

## **Presentation to C.E.O. / Directors-Employer's Safety Responsibilities**

For this presentation I am conscious I am not qualified to give legal advice, for that you need to turn to your legal team. I can only speak about my personal experiences with legal issues in safety.

In 2005 I did some work for a major metal manufacture who had an employee badly fracture his leg because of breaches of the Workplace Health & Safety Act. I remember a company director's ashen face after the "Record of interview" with the Division of Workplace Health & Safety and his comment that "This was the worst experience of my life"

In most parts of Australia workplace accidents expose company directors and senior managers to potential prosecution under health & safety legislation. Prosecutions of individuals have been less common than company prosecutions, but authorities have increased their focus on individual accountability. No individual has gone to jail in Queensland yet but there have been companies and individuals fined.

**Safety risks of assuming senior management positions can be minimised with a combination of due diligence and a good OHS system that ensures both the corporation and its senior employees comply with the legislation.**

If you have an accident with a serious outcome OR the potential for a serious outcome exists OR you have a major breach of the Workplace Health & Safety Act you end up with a good chance of being called to appear in a regulatory body hearing (Record of interview with the Division of Workplace Health & Safety), magistrate's Court or a Common Law hearing.

*You will be perused mercilessly and they will try to prove you and your organisation are incompetent fools. If you do not have solid evidence to defend yourself with, you will look a fool. Every weakness in your defence will be explored. You will be hammered about why you did not identify best practice elsewhere and why you did not implement it.*

The opposing parties will be advised by OHS professionals with much more expertise than your own safety staff. Unless you have a robust Safety Management System that you can prove works in the field you will end up looking like an idiot.

DOCUMENT DOCUMENT DOCUMENT Training records, maintenance records, disciplinary records etc. are often asked for in hearings. Have an assessment with all training you conduct.

## **The Buck Stops Where?**

In accordance with the type of role they have, executive officers should take steps to ensure they do not breach safety legislation.

A board of directors should:

- Require management to ensure that the company complies with its obligations.
- Put in place a team with the skills and experience to deliver compliance
- Demand the team has a plan that will ensure compliance
- Review and approve the plan, expenditure, incident reports etc.
- Continuously monitor performance against the plan, with regular reports.
- Provide the team with sufficient resources to ensure compliance with the plan.

Practically, the board must ensure that:

- Close attention is paid to contracts with senior managers and major contractors.
- Safety compliance and performance is on each board meeting agenda.
- It receives regular (monthly) reports--- reviews of progress against the plan. Expenditure, incident reports, etc.
- Regular internal audits are conducted using approved methodology and up-to-date tools.
- A separate (less regular) auditing process, independent of management, reports directly to the board.
- Actions are followed up and ticked off, and included in subsequent reports

Senior managers or directors who actually work in the workplace are required to take a more direct approach to OHS management than a board of directors. In the event on an accident, the authority will almost always interview the senior manager. The board may also require the manager to speak on behalf of the company in a record of interview. This immediately exposes any vulnerability in the manager's industrial liability. It is crucial in these circumstances that senior managers have good knowledge of safety issues.

A senior manager must:

- Ensure that the organisation complies with its obligations.
- Recruit and manage a team with the skills and experience to deliver compliance, and keep the board informed of any changes to the team.
- Take responsibility for developing a plan to ensure compliance, and oversee its implementation.
- Review and approve the plan, and make recommendations to the board about the plan, expenditure and incident reporting.
- Ensure performance is monitored against the plan by providing regular reports to the board. Senior management should personally present these so the board has an opportunity to query items.
- Act as the central contact with the board to ensure sufficient resources for compliance.

There are 2 arms to employer liability in safety

1 Statute Law (Principally the Workplace Health & Safety Act in Qld)

2 Common law

1 Workplace Health & Safety Act

**29 What obligations under section 28 include**

Without limiting section 28, discharging on obligation under the section includes, having regard to the circumstances of any particular case, doing all of the following---

- (a) Providing and maintaining a safe and healthy work environment;
- (b) Providing and maintaining safe plant;
- (c) Ensuring the safe use, handling storage and transport of substances;
- (d) Ensuring safe systems of work;
- (e) Providing information instruction, training and supervision to ensure health and safety.

