

FACT SHEET

Who is an officer?

Under the *Occupational Health and Safety Amendment Act 2011*, an officer of a corporation is as defined in section 9 of the *Corporations Act 2001*, with some exceptions. This amendment takes effect from 7 June 2011.

Who should read this?

This fact sheet is for officers of a corporation, including:

- directors, secretaries and senior managers of corporations
- officers of the Crown
- officers of public authorities.

Who is an officer?

An officer includes:

- a secretary or director of a corporation
- someone who makes, or participates in making, decisions that affect the whole, or a substantial part, of a corporation
- someone who has the capacity to significantly affect a corporation's financial standing
- someone who is accustomed to having their instructions actioned by the board – this does not include those who provide advice to the board as part of their role.

Who is not an officer?

Under the *Occupational Health and Safety Amendment Act 2011*, the following people are excluded from being an officer:

- a partner in a partnership
- a minister of the Crown
- an elected member of a local authority.

Volunteer officers

A volunteer officer of a corporation must also exercise due diligence to ensure the corporation complies with its OHS duties, but they cannot be prosecuted for failing to comply with their responsibilities as an officer.

For the purposes of the amendment, a volunteer is as defined in section 60 of the *Civil Liability Act 2002*.

A volunteer is someone who does work not for private financial gain and for a charitable, benevolent, philanthropic, sporting, educational or cultural purpose.

Your responsibilities as an officer

As an officer of a corporation, you must exercise due diligence to ensure the corporation complies with its OHS duties. These duties include:

- general duties relating to health, safety and welfare at work
- consultation
- notifying workplace incidents
- other relevant provisions in the regulations. (none prescribed at this stage).

Due diligence means taking reasonable steps to ensure compliance mechanisms are in place that enable a corporation to meet its OHS responsibilities. It means you must:

- have up-to-date knowledge of OHS matters
- gain an understanding of a corporation's operations, including its hazards and risks
- ensure that the corporation has available, and uses, appropriate resources and processes to minimise risks

- ensure that the corporation has, and implements, processes for receiving, considering and responding to information regarding incidents, hazards and risks
- ensure that the corporation implements processes for complying with any duty or responsibility under the *Occupational Health and Safety Act 2000* – eg reporting notifiable incidents, consulting with employees, complying with notices, ensuring OHS training and instruction is provided to employees, and ensuring that elected OHS representatives undertake any required course of training.

What should you do?

- Identify the officers of your corporation
- Ensure they have training in due diligence requirements
- Establish a due diligence framework for your corporation.

Further information

For more information about your role and responsibilities as an officer, visit workcover.nsw.gov.au and go to 'New legislation 2012'.

- Contact the Australian Securities and Investments Commission on 1300 300 630.
- *Occupational Health and Safety Amendment Act 2011*.
www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/0/5016501b29e8ae50ca2578860020c73e?OpenDocument.
- Corporations Act.
www.comlaw.gov.au/Details/C2011C00189/Html/Volume_1#_Toc290638925.

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This publication may contain occupational health and safety and workers compensation information. It may include some of your obligations under the various legislations that WorkCover NSW administers. To ensure you comply with your legal obligations you must refer to the appropriate legislation.

Information on the latest laws can be checked by visiting the NSW legislation website (www.legislation.nsw.gov.au).

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

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Catalogue No. **WC03368** WorkCover Publications Hotline **1300 799 003**
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ISBN 978 1 74218 847 8 ©Copyright WorkCover NSW 0611