

# Due diligence at work

A checklist for action  
on workplace health  
and safety for  
company directors  
and managers



November 1997



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This guide and the checklists in it are designed to help managers take 'due diligence': that is, to take every precaution reasonable in the circumstances to protect the health, safety and welfare of their workers.

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## 1. About this publication

This guide on due diligence in the workplace is to help employers, directors, managers and supervisors determine whether they are adequately protecting the health, safety and welfare of employees at their workplace.

Quite simply, due diligence requires that employers, supervisors and others understand and carry out their legal duties, assess the risk and hazards in the workplace on an on-going basis and **take all reasonable precautions** with respect to those risks.

A series of checklists are to help you with establish or improve your health and safety program. They also provide a basis for a system that, if necessary, may help you demonstrate that you have exercised due diligence in the workplace.

Remember that this publication is intended as a guide only. As there are a number of different ways to carry out due diligence, WorkCover does not seek to impose the checklists as a requirement. Nor should this guide be a substitute for carrying out a genuine due diligence procedure.

## 2. What is due diligence?

At its simplest, due diligence means take care. In the workplace, it means taking every precaution reasonable in the circumstances to protect the health, safety and welfare of all of your workers. Evidence of due diligence is one of the two defences available to a director or person concerned with the management of a corporation charged with an offence under Section 50(1) of the *Occupational Health and Safety Act 1983*.

Offences by corporations

50. (1) *Where a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each director of the corporation, and each person concerned in the management of the corporation, shall be deemed to have contravened the same provision unless he or she satisfies the court that:*
- (a) *(Repealed)*
  - (b) *he or she was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or*
  - (c) *he or she, being in such a position, used all **due diligence** to prevent the contravention by the corporation.*
- (2) *A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.*
- (3) *Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any corporation by which an offence against the provision is actually committed.*
- (4) *In the case of a corporation which is a council of a local government area, a member of the council (in his or her capacity as such a member) is not to be regarded as a director or person concerned in the management of the council for the purposes of this section.*

Due diligence is a proactive management tool that, when used properly, will foster the careful and systematic identification and assessment of specific workplace hazards and the establishment of control measures to prevent costly injuries and illnesses at work.

## What is required?

Due diligence requires everyone in the workplace, (employers, directors, managers and supervisors, in particular) to understand and comply with the **duties** set out in the *Occupational Health and Safety Act* and associated legislation.

Next, you must identify **risks to safety, health and welfare** in your workplace, particularly those risks identified in the *Occupational Health and Safety Act* and associated legislation. Once risks are identified, due diligence requires that you address these risks through a **properly functioning and documented** health and safety system. The more harmful or serious are the potential dangers, the more you must guard against them to prevent workplace injuries and illnesses.

Whether an individual acted diligently depends on whether he or she took every precaution reasonable in the circumstance **for that particular case**. What might constitute duly diligent behaviour in one case may not hold true in another. This is because each situation and each workplace is unique and needs to be assessed on an individual basis. Still, there are a number of general measures that all employers can and should implement in an attempt to comply with the Act and to demonstrate due diligence. These include:

- carrying out all duties under the Act and ensuring that your company complies with the Act and associated legislation;
- setting up a well-documented system for identifying, reporting and responding to all actual and potential hazards in the workplace;
- establishing safe practices, procedures and controls that are specific to the hazards in your workplace and that either meet or exceed the requirements set out in the Act;
- providing instruction and training on an on-going basis to all employees, including supervisors and workers;
- communicating regularly with employees about foreseeable health and safety hazards;
- allocating adequate time and resources for the health and safety program to be established and followed by all parties in the workplace; including the occupational health and safety committee;
- monitoring and auditing of your program on a regular basis.

