Work Health and Safety Act 2012 (SA)

Due diligence for Officers (Governance) under WHS:
What you need to know and do about safety as an Officer of the University of Adelaide

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Overview of the training

1. New Work Health & Safety legislation
2. Duties owed under WHS Act
3. University’s HSW Management Framework
4. Due Diligence Report
5. Consequences of non-compliance
6. Summary
1. New Work Health & Safety legislation

- National effort to harmonise State/Territory-based Work Health & Safety legislation
- New *Work Health & Safety Act 2012* (SA) passed late 2012
- Others which have passed harmonised legislation: QLD, NSW, TAS, ACT, NT
- Implementation date for legislative changes in SA was 1 January 2013
Key changes under the WHS Act

• ‘PCBU’ has primary duty of care to ensure health and safety of ‘workers’
• ‘Workers’ includes people outside traditional employment relationship: eg. contractors, HDR students, titleholders
• ‘Officers’ owe personal duties to ensure the PCBU complies with the Act
• PCBU has broader consultation requirements
• Union right of entry
• Higher penalties
3. Duties owed under the WHS Act

**Primary duty**
- Person who conducts a business or undertaking

**Duties related to specific activities**
- Management or control
- Designers, suppliers, importers, manufacturers, installers, plant, substances or structures

**Duties related to specific role**
- Officers
  - Workers and ‘other persons’
    - Higher degree research students
    - Undergraduate students
    - Visitors
    - Volunteers

Reasonably practicable

Due diligence

Reasonable care
What is a ‘PCBU’ in the University context?

- The University of Adelaide
- Wholly-controlled entities of the University
  - eg. Adelaide Research & Innovation (ARI)
- Unincorporated joint ventures:
  - eg. eResearch SA
Who is an ‘Officer’ in the University context?

- 'Officer' given the same meaning as in the *Corporations Act 2001* (Cth)
- ‘Person who makes or participates in making decisions that affect a substantial part of the business’
- Broad scope of individuals:
  - Vice-Chancellor & President
  - Senior management of the University
  - Members of Council
  - Members of Council committees (where relevant)
  - Members of management committees (where relevant)
What are the duties owed by Officers?

• Officers **must** exercise ‘due diligence’ to ensure the University complies with its duties

• Due diligence is more onerous than the previous Officer’s standard of ‘reasonable care’

• Duty applies regardless of breach by University or risk to health and safety
Due Diligence for Officers

- Requires **reasonable steps** which include:
  - knowledge of WHS matters and understanding of operations, hazards and risk
  - ensuring appropriate resources and processes to
    - comply with WHS duties
    - control hazards
    - audit safety processes
    - receive and consider safety information
Volunteers

- Can only be prosecuted for a failure to take reasonable care.
- Cannot be prosecuted for a failure to exercise due diligence.
4. The University’s HSW Management Framework

HSW Policy & Handbook
- Objectives
- Required actions
- Responsibilities

Planning
- HSW Action Plan
- Schedule of Programmable Events
- Training Needs Analysis and Plan
- Corrective Action Plans

Implementation
- Responsibilities/processes as per HSW Handbook
- Hazard management
- Training
- Records and documentation
- HSW governance structure

Evaluation
- Internal Audit
- External Audit (WorkCover Validation)
- Interaction with other internal systems (eg. Legal Compliance Framework)

Improvement
- HSW Action Plan
- Consultation
- Policy review cycle
- Response to audits
- Legislative change monitoring and response
The University’s safety governance structure

- **Schools and Branches**: Governance of operational safety management. Consultative forum for local staff in relation to HSW.
- **Faculty & Divisional HSW Committees**: Monitors the University’s HSW system/performance and advises the VC on strategic HSW matters. Membership includes senior Faculty/Divisional Management.
- **University Health & Safety Committee (UHSC)**: Identifies / monitors exposure to HSW risks. Monitors and reviews policies and procedures, monitors compliance. Advises Council.
- **VC**: Council

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VC

Council

Audit, Compliance & Risk Committee
Your role in safety governance

- The extent of your authority
  - Governance decision-making
  - Oversight and review
- Which hat do you wear and when?
- The challenges of detail and complexity
5. Due Diligence Report

- Designed to assist you to discharge your obligations as an Officer
- Captures key information from the University’s existing HSW Management Framework
- To be introduced as a new standing report in 2013 (replaces existing HSW Performance Report)
- Should be considered alongside an understanding of the University’s operations, and its safety management system
## Due Diligence Report components

