failure) on another shuttle booster had been addressed.

The Colombia Accident Board determined—in their 2003 report into the disaster—that management and organisational problems were as much of a factor in the disaster as technical issues. Managers became comfortable with foam strikes on previous missions despite a requirement that debris not strike the shuttle. Concerns of lower level engineers about the strike on Colombia never reached upper management.

For this reason, it is necessary to implement a system which will allow corrective action to be taken where required. Corrective action may be necessary to fix a gap in the system as a preventive measure following evaluation. It may also be a reactive measure following an incident in the workplace. It is preferable that any corrective action taken is preventative, and therefore proactive in nature.

Regular reviews of performance and appropriate corrective action will result in a process of continuous improvement. This process should identify:

- > reasons why WHS performance may not be meeting organisational targets and objectives (possibly through deficiencies in systems, processes etc.)
- > instances of non-compliance with legislative requirements
- > opportunities to improve the organisation's work health and safety performance through adjustments of systems
- > changes necessary as a result of the introduction of new technology, plant, equipment, chemicals or work practices
- > the effectiveness of any changes made.

CONSIDER HOW WRITTEN RECORDS CAN HELP YOU DEMONSTRATE DUE DILIGENCE

Does everything have to be documented?

The WHS Act and Regulations state what records must be kept and the length of time the records must be kept. Keeping other records is optional, however if it is not recorded when it happens, what do you have available to demonstrate you have complied with your due diligence duties in relation to the matter?

SYNTHESIS

SYNTHESIS

Synthesis involves putting together the parts you analysed with other information to create a system that will help you to demonstrate that you have exercised due diligence in the workplace. You reach out for data or ideas derived from a variety of sources. It enables you to organise, construct, compose, and create your finished result.

The intent of the positive duty placed on officers under the WHS Act is to ensure engagement and leadership by officers in work health and safety management to prevent injury and illness in the workplace. This supports sustainability and improvement in work health and safety performance and workplace productivity.

The way in which activities are undertaken, including the ways in which decisions are reached, consultation and risk assessment are undertaken and so on, are critical in supporting an effective due diligence framework.

The critical elements of exercising due diligence are:

- > the things you should know regarding work health and safety matters (section 27(5)(a))
- > why the business or undertaking conducts specific operations and the risks and hazards associated with these operations (section 27(5)(b))
- > how the business or undertaking applies its resources in complying with the WHS legislation (subsections 27(5)(c) & (e))
- > what the information received tells you about the risks and hazards and how the business or undertaking responds (section 27(5)(d))
- > verification that the systems, policies and procedures effectively assist in protecting the health and safety of workers (section 27(5)(f)).

These requirements, while not exhaustive, form a basis for you, as an officer, to take action to ensure compliance with work health and safety laws by your organisation.

Taking a whole-of-system thinking approach to exercising due diligence enables the formulation of a plan for accessing information to assist decision making. Combining seemingly unconnected pieces of information that on their own do not necessarily create a need for change, can often provide an insight into wider or more subtle issues that need to be managed before they turn into serious health and safety issues.

Consider the insights, implications, and conclusions arising from working through each of the elements of due diligence.

This examination from a new (informed and considered) perspective casts new light on your former, current, and future knowledge of health and safety in your business or undertaking. Leading questions are a useful device to explore the implications or consequences of the conclusions reached.

WHAT'S POSSIBLE, WHEN YOU BRING ALL ELEMENTS TOGETHER— WHERE TO FROM HERE?

This guidance and information aims to assist you, as an officer, to get started and to identify some ways in which you can meet your due diligence obligations.

Aside from the mandatory requirement to exercise due diligence, as an officer in your organisation, you have so much more to gain from taking a proactive approach and making a genuine commitment to the health and safety of all of your workers.

The techniques of effective planning, consultation and communication can spread to other aspects of your organisation, for example:

- > worker/management cooperation can increase
- > cost of accidents, damage, and lost time goes down
- > quality of product, morale, and reputation goes up.

Most importantly, you and the other people in the workplace who share your working life return healthy and safely to your family and friends at the end of the day.