

Safety Law Essentials for Schools

By Warwick van Ede

1 January 2012 saw the beginning of some of the most significant changes to take place in Australian Workplace Safety Laws. This date marked the start of a process to “harmonise” Australia’s Work Health & Safety (WH&S) systems. This process is set to be almost completed on 1 January 2013.

In this brief overview of the new regime, we will focus on the key areas of change and the implications of those changes for schools.

Duty of Care – the “PCBU”

Under the old law, a duty was owed by an employer or a controller of premises, and it was a duty in respect of a “place of work”. The new legislation introduces the notion of the “Person Conducting a Business or Undertaking” (PCBU).

The understanding of the “duty of care” has been expanded so that there is now a duty to keep safe any person who “works for or is affected by” the PCBU. The former duty was primarily concerned with employees only.

Therefore, the first thing which a school (as a PCBU) will need to do is to consider the extent of its WH&S duty of care. Now that the duty requires a school to take all reasonably practicable steps to ensure the safety of those “affected” by it, some assessment needs to be made of those persons potentially covered by such a duty – not merely employees, but also contractors, visitors, volunteers, suppliers and students.

The Duty to Consult

Another new concept introduced by the harmonised scheme is the duty for a school to “consult, co-operate and co-ordinate” with other PCBUs who owe a duty of care in relation to the same area or matter.

This means that developing proper WH&S policies cannot occur in isolation, but must be part of an explicitly co-ordinated approach with others - for example, contractors.

What is “Reasonably Practicable”

When schools are considering what it means to take “all reasonably practicable steps” to keep people safe, the factors which schools will need to take into account include the likelihood of risk arising from an activity, the degree of harm which might be suffered as a result of that activity, and the knowledge of and availability of any controls on that activity. Only where the cost of implementing controls is “grossly out of proportion to the risk” will cost be a legitimate reason not to take a certain step.

Broadly, schools will be expected to have an understanding of the legislation, the regulations made under it, the various Codes of Practice which might be applicable and any relevant Australian Standards. Perhaps most critically, the existence of and adherence to the school's own WH&S Management System will be the focus of any investigation arising from an incident. The Management System should be developed after careful consideration of the breadth of the School's WH&S duty (referred to above), and in consultation with various stakeholders. (e.g. staff, students, visitors, contractors).

Health & Safety Representatives

Whilst there has always been a role for employees within the workplace safety regime, the new system brings some notable changes to that role.

Firstly, a school will have an ongoing duty to consult with employees regarding its WH&S Management System generally.

However, there is also the possibility (a possibility which only arises in certain circumstances) that groups of employees can elect Health and Safety representatives. If this occurs, there are a number of consequences for school-employers. For example, there is the possibility that elected Health & Safety representatives may have the power to issue provisional infringement notices to the school or even "Cease Work" notices.

Personal Liability

Whilst all employees have a duty to exercise "reasonable care", additional burdens are now imposed on "Officers". Officers are defined to mean persons who make or participate in making decisions that affect the whole or a substantial part of the business.

Officers have an additional responsibility to exercise "due diligence", which includes taking reasonable steps to understand Work Safety Laws, understand the school's main safety risks, ensure a Management System is in place at the school and operating effectively, and ensure adequate resources are committed to safety.

Because of the increased level of fines which can be imposed on Officers personally, and the possibility of prison sentences for the worst case offences, it is critical that proper consideration be given to these issues.

Action Steps

Although most schools will have existing WH&S plans and Management Systems, the changes referred to in this overview mean that it would be timely to review them, together with these general areas of investigation:

- **Duty of Care** - is there now a larger group of people potentially "affected" by the school's undertaking? What does that mean in terms of the school's WH&S Management System?
- **Consultation** - with whom do you consult? Are arrangements being monitored to ensure that consultation is effective?

- **Review Systems** - is the WH&S Management System tested periodically by way of audit or review to ensure its adequacy?
- Are you “visible” on safety, by personally reviewing its operations?

Conclusion

It is critical that all persons can be assured of a safe and healthy workplace. Whilst this article is only intended to be an overview of some of the important issues, you will have seen that there is a need to ensure that these matters are properly addressed, not only for the legal protection of Officers, but because safety is paramount.

For more information, please contact

Warwick van Ede

02 9267 9800

warwickvanede@emilford.com.au

© Emil Ford Lawyers