**27A Managing exposure to risks**

(1) To properly manage exposure to risks, a person must---

- (a) Identify hazards; and
- (b) Assess risks that may result because of the hazards; and

- (c) Decide on appropriate control measures to prevent, or minimise the level of, the risks; and
  - (d) Implement control measures; and
  - (e) Monitor and review the effectiveness of the measures.
- (2) To properly manage exposure to risks, a person should consider the appropriateness of control measures in the following order---
- (a) Eliminating the hazard or preventing the risk
  - (b) If eliminating the hazard or preventing the risk is not possible, minimising the risk by measures that must be considered in the following order---
    - (i) Substituting the hazard giving rise to the risk with a hazard giving rise to lesser risk;
    - (ii) Isolating the hazard giving rise to the risk from anyone who may be at risk;
    - (iii) Minimising the risk by engineering means;
    - (iv) Applying administrative measures;
    - (v) Using personal protective equipment.

| <b>Workplace Health and Safety Act 1995</b>                         | <b>Individual</b> | <b>Imprisonment</b> | <b>Corporation</b> |
|---|-------------------|---------------------|--------------------|
| Multiple Deaths   | \$150,000         | 3 Years             | \$750,000          |
| Offences causing death or grievous bodily harm                      | \$75,000          | 2 Years             | \$350,000          |
| Exposure to substance likely to cause death or grievous bodily harm | \$56,250          | 1 year              | \$281,250          |
| Offences causing bodily harm  | \$56,250          | 1 Year              | \$281,250          |
| Other Offences  | \$37,500          | 6 Months            | \$187,500          |

## 2 Common Law

### Personal Liability

In the previous case, the employer is held liable for the negligence of another. However, the employer himself owes certain duties to his employees and he will be liable for any breach of those duties which results in injury to another employee.

There are four basic duties:

- To provide and maintain competent staff;
- To provide and maintain a safe place of work;
- To provide and maintain safe plant and appliances;
- To provide and maintain a safe system of work. (A system means generally the way things are done).

### Strengths of X's approach to health & safety management

Well run management safety committee

Effective departmental safety committees

Some developed Work Method Statements and Safety Management Plans .for construction work

Evidence of safety checklists, inspection sheets and some risk assessments happening

Effective & keen All Risks Officer

Generally relatively low risk work

Modern well maintained vehicle fleet

Generally positive, friendly workforce amenable to helping out

Training happening for basic skills

Seems to be a high awareness of the importance of safety in most areas

Well-Being initiative is a positive process

Manual Handling training is a step forward

Commitment to employing sufficient safety staff

Provision of personal protective equipment is appropriate

Evidence that the development of safe working procedures is commencing

Documentation for safety aspects seems reasonable

Operational Health & Safety Plans have been developed in the past

Test & Tag initiative is underway

Health & Safety Systems Audit in April 2004

Some tool-box talks are happening

Health & Safety Reps. have been appointed

A review of the provision of safety stats is currently underway

### **Opportunities for improvement in X's approach to health & safety management**

**Need a comprehensive audit to a defined standard to guide Safety Management System development. In 2004 there was a safety systems audit.**

**Need a strategic OHS Management Plan-mission, values, goals objectives and how to achieve your objectives**

**Must have an effective Safety Management System-Compliance with A.S. 4801 is well regarded- S.M.S. must work in the field not just exist on a computer system**

**Although there are some good aspects to it Y as it exists on the computer systems does not meet the requirements for a Safety Management System as**

outlined in A.S. 4801 and industry best-practice. Some senior personnel spoken to have no knowledge of Y being implemented in the council.

