

# Is your business ready for greater WHS responsibility?

Recent changes to Work Health and Safety (WHS) laws have enacted additional responsibilities for persons conducting a business or undertaking management or supervisory roles.

The safety-related policies and procedures that are required to be implemented within a workplace have been broadened, along with significant increases to fines and penalties for employers found to be negligent.

There are now broader responsibilities applicable to employees within the workplace. Officers (as defined by section 9 of the Corporations Act) now have specific WHS duties and responsibilities. The Corporations Act provides an officer is a person who:

- makes decisions that affect the whole or a substantial part of the business
- has the capacity to affect significantly the business' financial standing, or
- in accordance with whose instructions or wishes, the directors are accustomed to act (excluding advice given by a person in the proper performance of functions attached to the person's professional capacity or their business relationship with the director).

The reforms have enacted a due diligence requirement on officers to ensure reasonable steps are taken to:

- acquire and keep up-to-date knowledge of WHS matters;
- understand the nature and operations of the trade, business or other undertaking of the business and associated risks;
- ensure that appropriate resources to eliminate or minimise hazards from such operations are available and utilised by the business;
- ensure the business has processes for receiving and considering information about incidents and hazards and responding in a timely manner; and
- ensure the business has, and implements, appropriate processes for complying with its relevant duties and obligations under the legislation; for example, reporting, consultations and training.

A consequence of these additional duties is that officers may be liable for failing to exercise the above mentioned due diligence, despite the business itself complying with its obligations, or without an incident or accident in the workplace even occurring. Managers, directors and employees now have duties to monitor and understand the business' safety performance and associated obligations.

A broader obligation has also been imposed on the person conducting the business or undertaking regarding consultation. Persons conducting the business or undertaking must consult with 'workers', not just 'employees', as far as is reasonably practicable, about safety-related matters, such as when the business is obliged to identify hazards, implement change or assess risks.

The overt costs and implications of workplace injuries are very high, but the covert repercussions such as lost productivity, training of replacement workers, investigation costs and even negative publicity carry their own importance. These factors provide greater weight to the requirement for solid control measures and injury prevention strategies.

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## The risks are real

In order to protect the health and safety of your employees in the work environment, you must firstly identify, evaluate and address all workplace risks to avoid ever-stiffening penalties.

For instance, during a busy time a privately-owned steel fabrication company employed a part time contractor who caught his hand in a machine and lost two fingers. This led to a full WHS investigation that resulted in the company being found liable for \$100,000 plus an additional \$45,000 in defence costs.

At a minimum, the following items should be considered as part of your initial review:

- Do you conduct risk inspections within your workplace?
- Do you consult with and inform your workforce on WHS-related matters?
- Do you have an effective and compliant WHS Management System (WHSMS)?
- Has your WHSMS been reviewed by an independent third party?
- Is your system and related documentation updated regularly in line with your evolving business functions and legislation?

Gow-Gates is well positioned to facilitate this process and can work with you to conduct a comprehensive gap analysis that will assist in identifying the high-level risk activities present in your workplace along with legislative requirements.

To learn more about how Gow-Gates can assist with your WHS needs please contact **Chad Hewitt** on Tel: 0447 277 782 or Email: [chewitt@gowgates.com.au](mailto:chewitt@gowgates.com.au)

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