### 3. How does your company measure up?

We have identified 10 key elements to due diligence from the general measures listed in the previous section. These are:

1. Health and safety policy and program
2. Duties of employers and others
3. Occupational health and safety committees
4. Contractors
5. Hazard identification, assessment and control
6. Instruction and training
7. Communication
8. Human resources
9. Notification of accidents and WorkCover infringement notices
10. Auditing and review

The following checklists have been developed to help you assess your ability to demonstrate due diligence. The series as a whole is a composite of many of the practical things that the courts have come to look for in determining whether a company, its directors and its managers practice due diligence. While not exhaustive in scope, the checklists will provide a solid foundation for introducing due diligence concepts into the workplace.

Use the checklists to find out whether your company (namely the person involved in managing the company) is meeting the key components of due diligence (that is, following appropriate practices, procedures and controls). Follow up on any items where the answer is 'no' and take the necessary actions to bring your workplace health and safety program to a level that demonstrates a **duty of care** that would be considered 'reasonably practicable' (See Section 53 of the OHS Act).

You will find there are benefits for your effort, such as a reduced incidence of work-related injuries and illnesses, reduced lost time, reduced workers compensation costs, increased productivity and improved quality.

## 4. Key elements of due diligence

### Component 1.0 – Health and safety policy and program

Employers must ensure the health, safety and welfare of their employees and that includes:

- providing or maintaining equipment and systems of work that are safe and without risk to health;
- making arrangements for ensuring the safe use, handling, storage and transport of equipment and substances;
- providing the information, instruction, training and supervision necessary to ensure the health and safety at work of employees.

An effective way of fulfilling these requirements of the *Occupational Health and Safety Act*, is for an employer to prepare and review regularly (e.g. annually) an occupational health and safety program to implement that policy.

#### a. Health and safety policy

A health and safety policy is a statement of intent and a commitment to plan for coordinated management action. A policy indicates the values, goals and priorities of your organisation in preventing injuries and illnesses at work. Without a written health and safety policy, your company may have a hard time convincing WorkCover or the courts that it is committed to health, safety and welfare. But, this only the first step.

#### Checklist - health & safety policy

Checklist	Yes	No	Action plan needed
1. Does your company have a written health and safety policy? Is it endorsed by a senior manager or operating officer?			
2. Does the policy indicate the commitment of the employer to health, safety and welfare in the workplace?			
3. Does the policy contain a reference to your health and safety program and the related procedures for implementing your policy objectives?			

Continued...

Yes No

	Yes	No	
4. Does the policy statement list in general terms the standards and objectives expected of all people?			
5. Is the policy posted in a conspicuous place (eg, a lunchroom, main hallway)?			
6. Is the policy effectively communicated to every employee in the workplace?			
7. Does the employer to ensure that it remains applicable review the health and safety policy at least annually?			

### **b. Health and safety program**

A health and safety program should be developed to implement the health and safety policy. A health and safety program outlines rules, policies and procedures that are specific to the types of hazards that are present or may arise in your workplace. A well-established management system and management commitment is necessary for any program to be effective. A good occupational health and safety system should have established procedures for:

- identifying risks to people, processes, equipment, materials and the environment;
- establishing controls and setting standards;
- measuring and evaluating the results for continuous improvement;
- defining responsibilities and accountabilities.

In the event of a prosecution, it would be useful to an employer (or director, manager, supervisor) to show that he or she had taken all reasonable care by following the system components listed and performing all of the program activities diligently.

While program activities would be the same from company to company in most cases, the emphasis and techniques might vary. These would have to be specific to the workplace and depend on the organisational structure, the nature of the business and the risk factors.

