

# WESTERN SYDNEY UNIVERSITY



## WHS Fact Sheet

### WHS Duties for “Officers”

#### Defining “Officers”

Officers have high level WHS responsibilities under the WHS Act 2011 (the Act). An officer is a person who has significant decision making abilities and financial control over a Person Conducting a Business or Undertaking (PCBU) or a substantial part of a PCBU. An officer is formally defined from the Corporations Act and includes directors or secretaries of organisations, chief financial or operating officers and those in executive positions who operate, control or govern a PCBU or part thereof. Decisions from officers affect the resources available for WHS within a PCBU.

At Western Sydney University the “Officers” include the University Senior Staff and Executive, Board of Trustees, Deans of Schools and Heads of Divisions. The requirements of Officers are detailed in Section 27 of the Act.

#### What is required from “Officers”?

The Act requires Officers to exercise **due diligence** to ensure that the PCBU complies with the Act. This includes ensuring that the PCBU has appropriate systems of work to manage WHS and that these systems are monitored and evaluated to achieve and sustain compliance. The expectation is that Officers are actively involved in WHS management within the PCBU.

Officers who fail to meet due diligence requirements under the Act can be held personally liable.

#### What is Due Diligence?

Due diligence includes taking reasonable steps to;

- Acquire and keep up-to-date knowledge of WHS matters,
- Gain an understanding of the PCBU operations including the hazards and risks associated with the operations,
- Ensure that the PCBU has appropriate resources and processes to enable WHS hazards to be identified and risks to be eliminated or minimised,
- Ensure that the PCBU has appropriate processes for receiving and responding in a timely and appropriate way to information about incidents, hazards and risks,
- Ensure that the PCBU has, and implements, processes for complying with any duty or obligation on the PCBU under the WHS act
- Verify, monitor and review processes

These are proactive duties, requiring the officer to continuously ensure the PCBU complies with duties and obligations under the WHS Act. Active verification, through inspections or auditing processes is expected to ensure resources and processes are available and in use.

For Officers to meet their due diligence requirements the PCBU needs to have;

- Appropriate governance, with defined authorities, responsibilities and accountabilities for managing WHS,
- Information gathering and reporting systems so that WHS information and advice can flow to Officers, to enable them to understand the hazards, risks, obligations and performance of the PCBU,
- Records related to decisions made by a PCBU in relation to WHS are retained.

## Penalties for Officers

The penalties for offences (relating to Officers) under the Act are divided into 3 categories.

Category	Maximum Penalty	Definition
1 – Reckless Conduct	\$600,000 or 5 years imprisonment or both	A person commits a Category 1 offence if: <ol style="list-style-type: none"> <li>a) the person has a health and safety duty, and</li> <li>b) the person, without reasonable excuse, engages in conduct that exposes an individual to whom that duty is owed to a risk of death or serious injury or illness, and</li> <li>c) the person is reckless as to the risk to an individual of death or serious injury or illness.</li> </ol>
2 – Failure to comply	\$300,000	A person commits a Category 2 offence if: <ol style="list-style-type: none"> <li>a) the person has a health and safety duty, and</li> <li>b) the person fails to comply with that duty, and</li> <li>c) the failure exposes an individual to a risk of death or serious injury or illness.</li> </ol>
3 – Failure to comply	\$100,000	A person commits a Category 3 offence if: <ol style="list-style-type: none"> <li>a) the person has a health and safety duty, and</li> <li>b) the person fails to comply with that duty.</li> </ol>

## Where can I go for more information?

- The following websites provide detailed information about the new WHS Act and the changes in legislation.
  - <http://www.workcover.nsw.gov.au/Pages/default.aspx>
  - <http://safeworkaustralia.gov.au/Pages/default.aspx>
- You can also contact WHS if you have would like further information.

## Related WHS Fact Sheets

- WHS Duties for Officers
- WHS Duties for Workers
- WHS Consultation Methods