

INFORMATION FOR SENIOR OFFICERS OF ORGANISATIONS

OCCUPATIONAL HEALTH AND SAFETY ACT 2004

1ST EDITION

MAY 2005

The *Occupational Health and Safety Act 2004* clarifies and brings Victoria's safety laws up to date to reflect modern workplaces and arrangements.

The Act states that employers must take every reasonable action, and work proactively to ensure health and safety in their business activities.

The following information summarises the duties and obligations that officers of organisations have in taking reasonable care to ensure that their organisation complies with the Act.

Who is an officer?

Officers are generally only those people at the most senior levels of organisations that are genuinely in a position to prevent contraventions of the Act.

An officer is:

- a director or secretary of a corporation;
- an office holder or a partner in a partnership, unincorporated body or an association;
- a person who makes, or participates in making decisions that affect the whole, or a substantial part, of the business;
- a person who has the capacity to significantly affect the corporation's financial standing;
- a person in accordance with whose instructions or wishes the directors of the corporation are accustomed to act (unless the person is providing advice in a professional capacity);
- a receiver, or receiver and manager, of the property of the corporation;
- an administrator of a corporation;
- an administrator of a deed of company arrangement executed by the corporation;
- a liquidator of the corporation; or
- a trustee or other person administering a compromise or arrangement made between the corporation and someone else.

Who is not an officer?

Volunteers, irrespective of whether they receive out of pocket expenses, are not liable as officers under this Act.

Branch office managers, middle level managers, and supervisors in small businesses are not officers, given that they generally implement the decisions of others or report to the higher levels within their organisation.

The duties of officers

Officers must use the level of sound judgement, prudent decision-making and taking of action that any reasonable person would use to prevent and reduce hazards and risks to health and safety.

Officers should know what their own and their organisation's OHS obligations are and how they are managed, including:

- appointing a member of the executive with overall responsibility for health and safety;
- defining, documenting and communicating to all levels in the organisation their specific health and safety responsibilities, authority to act and reporting requirements;
- holding managers accountable for their health and safety responsibilities;
- allocating financial and physical resources so that their organisation's health and safety actions comply with the Act;
- employing or engaging sufficient numbers of qualified and competent people to advise on and to implement OHS requirements;
- ensuring that there are procedures in place for the systematic identification of workplace hazards, evaluation of their risk and implementation of controls to manage the risk;
- providing induction programs and training on OHS for all employees including management;
- ensuring there is a system in place for the reporting of hazards and incidents and for a prompt response to investigate and rectify them; and
- understanding their organisation's OHS performance and monitoring it over time.

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Officers and contraventions of the Act

If an organisation does not comply with the OHS Act or regulations, and that failure can be attributed to an officer not taking reasonable care, then that officer may be guilty of an offence. The liability of the officer will be determined objectively, having regard to the following:

- what they knew about the matter;
- the extent of their ability to make, or participate in the making of decisions that relate to the matter;
- whether any other person was involved in the decision-making and action taken or not taken; and
- any other relevant matter.

For example:

An employee identifies a rusty steam pipe in a production area and lodges a hazard report which is forwarded to senior management of the company. No action is taken to have the pipe repaired or replaced even though funds have been requested for the work by line managers. If the pipe bursts and an employee is injured, a senior manager from that organisation may be held responsible for failing to take reasonable care to prevent this incident.

When WorkSafe is investigating the potential liability of officers, a number of factors will be assessed to determine if they have taken all reasonable care. This assessment will include the following:

- the measures which might reasonably have been taken in the circumstances to avoid the incident, and if they fall within the duties, responsibilities and scope of the officer's functions;
- if the officer had previous advice or warnings regarding matters leading to the incident or should have reasonably known about the advice or warnings;
- if the officer failed to ensure that action should have been taken to prevent the incident;

- if the officer knowingly compromised safety for personal gain, or for commercial gain of the organisation; or
- if the contravention was attributable to an act or omission of another person.

FURTHER INFORMATION

This information is based on the *Occupational Health and Safety Act 2004* and should not be considered a legal document, or a substitute for the Act.

For further information please contact WorkSafe Victoria on 1800 136 089 or online at www.workcover.vic.gov.au

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