## Checklist – health and safety program

Checklist	Yes	No	Action plan needed
1. Does the written health & safety program indicate your company's commitment to health, safety and welfare (stated also in general terms in the policy)?			
2. Are health, safety and welfare responsibilities clearly defined, assigned and understood by everyone at the workplace?			
3. Is there a person who is responsible for developing and implementing the health and safety program and for ensuring the program's compliance with all legislation? Is this a senior position in the organisation and does this person have authority to take action?			
4. Are supervisors and managers aware of their responsibilities under the <i>Occupational Health and Safety Act</i> ? Do they ensure that people under their control work in compliance with the Act and Regulations?			
5. Is there a hazard identification and reporting system in place and is there active participation by the Occupational Health and Safety Committee?			
6. Are there written job safety procedures for every job and task in the workplace?			
7. Does your program contain written procedures for dealing with: <ul style="list-style-type: none"> <li>- hazardous activities?</li> <li>- equipment?</li> <li>- materials?</li> <li>- jobs and tasks?</li> <li>- work processes?</li> <li>- environment?</li> <li>- people issues?</li> </ul>			
8. Are there written procedures in place that are regularly updated to incorporate changes in the environment, equipment, materials, processes or personnel? Do these procedures serve to eliminate or minimise the hazards introduced by such changes?			

**Continued**

	Yes	No	
9. Does the program outline specific things that need to be done to ensure compliance with health and safety legislation (eg, accident reporting and investigations, provision of training, working with OHS committees)?			
10. Are there specific standards set in the health and safety program so that performance of each activity or element can be measured?			
11. Is an annual review conducted of the health and safety program to ensure that it is consistent with the policy?			
12. Is equipment maintained in safe operating condition?			
13. Are details of each safety procedure set out in a manual and given to each employee? Do supervisors ensure that all employees comply with safety procedures (e.g, lockout procedures, machine guarding, confined space entry procedures)?			
14. Is there regular and on-going communication between workers, supervisors and managers on hazards and potential hazards?			
15. Do hiring practices specify the obligations as set out under the <i>Occupational Health and Safety Act</i> ?			
16. Does the health and safety program contain provisions for disciplinary action to enforce safety rules?			

**Component 2.0 – Duties of employers and others**

Under the *Occupational Health and Safety Act*, everyone in the workplace — employers, supervisors and employees, directors and managers — has a role to play in making the workplace healthy and safe.

If employers and their employees don't understand and carry out their duties, any attempts at proving due diligence are, for obvious reasons, destined to fail. Think about the risks and hazards that are introduced to the workplace when duties aren't fulfilled: hazards such as the incompetence of supervisors, ignorance of workplace dangers, poorly maintained equipment and inadequate instruction and supervision. Clearly,

everyone must guard against such hazards.

Employers '**must** ensure the health, safety and welfare at work of their employees'. (Section 15 of the Act). The only defence is that 'it was not reasonably practicable' to comply, or any contravention 'was due to causes over which he had no control'. (Section 53 of the Act). This is called the general duty of care. Where a company is involved, the decisions are made by the directors and other persons concerned in the management of the company. Those persons must ensure the health, safety and welfare of the employees at the workplace.

## Checklist – employers

Checklist	Yes	No	Action plan needed
<i>Does the employer</i>			
1. Provide information, instruction, training and supervision to employees to protect their health, safety and welfare?			
2. Appoint <b>competent</b> supervisors. Competent persons are persons who: - are qualified because of their knowledge, training and experience to organise work and its performance; - are familiar with the provisions of the Act and associated legislation that apply to the work; and - have knowledge of actual or potential dangers to health and safety in the workplace.			
3. Inform workers of any hazards in the workplace and how to safely handle, store, use, dispose of and transport any article, device, equipment or biological, chemical or physical agent?			
4. Provide equipment, materials and personal protective equipment as prescribed by the Act and associated legislation?			
5. See that equipment is maintained in good condition?			
6. See that the equipment, materials and personal protective equipment provided are used as prescribed?			
7. Carry out measures and procedures required by the Act and Regulations?			
8. Assist and cooperate with the Occupational Health and Safety Committee?			
9. Take precautions that are reasonable practicable in the circumstances to protect workers?			

## Checklist - supervisors

Checklist	Yes	No	Action Plan Needed
<i>Do supervisors</i> 1. Advise workers under their control of potential or actual hazards?			
2. Provide workers with written instructions on the measures and procedures that are to be followed?			
3. Ensure that workers under their control work, use, or wear the equipment, personal protective equipment or clothing that the employer requires or that is required by the Act?			
4. Ensure that workers work in the manner and with the personal protective equipment, measures and procedures required by the Act and applicable Regulations?			
5. Take precautions that are reasonably practicable in the circumstances to protect worker health and safety?			

