

Model harmonisation between legal obligations and safety obligations

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WorkWith and Milner Lawyers

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WorkWith - Supporting Smarter Workplaces



Harmonisation

General view by many is that the legal obligation (lawyers in particular) get in the way of the real safety and health activities.

Harmonisation

The various Workplace Health and Safety Acts

- create strict duty of care obligations
- require documented systems
- require safety systems to be practised
- demand consultation with workers
- impose personal liability on those *concerned with* or *who take part in the management* of a corporation
- prosecute breaches of the obligations – they are quasi-criminal obligations

What the legislation does

Part 1

To understand the “harmony” point we must first recognise what the legal safety and health obligation is

It can be summarised by the following
4 principles

What the legislation does

Principle 1

Irrespective of the expression - *so far as is reasonably practicable* - treat the obligation as a **GUARANTEE OF PROTECTION**

What the legislation does

Principle 2

Focus on risks - not on actual incidents

What the legislation does



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What the legislation does

Principle 3

Be more than reasonable - more than prudent

What the legislation does

Principle 4

Ensure the **GUARANTEE OF PROTECTION** extends to:

- the careful and diligent
- the hasty and careless
- the inadvertent and inattentive
- the unreasonable and foolhardy (even the disobedient?).

What must businesses do

Part 2

The Response

Safety and Health Systems

Use a comprehensive safety system- with signposts

Safety and Health Systems

But to meet the legal obligation the system must:

- easily record (and prompt) the systematic approach to safety and safe work procedures
- signposts to prompt managers and workers to do each safety step:
 - identify hazards
 - assess risks
 - identify controls
 - implement controls
 - monitor effectiveness (audit)

Safety and Health Systems

Does the safety system signpost workers to implement controls in the following order:

- **eliminate** the hazard that creates risk
- **substitute** the hazard that creates risk
- **isolate** the hazard that creates risk
- **minimise** the risk from the hazard by:
 - engineering methods
 - administrative methods
 - personal protective equipment

Safety and Health Systems

Signpost – to ask -

Is there a regulation or code of practice or even an Australia Standard that applies to the work?

If there is - do my safety control measures comply?

Safety and Health Systems

Signpost - ask

Does the safety system have a process that allows you to identify and ensure that safe work procedures translate into safe work practises?

Safety and Health Systems

Signpost ask -

Does the safe work procedure encourage people to disobey it or give people a reason to violate it ?

Safety and Health Systems

Signpost - ask

how does the safety steps procedure support a guarantee of safety

- has the focus been on risk – or was I just trying to stop a particular incident;
- is this safety step a bit over the top – and if not – what would it take to go over the top "*what would be better than...*"

Safety and Health Systems

Signpost - ask -

How does the safety procedure protect human from there own actions:

- if they are careless
- if they act inadvertently
- if the have a moment of foolishness

A worker ought not pay too high a price for being human

More than Systems

Safety culture

More than Systems

Safety Culture

- the shared values and beliefs
- how we interact with the control systems
- how we do things around here

More than Systems

Safety Culture is essential because despite our safety systems – people are designed to fail from time to time as:

- bad events seem personally remote
- work pressures cause people to accept risks
- individuals forget to be afraid

More than Systems

Safety Culture:

- reminds workers about a safe way of working
- ensures wariness
- neutralises reasons to violate safety controls

Safety and Health

Are you an **officer**?

An EO is **concerned with** or **takes part in** the **management** of a company –

- must have decision making authority
- generally determine budgets, business directions, equipment, working conditions
- more than merely passing on management's instructions (so line managers or leading hands do not take part in the management of a company).

Safety and Health

Executive Officer exposure -

If the company breaches the Act then each **executive officer** also commits an offence against the Act.

“Injuring and killing people is simply unacceptable”

Where do you sit?

“Whatever we do we’ll never stop accidents”

Incident & Injury Free

Lend Lease

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