

QUICK FACT SHEET

Module 5: Duties of officers

Who is an officer?

An officer of a business or undertaking is defined in the Corporations Act. It includes:

- a director or secretary of the corporation
- any person who makes or participates in making decisions that affect the whole or a substantial part of the business of the corporation
- any person who has the capacity to significantly affect the corporation's financial standing
- any person who is appointed as an officer of an unincorporated association
- officers of the Crown or a public authority
- a partner in a partnership

Due diligence

Exercising due diligence includes an officer taking reasonable steps to:

- acquire and keep up-to-date knowledge of work health and safety matters
- gain an understanding of the nature of the operations of the business of the PCBU and generally of the hazards and risks associated with those operations
- ensure that the PCBU avails and uses appropriate resources and processes to eliminate or minimise risks to health and safety risks that arise from work carried out as part of the conduct of the business
- ensure that the PCBU has appropriate processes for receiving and considering information about risks, hazards and incidents, and responding to the information in a timely manner
- ensure that the PCBU implements processes for complying with all their obligations and duties under the WHS Act
- verify the provision and use of resources and processes by the PCBU to eliminate or minimise risks, receive and consider information and comply with their obligation

Effective WHS system

In order to demonstrate that he or she has exercised appropriate due diligence, an officer will need to show that the PCBU has an effective workplace health and safety system.

Breach of due diligence

Officers of a PCBU owe a duty to exercise due diligence to ensure that PCBUs comply with their duties and obligations under the WHS Act. If a company is charged with committing an offence by breaching one of its

WHS duties, officers may be held personally liable for failing to exercise due diligence to ensure that the company did not breach that duty.

Penalties for officers

If an officer of a PCBU fails to exercise due diligence to ensure a PCBU does not breach its WHS duties, a court can impose a range of penalties depending on the seriousness of the offence committed.

A PCBU commits a Category 1 offence if they

1. owe a health and safety duty
2. engage in conduct that exposes an individual (to whom that duty is owed) to a risk of death, serious injury or illness
3. are reckless to the risk of death, serious injury or illness from their conduct

An officer who fails to exercise due diligence to ensure that a PCBU does not commit a Category 1 offence can face a maximum penalty of \$600,000 and/or five years' imprisonment.

A PCBU commits a Category 2 offence if they:

1. owe a health and safety duty
2. fail to comply with that duty
3. expose an individual to a risk of death, serious injury or serious illness

An officer who fails to exercise due diligence to ensure that a PCBU does not commit a Category 2 offence can face a maximum penalty of \$300,000.

A PCBU commits a Category 3 offence if they:

1. owe a health and safety duty
2. fail to comply with that duty

An officer who fails to exercise due diligence to ensure that a PCBU does not commit a Category 3 offence can face a maximum penalty of \$100,000.