## Checklist - employees

Checklist	Yes	No	Action plan needed
<i>Do employees</i> 1. Take reasonable care of the health and safety of other persons at the workplace?			
2. Use or wear the equipment, personal protective equipment or clothing that is required by the employer?			
3. Cooperate with respect to legislative requirements?			

## Directors' and managers' duties

Directors and managers of a corporation have a **personal obligation** to take all reasonable care to ensure that the corporation complies with the Act and its associated legislation, and with the requirements of WorkCover.

To effectively carry out this responsibility, directors and each person concerned in the management should ensure that the company has a system in place for complying with the law. They must also keep abreast of major health and safety issues in the company and act immediately when there is a failure in the health and safety in the company and act immediately when there is a failure in the health and safety system. Written documentation of this active and personal involvement is also critical.

## Checklist – directors and managers

Checklist	Yes	No	Action plan needed
<i>Do directors' and managers'</i> 1. Ensure that there is a system in place for complying with the law?			
2. Review health, safety and welfare issues at every board meeting and ensure that the company is in compliance with the Act (e.g. are procedures in place)? Is there an active occupational health and safety committee?			
3. Act promptly when they become aware of a problem (e.g. if a notice is issued)? Do they promptly issue instructions in writing, to the appropriate company official to ensure that any contraventions are quickly corrected?			
4. Follow up to ensure instructions have been carried out?			
5. Keep documentation on file to demonstrate their involvement in major health and safety issues?			
6. Take the appropriate steps after an injury or incident in terms of reporting or rectifying procedures?			

## Component 3.0 – Occupational health and safety committees

Occupational health and safety committees must be established in workplaces of 20 or more where the majority of employees request it. The occupational health and safety committee provides the basis for cooperation on safety matters through the **internal responsibility system**. The concept underlying the internal responsibility system is that employers and workers must share the responsibility for workplace health and safety as they are in the best position to identify health and safety hazards and to come up with practical solutions.

The occupational health and safety committee has the right to make written recommendations to the employer to correct hazards. Committees have the power to:

**Review** measures taken to make the workplace healthy and safe. (OHS Act section 24(1)(a))

**Bring** to the attention of the employer and investigate any situation that a committee member or an employee thinks is unsafe (OHS Act section 24(1) (b))

**Resolve** any health and safety problem, if possible. If the committee cannot resolve the problem it can ask an inspector from WorkCover NSW to help. (OHS Act section 24 (1)(c) and 24 (2))

The OHS (Committees in Workplaces) Regulation 1984 sets out the procedures for committees, their functions and powers as well as the training for committee members.

The law has set up a comprehensive compliance mechanism for enhancing the health, safety and welfare of employees.

To prove they have been duly diligent, employers must be able to show that they actively support and fully cooperate and consult with the occupational health and safety committee. The duly diligent employer (or director or manager or supervisor) will undertake to correct promptly any deficiencies that the committee has identified.

### Checklist – occupational health & safety committees

Checklist	Yes	No	Action plan needed
1. Is the committee in compliance with the requirements of the Act and Regulation (e.g, in terms of its composition and structure)?			
2. Has the committee established terms of reference that specify: - the length of time that a members services on the committee (to ensure continuity); how the different departments will be represented; how the convenor or chairperson will lead meetings?			
3. Is the committee provided with sufficient time and financial and other resources to carry out effectively its functions (e.g, time to prepare for meetings, secretarial support)?			