If I was the C.E.O. or a Director of the X I would be quite concerned about the current state of the Safety Management System

### How Senior Management Team Can Demonstrate Safety Due Diligence

*"A health & safety problem can be described by statistics but cannot be understood by statistics. It can only be understood by knowing and feeling the pain, anguish, and depression and shattered hopes of the victim and of wives, husbands, parents, children, grandparents and friends, and the hope, struggle and triumph of recovery and rehabilitation in a world often unsympathetic, ignorant, unfriendly and unsupportive, only those with close experience of life altering personal damage have this understanding."*

## SUCCESSFUL SAFETY

- Senior management insists on safety performance in a manner that is clearly understood and echoed at all levels (BHP Bench-Marking Study)



### SAFETY BENCHMARKING

Over a 14 month period in 1994 -Five BHP Minerals carried out an extensive international safety benchmarking exercise with "best in safety class" companies throughout the world. Twenty-five locations throughout the world participated in the study. An approximate 100 page report on findings is available should anyone wish to refer to it

The following were recurring themes in the world's best safety performers.

- 1. Executive management provides the impetus for safety performance. This means that senior management is not only committed to and supports safety, but that it insists on safety performance in a manner that is clearly understood and echoed at all levels.**
- 2. Management focus is a key to quality safety performance.**

3. Existence of a company-wide framework or systematic, standardised approach to safety. The approach has performance standards that receive regular internal and external audits
4. Objectives are set and organisations work towards set targets for implementation of the objectives.
5. Safety personnel report in at the highest level in the organisations. They have mainly an advisory function. Management and supervision drives the safety programme not the safety personnel.
6. Effective safety training targeted to identified needs at all levels. Induction training and detailed safety training for supervisors and managers was high on the priority list.  
Regular safety meetings were seen as important.
7. Active personal involvement of senior management personnel in the safety programme
8. Safety is considered in performance evaluations of all staff
9. Regular, detailed audits of the safety management system
10. Formal approaches to hazard identification and risk analysis, employees were fully involved in this
11. Formal emergency response procedures that were practiced and audited
12. The best in class addressed contractor safety before contractors were allowed on site, they pre-qualified them based on safety and made safety performance a contract condition. Contractors were expected to perform at the same safety level as permanent employees
13. High on the list of the ways the best in class built safety awareness were management participation and leadership, dissemination of information, safety meetings and rewards or recognition of performance
14. Safety is a condition of employment and dismissals occur for non-performance
15. Well-managed rehabilitation programmes are in place
16. The best in class use medical examinations and testing to ensure fitness for duty
17. There were E.A.P's in place
18. There were off the job safety programmes
19. There was an emphasis on vehicle / plant maintenance and driver / operator training programmes.
20. There were extensive PPE training, maintenance and audit programmes
21. Lock-out procedures were used instead of tag-out
22. Best in class managers and supervisors respond positively to safety issues that are raised
23. Best in class supervisors are responsible for safety auditing, investigating accidents, planned job observations and training
24. All levels in the organisation make decisions that reflect the philosophy "Safety first-Production will follow"

It is suggested Safety Management Systems be built around the above benchmarking findings.

### **How the senior management can demonstrate due diligence**

#### Summary of current situation

There is an operational rather than strategic approach to safety in the X at the moment. In comparison with a number of places where the author has worked safety has been driven bottom up from safety staff instead of top down from senior management. X needs a Safety Management System accredited to A.S. 4801 Safety

Management Systems. The current Y system does not comply with this Australian Standard.

#### Establish an accredited Safety Management System

A.S.4801 is the Australian Safety Management System standard and the standard by which you will be judged. There are a number of commercial Safety Management Systems in Australia that are accredited to A.S.4801 – National Safety Council 5 star, N.O.S.A. 5star, D.N.V., I.S.R.S. and the Victorian Government Safety-Map (probably the best) are the most common ones..

#### Senior Management Team Safety Committee

Have a Senior Management Team Safety Committee that meets quarterly to review how the Safety Management System is being managed. The frequency, duration and severity of Lost Time Accidents (those with over 1 day lost from work) and the high potential incidents would be reviewed as would the operation of the Safety Management System.

Note. It is a major mistake for management to leave it up to safety personnel to drive safety. At both statute & common law safety is management's responsibility. The Workplace Health & Safety Act recognises safety is a management responsibility not a safety officer's responsibility by exempting Workplace Health & Safety Officers from prosecution.