<table>
<thead>
<tr>
<th>Due Diligence component</th>
<th>Section of Due Diligence Report</th>
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</thead>
</table>
| **A.** Acquire and keep up-to-date knowledge of work, health and safety matters. | - Section 9, Key WHS Developments in Faculties and Divisions  
- Section 11, Legislative, Regulatory, and Compliance Review |
| **B.** Gain an understanding of the nature of operations of the business and undertaking of the person conducting the business or undertaking, and generally of the hazards and risks associated with those operations. | - Section 3, University Hazard Review  
- Section 5, Injury and Lost Time Statistics  
- Section 6, Key Incidents  
- Section 7, Claim Statistics |
| **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 on as part of the conduct of the business or undertaking. | - Section 8, Key WHS Issues in Faculties and Divisions  
- Section 10, Overdue Corrective Actions  
- Section 3, University Hazard Review  
- Section 5, Injury and Lost Time Statistics  
- Section 6, Key Incidents  
- Section 7, Claim Statistics |
## Due Diligence Report components

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</table>
| **D.** 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. | – Section 8, Key WHS Issues in Faculties and Divisions  
– Section 10, Overdue Corrective Actions  
– Section 3, University Hazard Review |
| **E.** Ensure 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 legislation. | – Section 10, Overdue Corrective Actions  
– Section 3, University Hazard Review  
– Section 11, Legislative, Regulatory, and Compliance Review |
| **F.** Verify the provisions and use of the resources and processes referred to in components C to E. | – Section 4, University Traffic Light Report  
– Section 5, Injury and Lost Time Statistics  
– Section 6, Key Incidents  
– Section 7, Claim Statistics |
Due Diligence Report flowchart

Faculties and Divisions
- 60+ Schools/Branches
- 8 Faculty/Division OHS Committees
- UHSC
- Due Diligence Report

Management Committees
- VC
- Due Diligence Report
- Audit, Compliance & Risk Committee
- Council

Governance Committees
- Finance Committee
- Estate Committee
- People & Culture Committee
- University Risk Management Committee
- Planning & Budgeting Committee

Due Diligence Report
Checklist for Officers

1. Do I understand the University's and my obligations in relation to work health and safety?

2. Do I understand the health and safety risks inherent in the University's operations and what the University does to control them?

3. Is the University's safety management system adequate and compliant? If I rely on someone to inform me of this, is that reliance reasonable?

4. Is safety management adequately resourced?

If the answer to any of these questions is 'no' or 'I don't know', then some attention is required to attain the standard of 'due diligence'.
6. Consequences of non-compliance

<table>
<thead>
<tr>
<th>Type of offence</th>
<th>Proposed maximum penalty for corporation</th>
<th>Proposed maximum penalty for individual</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 1:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• health and safety duty</td>
<td>$3,000,000</td>
<td>$600,000 for officers and/or up to 5 years’ imprisonment</td>
</tr>
<tr>
<td>• engages in conduct, without reasonable excuse, that exposes a person to whom duty is owed to a <strong>risk</strong> of death or serious illness or injury</td>
<td></td>
<td>$300,000 for workers and other persons and/or up to 5 years’ imprisonment</td>
</tr>
<tr>
<td>• <strong>reckless</strong> as to risk to any individual</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Category 2:</td>
<td>$1,500,000</td>
<td>$300,000 for officers</td>
</tr>
<tr>
<td>• health and safety duty</td>
<td></td>
<td>$150,000 for workers and other persons</td>
</tr>
<tr>
<td>• fails to comply with duty</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• exposes individual to a risk of death or serious injury or illness</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Category 3:</td>
<td>$500,000</td>
<td>$100,000 for officers</td>
</tr>
<tr>
<td>• health and safety duty</td>
<td></td>
<td>$50,000 for workers and other persons</td>
</tr>
<tr>
<td>• fails to comply with duty</td>
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Insurance

- The University has a D & O Policy.
- Public policy is against cover for criminal penalties where personal fault is involved.
Practical situations that might lead to liability of Officers

1. Prioritising operational issues over safety
2. Failure to spend money on safety
3. Lack of knowledge of safety issues
4. Failure to progress safety issues
7. Summary

- The *WHS Act 2012* (SA) imposes personal obligations on Officers to ensure compliance
- Officers **must** exercise due diligence
- The Due Diligence Report has been designed to assist you to discharge your obligations as an Officer
- This Report captures key streams of information from the University’s HSW Management System
- It should be considered alongside an understanding of the University’s operations, and its HSW Management System