**Continued****Yes No**

	Yes	No	
4. Have all committee members been trained in health and safety legislation and hazard identification to enable them to act effectively?			
5. Has the convenor been given additional training to enable him or her to carry out an OHS leadership role effectively?			
6. Are there responses in writing to committee recommendations, with an implementation timetable or with reasons for disagreement?			
7. Is the committee provided with information, such as copies of any reports dealing with OHS issues?			
8. Is relevant training developed and implemented by the employer in consultation with the committee? See also <u>Instruction and training</u> .			
9. Is the training, detailed above, and workers' familiarity with it reviewed at least annually in consultation with the committee? See also <u>Instruction and training</u> .			

## Component 4.0 – Contractors

An employer who retains contractors to provide services at the workplace remains primarily liable for ensuring that the contractor’s employees are not exposed to risks to their health or safety while they are at his/her place of work. In addition, contractors as employers, have liabilities to ensure the health, safety and welfare of their own employees. In showing due diligence, the employer cannot point to the contractor as having responsibility for health and safety.

In short, while work can be contracted out, responsibility for health and safety cannot. This means that the employer must take all reasonable steps, including training and testing, to ensure that any contractors retained to provide services at the workplace understand their obligations under the *Occupational Health and Safety Act* and comply with them.

### Checklist - contractors

Checklist	Yes	No	Action plan needed
1. Has your company conducted training and testing programs for the contractors it regularly retains?			
2. Do the contractors understand and agree to comply with their obligations under the Act? Is the agreement obtained in writing?			
3. Is there documentation to ensure that the contractor is aware of willing to work in compliance with all company safety rules and procedures?			
4. Has the employer or a representative of the employer met with the contractor prior to the start of work to review safe work practices and obligations?			
5. Is the workplace visited regularly by the employer to ensure that the safety measures and procedures detailed in the contract are being met?			
6. Does your company receive regular confirmation from the contractor that all safety measures and procedures are being carried out?			
7. Does your company ensure that contractors take disciplinary action for breaches of safe work practices?			
8. Are all meetings and discussions with the contractor documented?			

## Component 5.0 - Hazard identification, assessment and control

Under the *Occupational Health and Safety Act*, employers have the duty to ensure the health, safety and welfare of workers. *The Occupational Health and Safety Act* and associated legislation specify certain risks or hazards that must be guarded against. However, there are many other risks that are not specifically covered. It is up to the employer to identify, assess and control these too.

An important part of bringing due diligence to work is to develop and implement procedures to identify hazards before an injury occurs.

The *Occupational Health and Safety Act* expects employers (Directors, managers, supervisors and others in authority) to consider, in advance, the jobs to be performed by employees and to take due care to inform, train and protect them from hazards. Once a hazard is identified by any party, the employer must take corrective action.

Effective hazard identification, assessment and control are central to a successful health and safety program and any due diligence defence. Hazards are identified through a variety of techniques such as job safety analysis, workplace inspections, injury and incident investigations, exposure assessments, chemical process safety and system safety reviews. The involvement of OHS committees is critical in the identification, assessment and control of hazards.

### Checklist – hazard identification, assessment & control

Checklist	Yes	No	Action plan needed
1. Is there a system for identifying, reporting and responding to hazards or potential hazards at work?			
2. Does the employer take corrective action when hazards are reported?			
3. Are all potential and actual hazards identified and communicated to the employees?			
4. Are regular workplace inspections conducted by members of the occupational health and safety committee?			
5. Do supervisors and employees monitor their work areas and equipment on an ongoing basis to identify and correct hazardous situations?			
6. Are written procedures established for different types of inspections (e.g, production, equipment vehicle)? Do the written procedures have specific checklists for reporting hazards?			

**Continued**

	<b>Yes</b>	<b>No</b>	
7. Is the supervisor actively involved in all aspects of audits, inspections and other means of hazard identification so that a system is in place to address all actual or potential hazards?			
8. Is there an assessment procedure for hazards that is based on degree of risk, probability of occurrence, number of persons exposed, and duration of exposure?			
9. Are high-risk activities (e.g, confined space entry, working with electricity) identified and safe procedures put in place?			
10. Are the assessment criteria (listed in 8 above) taken into account when determining priorities for action?			
11. Are appropriate control mechanisms (such as engineering controls, work practices, hygiene practices and procedures, personal protective equipment, emergency plan, etc.) in place and maintained?			
12. Are standards set for each hazard control element? Do these standards take applicable regulations, standards, codes, manufacturing specifications, etc, into account?			