#### Senior Management Safety Workshop

Have a half to one day Senior Management Safety Workshop led by an expert facilitator. Topics could include Statute and Common Law Responsibilities for safety, Management responsibilities in safety, A briefing on A.S. 4801 Safety Management Systems, A briefing by L.G.W. on the "Safe plan" Safety Management System and a Force-Field Analysis on the council's current safety approach (Force-Field Analysis is a simple but very effective technique)

#### Force-Field Analysis

Purpose To clear the air and define the nature of the beast you are working with when starting a new project or reviewing an existing project

#### Recommended Stakeholders

Mix of stakeholders, too big a group gets awkward to facilitate

#### Facilitator

Experienced facilitator makes life much easier if you have a recording white-board or butchers paper to record discussion

#### Process

1. Revise the brain-storming rules
2. Brain-storm an objective for the Caloundra City Council Safety Management System. Some objectives could include Zero Disabling Injuries, x% decrease in the number of Lost-time Injuries, y decrease in your workers compensation premium, a target of ? Lost Time Injuries for the year. Some people simply say they have a "Zero Harm" objective.
3. Brain-storm the Facilitating / Promoting forces acting for the objective and the Restraining / Constraining forces acting against the objective.
4. Develop an action plan to boost the Facilitating / Promoting forces and negate the Restraining / Constraining forces.

### Timing

Allow 2-2.5 hours for the initial meeting

One of the outcomes of this process is that you will identify and define a number of the things you are already doing in safety, in itself. This is not a bad thing to do.

### Management commitment

It is not unusual in companies with high profile safety management systems for senior and middle management personnel to spend over 30% of their time directly on OHS issues. Key personnel conduct safety meetings, they personally participate in safety inspections in their area of responsibility, they have safety as a first high-profile agenda item of every meeting they conduct and they make it clear that they expect those below them to place a high priority on safety. It is not enough for top management to be committed to safety; it must be a clear and high profile demonstration of commitment - you get the performance you demonstrate you expect. This is one area where positive action by management can have an overwhelming influence on the culture of the organisation.

The most important safety job of senior leaders is to transmit and embed safety values.

## COMMUNICATION

- Nothing is more central to an organisations effectiveness than its ability to transmit accurate, relevant, and understandable information among its members.



### Annual Safety Management Systems audits

Annual strategic safety systems audits by an accredited auditor are essential. These must be backed up by operational safety systems audits carried out by your safety staff.

### Strategic safety plan

Need a strategic OHS Management Plan-mission, values, goals objectives and how to achieve your objectives. Senior management team should play an active part in its development.

### Safety training needs analysis

The only way to have a defensible safety training system is to carry out a safety training needs analysis to guide training conduct. Supervisor and middle manager safety training is particularly important. Subjects such as compliance with statute law,

compliance with common law principles, hazard identification, risk management, hazard control, accident investigation, and job safety analysis should be regarded as the basic skills and the knowledge for supervisors (A “tool-kit” for supervisors - safety skills). Worksafe Australia has identified key safety competencies for front-line managers. A number of these competencies are also relevant to all employees. A basic briefing on the obligations for various levels of employees under the Workplace Health & Safety Act is essential.

Some companies use “Safety Contracts” between the company and employees, performance in the contract is regularly reviewed.

#### Clearly define safety Responsibilities

During the performance appraisal of supervisory and management personnel an initial and high emphasis must be placed on safety. The focus should not be on what accidents have occurred in the supervisor’s workgroup, rather it should be on what he/she has done to introduce excellent safety programmes. (Detailed safety guidelines on position descriptions and a detailed safety responsibilities / accountabilities matrix for all personnel is important. It helps if advertisements for staff have safety stipulations).

#### Safety committees / safety meetings

These are very important and must be monitored by senior management. The danger exists that people tend to leave it to a safety committee meeting to raise issues when they should be managed straightaway.

#### Risk assessment

Risk assessment is an underpinning requirement of the Qld Workplace Health & Safety Act. Assessing risk should become a natural part of the way workers approach their work on a daily basis. Training of key personnel in risk assessment must be assured by senior management. Written risk assessments must be reviewed to ensure their adequacy.

