**WHS LEGISLATION FACTSHEETS**

**Person Conducting a Business or Undertaking**

The primary duty of care and various other duties and obligation are placed on the ‘person conducting a business or undertaking (PCBU).

The ‘person’ can be either a body corporate (company), unincorporated body or association and a partnership. An individual is only a PCBU where the individual is a sole trader or self-employed person.

A ‘Business” is an enterprise usually conducted with a view to making a profit and has a degree of organisation, system and continuity.

An undertaking may have elements of organisation, systems and possibly continuity, but is usually not profit-making or commercial in nature.

In accordance with the primary duty of care the PCBU must ensure:

* safe systems of work
* a safe work environment
* accommodation for workers, if provided,  is appropriate
* safe use of plant, structures and substances
* facilities for the welfare of workers are adequate
* notification and recording of workplace incidents
* adequate information, training, instruction and supervision is given
* compliance with the requirements under the work health and safety regulation
* effective systems are in place for monitoring the health of workers and workplace conditions.

A workplace is defined as a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work.

A worker is a person who carries out work in any capacity for a PCBU and includes:

* employee
* trainee
* volunteer
* outworker
* apprentice
* work experience student
* contractor or sub contractor
* employees of a contractor or sub-contractor
* employee of a labour hire company assigned to work for a PCBU.

An officer under the WHS Act has a positive duty to exercise due diligence to ensure the PCBU complies with its health and safety obligations. An officer is defined under the Corporations Act 2001 and includes:

1. a director or secretary of the corporation, or
2. a person:
3. who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation, or
4. who has the capacity to affect significantly the corporation’s financial standing, or
5. in accordance with whose instruction or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person’s professional capacity or their business relationship with the directors or the corporation).

Officers therefore include directors, company secretaries, CEOs, CFOs and potentially general managers where they have influence over more than 50% of the organisation. PCBUs need to review position descriptions and determine who in their organisation is likely to be considered a PCBU and ensure that there are systems in place to ensure that they meet due diligence obligations. Under the WHS Act an Officer can breach the legislation even where the PCBU is not liable.

Due diligence obligations include:

* to acquire and keep up to date knowledge of work health and safety matters
* to gain an understanding of the operations of the business and the hazards and risks involved
* to ensure appropriate resources and processes are provided to enable hazards to be identified and risks to be eliminated or minimised
* to ensure information regarding incidents, hazards and risks is received and the information is responded to in a timely way
* to ensure the PCBU has, and implements, processes for complying with any legal duty or obligation
* to ensure processes are verified, monitored and reviewed.

**Source: WorkCover NSW website**