## Component 6.0 – Instruction and training

Providing comprehensive and effective health, safety and welfare instruction and training to all parties in the workplace is a key component of any due diligence program. Managers, supervisors and occupational health and safety committee members, need training in order to understand and effectively carry out their duties. Employees need training too; they must understand their responsibility to work safely and to report hazards. Also, they must be made aware of every potential hazard and trained in how to perform every aspect of their work safely and efficiently.

To prove due diligence, employers (directors, managers and supervisors) must be able to demonstrate that not only was sufficient health and safety instruction and training provided, but that recipients understood the training and successfully applied it to their jobs.

### Checklist – instruction and training

Checklist	Yes	No	Action plan needed
1. Are supervisors, managers, directors and employees trained to understand their obligations under the Act and associated legislation?			
2. Are employees trained to work safely and efficiently, in accordance with health and safety laws and company rules and procedures?			
3. Is induction training provided to all employees on general hazards and safety rules of the workplace? In addition, is job-specific training provided on specific hazards, safety rules and practices related to specific work assignments?			
4. Can recipients understand the training? For example, have language and literacy barriers to understanding training been addressed (e.g, by translating materials into the language/s used in the workplace, by using videos and demonstrations, by using a 'buddy' system.			
5. <i>Does training cover</i> <ul style="list-style-type: none"> <li>- applicable OHS laws and company safety rules and procedures?</li> <li>- hazardous materials that workers may be exposed to and how to safely handle, store, use and dispose of these materials?</li> </ul>			

**Continued**

	Yes	No	
			<ul style="list-style-type: none"> <li>- hazardous physical agents that workers may be exposed to (eg, heat, cold, vibration, radiation)?</li> <li>- how to safely use equipment?</li> <li>- how to use and care for personal protective equipment (e.g, respirators, welding goggles, safety boots)?</li> <li>- what to do in an emergency (first aid, exit routes)?</li> </ul>
6.			<p>Have employees been evaluated or tested to ensure that they understand and can apply what they've been taught? (Tests can be performance-based, oral, written etc.) Are test results kept on file? Is additional training and testing carried out, if a person doesn't pass any tests given?</p>
7.			<p>Is refresher training provided regularly?</p>
8.			<p>Is training updated on a regular basis to ensure that it covers the equipment, materials and processes that are currently being used in the workplace?</p>
9.			<p><i>With respect to hazardous substances specifically</i></p> <ul style="list-style-type: none"> <li>- is training on hazardous substances developed and implemented by the employer in consultation with the occupational health and safety committee?</li> <li>- is this training and the worker's familiarity with it reviewed at least annually, and whenever there is a change in circumstances that may affect the health or safety of the workers? Is this review done in consultation with the committee?</li> </ul>
10.			<p>Have all training activities been documented (date of training, content, who received the training)? Are these records kept on file?</p>
11.			<p>Is there a procedure in place to monitor and enforce the health and safety given to workers?</p>

## Component 7.0 - Communication

The workplace is a dynamic environment, one in which changes are constantly introduced – new equipment, new materials, new processes, new people. All of these changes can introduce new hazards. For this reason, on-going communication with employees about the **specific risks** in their jobs and **the specific steps that should be followed** to guard against an accident or injury is essential.

Regular communication with employees on health, safety and welfare is also an excellent way to reinforce the learning from more formal instruction and training and to underscore the company's commitment to protect employee health, safety and welfare.

