

Engaging trained safety advisors to meet due diligence requirements in government (*Work Health and Safety Act 2011*)

1. Background

The [Work Health and Safety Act 2011](#) imposes a specific duty on officers of corporations and unincorporated bodies such as clubs and associations to exercise **due diligence** to ensure that the corporation, club or association meets its work health and safety obligations.

The duty requires officers to be proactive in ensuring that the corporation, club or association complies with its duty. Schedule 5 of the *Work Health and Safety Act 2011* defines an officer as:

- (a) an officer within the meaning of section 9 of the Commonwealth Corporations Act 2001, i.e. a person who makes, or participates in making, decisions that affect the whole or a substantial part of a corporation,
- (b) *an officer of the Crown*, or
- (c) *an officer of a public authority (including local government) but not an elected member of a local authority.*

In the government context, an officer is considered to be at the Director-General/Chief Executive Officer level. The duty applies regardless of whether an incident has occurred and irrespective of whether the corporation is prosecuted.

Due diligence in relation to ensuring health and safety is defined in Section 27 (5) of the *Work Health and Safety Act 2011*. In demonstrating due diligence, officers will need to show that they have taken reasonable steps to:

- acquire knowledge of health and safety issues
- understand operations and associated hazards and risks
- ensure that appropriate resources and processes are used to eliminate or minimise risks to health and safety
- implement processes to receive and respond to information about incidents, hazards and risks
- establish and maintain compliance processes
- access up to date safety information.

Trained safety advisors in government

While Workplace Health Safety Officers (WHSO's) will no longer be mandated under the *Work Health and Safety Act 2011*, the Queensland Government recognises advantages in retaining a trained safety advisor to assist an officer to satisfy their 'due diligence' obligations.

To minimise any confusion with the previously legislated WHSO, this policy refers to the retention of a 'trained safety advisor'.

Maintaining a role for a trained safety advisor within government agencies will:

- promote a positive work health and safety culture by sending a clear message that health and safety is valued by the agency
- support officers in meeting their due diligence requirements
- ensure safety information is updated
- be a cost-effective way of demonstrating due diligence.

2. Purpose

The purpose of this policy is to retain a health and safety role in government workplaces.

3. Scope

This policy extends to all Queensland Government agencies, Government owned corporations and statutory authorities.

4. Commencement

This policy will commence on 1 January 2012 with the commencement of the *Work Health and Safety Act 2011*.

5. Considerations for public sector organisations

- 1) An employer should retain a trained safety advisor for a workplace if 30 or more workers are normally employed at the workplace. **Thirty or more** means that during the current year, at least 30 workers are employed, or are likely to be employed, at the workplace for a total of any 40 days during the year.
- 2) A trained safety advisor can be appointed if less than 30 people are employed at the workplace, if an employer wishes to do so. If an employer is undertaking high risk work activities a decision may be made to engage a trained safety advisor regardless of the number of employees at the workplace in order to demonstrate 'due diligence.'
- 3) Where an employer has previously received approval (*under section 93 of the Workplace Health and Safety Act 1995*) to appoint a person to be the workplace health and safety officer for more than one workplace, these arrangements should be reviewed to determine if the person can reasonably perform the function of a trained safety advisor for each workplace. When making this decision an employer should consider the work tasks being currently undertaken and future work to assess the need for a trained safety advisor.
- 4) To ensure workers are aware of the identity of the trained safety advisor the employer should display a notice advising this information. The notice should be displayed in one or more conspicuous positions at the workplace.

6. Demonstrating due diligence

While trained safety advisors will not have legislated functions like the workplace health and safety officer, their role will be to support the employer in demonstrating due diligence. The due diligence criteria with suggestions on how to meet them are listed below:

1) Acquiring knowledge of health and safety issues

This can be met by:

- acquiring up-to-date knowledge of the *Work Health and Safety Act 2011*, regulations and codes of practice
- investigating current industry issues through conferences, seminars, information and awareness sessions, industry groups and 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 each corporation, club or association board meeting.

2) Understanding operations and associated hazards and risks

This can be met by:

- developing a plan of the operation 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 organisation's safety management system.

3) Ensuring that appropriate resources and processes are used to eliminate or minimise risks to health and safety

This can be met by:

- Establishing and maintaining safe methods of work
- implementing a safety management system
- recruiting personnel with appropriate skills, including safety personnel
- ensuring staffing levels are adequate for safety in operations
- giving safety personnel access to decision makers for urgent issues
- maintaining and upgrading infrastructure.

4) Implementing processes for receiving and responding to information about incidents, hazards and risks

This can be met by:

- employing a risk management process
- having efficient, timely reporting systems
- empowering workers to cease unsafe work and request better resources
- establishing processes for considering and responding to information about incidents, hazards and risks in a timely fashion
- measuring against positive performance indicators to identify deficiencies (for example, percentage of issues actioned within agreed timeframe).

5) Establishing and maintaining compliance processes

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.

6) Verifying the provision and use of the resources mentioned in due diligence criteria

Officers will need to ensure there is a system in place that records and provides evidence of the matters mentioned in due diligence criteria one-five.

It is important to note the duty to exercise due diligence will always remain with the officer and cannot be outsourced or delegated to a trained safety advisor. An employer's health and safety duties are not diminished by the appointment of a trained safety advisor or any act or omission of a person acting in the capacity of trained safety advisor.

7. Organisational support for trained safety advisors

To make a strong contribution as a trained safety advisor the following organisational support will be required. The trained safety advisor should have:

- access to relevant legislation, regulations and codes of practice
- knowledge of health and safety management principles, hazards and risks
- the opportunity to contribute to health and safety issues being considered at the corporate level
- the ability and delegation to communicate with other workers on health and safety matters input in regard of processes for receiving and responding to information about workplace incidents, hazards and risks.

8. Training

- Trained safety advisors can best be supported by Vocational Education and Training (VET) accredited training, to provide them with appropriate competency levels through a nationally recognised formal qualification.
- This policy does not mandate the Certificate IV in OHS qualification, however it encourages commensurate level of skill be attained. Agencies may choose to offer in-house training, comparative to the Certificate IV in OHS, to ensure the trained safety advisor maintains skills and knowledge of current workplace health and safety legislation and initiatives.
- Initial mapping of the Certificate IV in OHS competencies against the WHSO course indicates that WHSOs certified under the *WHS Act 1995* or those with a Statement of Attainment would require further training (approximately two days) to meet the requirement of the Certificate IV course. Several registered training organisations have begun promoting this option to industry.
- Government agencies are encouraged to undertake the appropriate level of training for their nominated trained safety advisors within a 12 month period from 1 January 2012.

9. Reporting

- Government agencies, statutory authorities and Government owned corporations will be required to keep a register of all trained safety advisors.
- The number of trained safety advisors will be included in yearly reporting information as part of annual reporting arrangements for Government agencies, statutory authorities and Government owned corporations.
- Measures that report on the implementation of all elements of this policy are being developed.