#### Safe working procedures

Safe working procedures are often called up in evidence in legal hearings. They must be developed by an organized methodology that the developers have been trained in to have any credibility. Job safety analysis is the preferred technique.

#### Benchmarking

The legal authorities expect organisations to be aware of safety best-practice in other organisations and the implementation of these high standards. The authors experience would suggest Qld local government is not the place to look for these high safety standards.

#### Non-permanent employees

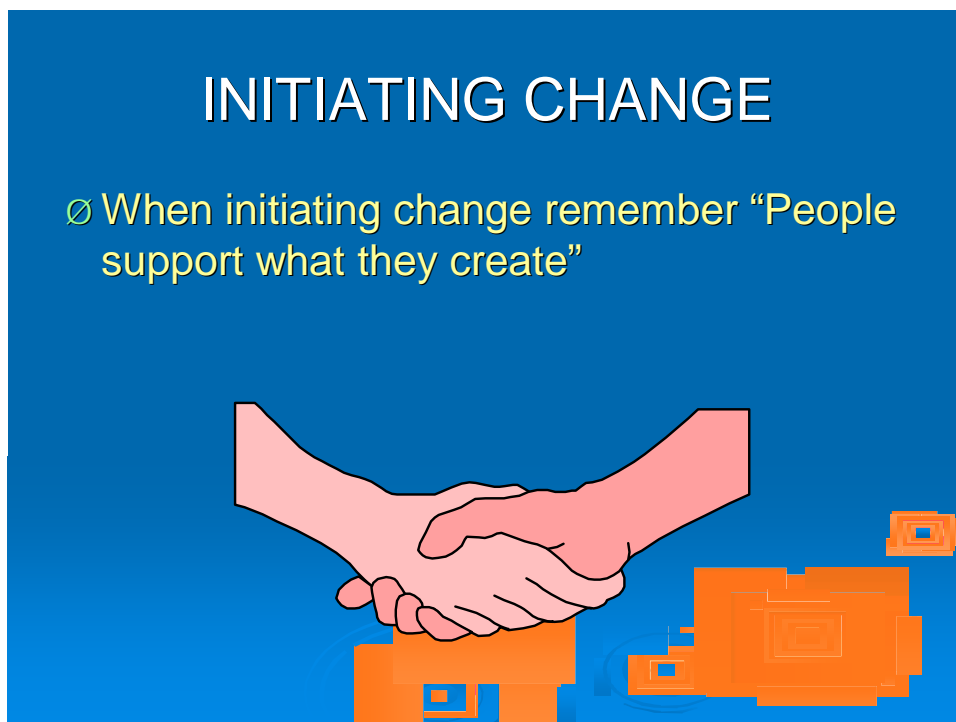
Ensure appropriate safety specifications are built into contracts with non-permanent employees.

#### Support a manual handling project team

Anecdotal evidence suggests manual handling is a major loss area in council. Preliminary work has been done on developing a project outline for a manual handling project team with the following major project steps-

- 1 Establish a manual handling project team-One year term initially-Leanne Martin, WHS Coordinator Corporate, WHS Coordinator Operations, Ergonomics consultant who conducted the manual handling training, 6 Health & Safety reps

- 2 Gain a basic understanding of project management methodology
  - 3 Develop a project plan using Microsoft Project
  - 4 Analyse past injuries to reveal areas where manual handling injuries have occurred-There may be some limitations in past data systems
  - 5 Gain an understanding of anatomy and physiology as it impacts on manual handling injuries (one day of consultant's time)
  - 6 Carry out an employee survey of manual handling risks
  - 7 Gain an understanding of manual handling risk assessment tools (one day of consultant's time)
  - 8 Risk assessment of manual handling tasks (most time consuming part of the project)
  - 9 Progressive reports on risk assessments with interim recommendations
  - 10 End of project report with major recommendations
- The time consuming part of this project will be having the health & safety reps carryout the manual handling risk assessments of the manual handling tasks that are done



For further information refer to the N.S.W. Workcover publication “Due diligence at work”-A guide for action on workplace health & safety for company directors and managers.

<http://www.workcover.nsw.gov.au/NR/...ligenc>