

**Subject** Health And Safety: Directors And Officers

**Date** 22 March 2016

## Major changes in place

The incoming Health and Safety at Work Act 2015 introduces more direct liability for those in governance with regards to workplace health and safety. This acts as a contrast to the current regime, in which officers, directors and agents of a body corporate are convicted only if they "directed, authorised, assented to, acquiesced in or participated in" their organisation's failure to take all practicable steps to prevent harm occurring in the workplace.

## Definition of officers

Under the Act, any person who is an "officer" of a PCBU will owe a specific duty of due diligence and will be subject to an increased penalty regime. The definition of an "officer" includes directors of a company and "any other person occupying a position in relation to the business or undertaking that allows the person to exercise significant influence over the management of the business or undertaking (for example, a Chief Executive)."

## Responsibilities under the Act

Specifically, the new due diligence duty will require those in governance roles to exercise due diligence to ensure the PCBU complies with its health and safety obligations. Accordingly, boards and directors should aspire to move beyond a mere "compliance" attitude and adopt a "best practice" environment, where health and safety duties are taken seriously and are not a begrudging 'tick in the box' exercise.

In practical terms, officers are required to actively contribute to health and safety practices in the workplace. This requires them to remain informed about health and safety, and the risks associated with the business being carried out. The due diligence duty also requires officers to ensure that the PCBU has appropriate resources to minimise and respond to risks, and implements processes for complying with any duty or obligation under the Act.

This should at the standard of diligence and skill that a reasonable officer would exercise in the same circumstances, taking into account the nature of the business or undertaking and the position of the officer and the nature of the responsibilities undertaken by the officer.

## Liability

If a director or officer exercises due diligence according to the Act, they will not be liable regardless of the conduct of the PCBU or other officers. However, a failure to comply with the due diligence duty could result in prosecution and a fine of up to \$600,000 (if the behaviour is reckless as to the risk of death or serious injury or illness).

A director or officer can face a term of imprisonment but only in circumstances where he or she was found to have been reckless, as above. This requires the director or officer to have foreseen the dangerous consequences that could have happened, accompanied with an intention to continue the unsafe conduct or practice regardless.

## Next Steps

Noting the changes coming into effect from 4 April 2016, we are advising clients assess the roles of directors and officers within their business. It may be prudent to change structures and you should seek advice if you have any concerns. You consider seeking advice from Health and Safety Consultants to guide you on the above and providing specific advice on complying with health and safety requirements in your business.

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## We can assist with any changes you decide if needed.

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