### Checklist - communication

Checklist	Yes	No	Action plan needed
1. Does management regularly communicate on health and safety issues and encourage two-way communication between employees and themselves?			
2. Do supervisors regularly communicate to their workers the hazards and potential hazards involved in their tasks and provide training in how to work safely to protect against those hazards?			
3. Are changes to tools, equipment, materials, processes and procedures communicated to employees before they are implemented? Are employees given specific instructions in how to work safely when these workplace changes are made?			
4. Is health and safety regularly discussed at a supervisory, managerial and department meetings? For example, are safety rules, practices and procedures regularly reviewed? Are requirements of the law discussed (e.g, MSDS)? Are employee questions and concerns about health and safety discussed?			
5. Are safety rules and procedures posted in prominent places to remind workers how to work safely?			

## Component 8.0 – Human resources

Since worker protection is the main goal of the *Occupational Health and Safety Act*, health and safety program activities should reflect management's commitment to this goal. Employers (directors, managers, supervisors) must ensure that employees follow the requirements of the Act and associated legislation and that job descriptions reflect these requirements.

As well, employees should be monitored through regular performance reviews. Maintaining adequate staffing levels is another area where employers must be duly diligent. This is especially important if a company is planning to restructure or downsize. In such cases, employers may need to implement tighter control measures and increase the frequency of inspections and audits.

### Checklist – human resources

Checklist	Yes	No	Action plan needed
1. Are recruitment processes and placement processes in compliance with obligations under the Act? For example, are <b>competent</b> persons put into supervisory positions?			
2. When recruiting new employees or contractors, are they asked for proof of any certificates of competency and other qualifications required for the job (e.g, forklift operator, crane driver)? - are these certificates checked to ensure that they are current and valid? - does the certificate meet the requirements of applicable health and safety laws? - are certificates periodically verified to ensure that they remain current?			
3. Do job descriptions contain specific requirements for health, safety and welfare? Is employee performance measured against these requirements?			
4. Is there written policy violations of safety rules?			
5. Is there a procedure in place to ensure that everyone in the workplace follows safety rules and practices that are implemented?			
6. Are adequate staffing levels maintained to ensure the health, safety and welfare of workers?			

**Continued****Yes    No**

7. Are relevant health, safety and welfare procedures discussed with all employees and is written documentation kept showing that these subjects have been covered?			
8. Are warning letters given to employees and kept on file, before action is taken, if they breach the requirements of the Act or company safety rules, procedures and standards?			
9. Are written records kept of measures taken against employees for health, safety and welfare breaches? Do these records include the date and time of breach, disciplinary action taken by management and name of person initiating the discipline?			

## Component 9.0 – Notification of accidents and WorkCover Infringement Notices

### Notification of accidents

Section 21B requires that where there is a death in the workplace the plant involved should not be disturbed and WorkCover should be notified immediately.

In addition, under Section 27 of the *Occupational Health and Safety Act* and the *OHS (Notification of Accidents) Regulation 1990*, the employer has the obligation to notify WorkCover within seven days of any accidents causing death or serious personal injury, any work-related illnesses and dangerous occurrences. The **Accident Report Form** details among other things, the names and addresses of the person involved in the accident, the employer, witnesses to the accident, nature and circumstance of the injury, description of the machinery or equipment involved, if any, time and place of injury, etc. the form must be submitted within seven days and a copy retained by the employer for at least five years. The law has set out criteria for accident reporting and a duly diligent employer must take note and have this information well documented.

Employers should ensure that management and supervisors understand their legal obligations for reporting accidents and injuries.

### WorkCover Infringement Notices

Under Sections 31R, 31S and 51B of the *Occupational Health and Safety Act* and the *OHS (Penalty Notices) Regulation 1996*, WorkCover inspectors have the power to issue Infringement Notices if they find that there is a contravention under the Act. There are three main kinds of Notices:

- Prohibition Notices
- Improvement Notices
- Penalty Notices (on-the-spot fines)

Other particular notices can be issued under Sections 21B, 21 C and 31Z of the OHS Act.

The employer must act upon these notices and, if there is disagreement, the law provides the employer with the option to appeal the notice within a specified time. All documents and evidence, as necessary, should be preserved in case of legal proceedings.

It is important to remember that proper written records (for illnesses, injuries or notices issued by an inspector) should be maintained.

## Checklist – accident notifications & WorkCover Notices

Checklist	Yes	No	Action plan needed
1. Is there a comprehensive injury /incident investigation reporting procedure in place and is it monitored on a regular basis to ensure that it is being followed?			
2. Is there an internal procedure that requires management to undertake its own investigation after an incident/accident? Is this investigation thorough and detailed? Are immediate steps taken to correct and implement remedial solutions?			
3. Is the occupational health and safety committee involved in the procedure of investigating critical injuries or fatalities?			
4. Are Accident Report Forms filed with WorkCover (in the case of fatalities, serious personal injury, work-related illnesses and dangerous occurrences) within the allotted seven-day time frame?			
5. In the event of a serious injury or fatality, is the workplace secured and left undisturbed until the appropriate authorities (e.g, police, WorkCover) have completed all investigations?			
6. Is follow-up action taken to ensure that corrective measures have been implemented and are functioning?			
7. Is a management person (other than a committee member) designated as the contact person for <b>any</b> accident or incident? Does this person have sufficient authority to implement corrective action and be the spokesperson with WorkCover?			
8. Does the designated management person accompany and prepare his or her own notes during an inspection or investigation by the WorkCover inspector?			

**Continued****Yes No**

9. Are injury/incident investigation reports reviewed to determine the causes of accidents and the means of preventing similar accidents in the future?			
10. Is full cooperation given to the WorkCover inspector or occupational health and safety committee during their investigation?			
11. Are the Prohibition, Improvement and Penalty Notices complied within the relevant times within the Notice? Is a procedure for appeal in place in case of disagreement with WorkCover?			

**Component 10.0 – Auditing and review**

The duty of care of the employer under Section 15 of the *Occupational Health and Safety Act* includes an obligation to **'maintain plant and systems of work** that are safe and without risk to health. Regular auditing is an important component of implementing due diligence in the workplace by ensuring maintenance of plant and systems. Auditing refers to regular evaluations of the entire health and safety system at a company with the aim of identifying and correcting any deficiencies or areas that do not measure up to the standards that have been set.

Auditing can be done internally by, for example, a trained employee of the company. But, there are also advantages to having an outside organisation audit your program. The use of outside professionals to perform workplace health and safety audits can, for example, provide a fresh and objective view of the workplace and the hazards that may exist within it.

**Checklist – auditing and review****Checklist****Yes No****Action plan needed**

	Yes	No	Action plan needed
1. Is your OHS system audited to identify and correct deficiencies or areas where standards are not being met?			
2. Are audits carried out by qualified persons who are familiar with health and safety legislation and practices and procedures that need to be in place?			
3. Do auditors use recognised audit techniques, such as interviews with key people, record checks, observations, on-the-spot interviews with employees, sampling and surveys?			

**Continued****Yes    No**

4. Are audit results examined and priorities established for taking action on identified problem areas?			
5. Is corrective action promptly taken by management so as to bring system components up to standard? Is there adequate follow-up?			
6. Are all audits documented in writing (who did the audit, when deficiencies identified, corrective actions taken by the employer, when action was taken)?			

## 5 In summary

It makes good business sense for employers to take all **reasonable care** to protect the health, safety and welfare of their employees. And it's the law.

Quite simply, due diligence requires that employers, supervisors and others understand and carry out their legal duties, assess the risks and hazards in the workplace **on an on-going basis**, and take all reasonable precautions with respect to those risks.

## 6 More Information

The following is a list of some WorkCover information products that can assist company directors and managers of corporation in fulfilling their responsibility for due diligence. The numbers shown are the catalogue numbers in the *WorkCover Information Products Catalogue*.

A full list of all WorkCover information products is contained in the catalogue which is available free of charge from any WorkCover Office or from the WorkCover Boolshop, phone (02)9699 8271 or fax (02) 9699 9041.

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