

Statutory Liability and Workplace Health & Safety Insurance





Employer liable for accidental overdose death

Thomson Reuters, Occupational Health News email, 12 Sept 2016



Statutory Liability

Are your company, directors, officers and managers insured for breaches of the following legislation?

- Workplace Health and Safety Legislation
- Environmental Law – EPA (Environment Protection Authority); Land and Environmental Court
- Employment Practices Legislation
- Industrial Relations Act
- NSW Anti-Discrimination Act
- Companies Law (e.g Corporations Act 2001)
- Any other Statutory Legislation with a provision for civil fines and penalties

Statutory liability insurance covers you in respect of:

1. Strict liability – where the company/individual is responsible for the damages caused by their actions regardless of culpability (fault);
2. Vicarious liability – where the company or individual is held liable for a breach of legislation by an employee, irrespective of whether the employee intended the act or the company or individual authorised it;
3. Personal liability of the directors and officers who may be exposed to fines and penalties regardless of direct involvement in the alleged breach;
4. Company fines and penalties; and
5. Defence costs



Conventional insurances do not provide the appropriate assistance, support or protection that is necessary to protect the organisation, their directors, officers and employees in a serious safety incident setting.



Employer and individual fined \$460k over fatalities

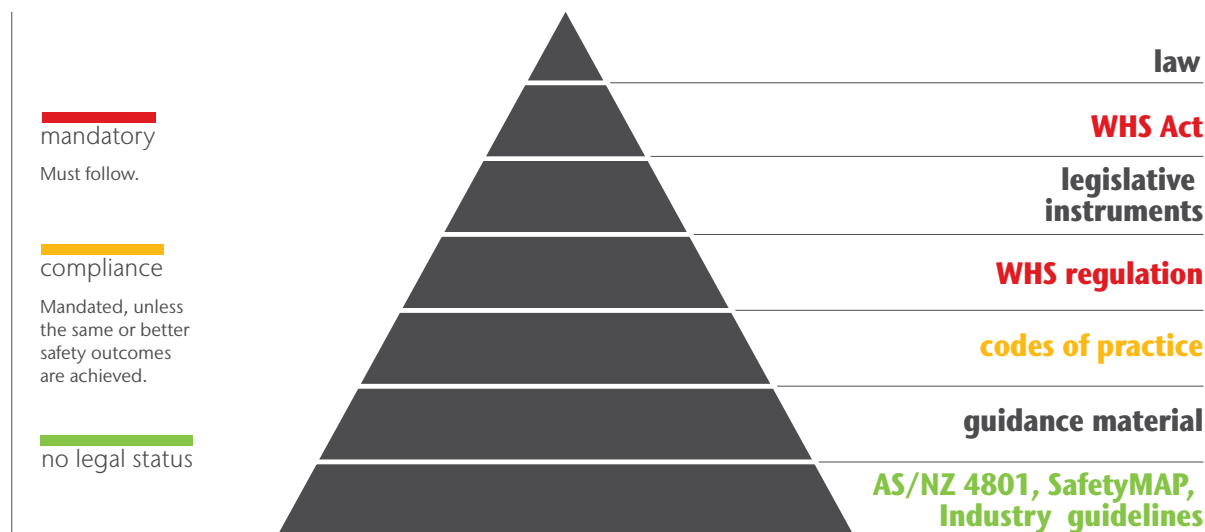
Stuart Layt, Australian Associated Press Oct 26 2016



Do you have the right protection in the event of a workplace Work Health & Safety incident?

Regulations surrounding workplace safety, harsher penalties and significant fines, means greater risk exposure for those who owe a duty of care to the health and safety of workers and contractors. In providing and administering a safe and healthy workplace, directors, officers and employees are all personally liable for upholding this duty of care.

Comprehensive incident management & early engagement with regulators can avoid prosecution.



The timeline of a serious WHS incident

Date of serious injury or fatality	6 months	1 year	18 months	2 years
Who will you contact and how will you deal with the critical incident situation?	Complete evidence and prepare defence of WHS framework.	How much will it cost a WHS legal team to prepare evidence and compile a defence?	Workplace safety authorities can take up to 18 months to prosecute.	Resulting fines & penalties could be 2 years after an incident.



Aon's unique solution

"This solution is superior to any other insurance product in the market as it is designed specifically to respond to a WHS incident."

- Exclusive combined Statutory Liability and Workplace Health & Safety Policy with a single insurer: Liberty International Underwriters
- Section 1 – Work Health and Safety: Provides immediate response (investigation, defence and crisis costs) from the time of a serious workplace injury / fatality or threatened or actual action by a Workplace Safety Authority and any subsequent insurable fine and penalty. The Insured has direct access to a panel of specialist WHS qualified lawyers with discounted rates pre-negotiated by the Insurer. The policy covers all parties that need protection, including: the company itself, employees, directors & officers, volunteers, secondees, persons on work experience, and contractors, (all “workers”).
- Section 2 – Statutory Liability: This section of the policy provides coverage for breaches of other Statutory legislations (excluding Work Health and Safety Legislation). The Insured gains access to best in class coverage for Statutory Liability Insurance.
- The solution is highly complementary to organisations whose directors and executive management team have established a WHS governance and risk management framework.
- Limit of limitation: up to \$20 million (aggregate limit) for all costs including reputational defence, ancillary expenses, and insurable fines and penalties.
- Cover available for Australian and New Zealand Jurisdictions
- Basic underwriting information enables an indicative cost estimate to be provided.
- Complimentary solution to the Aon Workplace Health & Safety Due Diligence service.

Aon has listened to our clients and developed a unique, simplified SLI-WHS Liability package solution.

	D&O policy		Statutory liability policy	Aon's WHS Liability
	Director or Officer	Company		
legal expenses Will the policy cover the cost associated with legal representation for a potential regulatory action or formal investigation?				
other expenses Will the policy cover the cost of <i>Other Expenses</i> such as costs incurred by a Workplace Safety, court, arbiter, or other body which the Insured(s) are obligated to pay?				
insured(s) request to defend Will the policy pay costs if the insured(s) insist that the matter can be defended, despite a contrary view held by a Senior Lawyer retained by the insurer, or their own lawyers?				
	not covered	some coverage	fully covered	

SITUATION

Immediately following a fatality or serious injury (e.g. loss of limb) but **prior to** a regulatory claim or formal investigation.



Aon's Expert Team of WHS Practitioners

Aon recognised that companies across Australia have varying degrees of sophistication or maturity when it comes to the way Work Health and Safety is viewed, managed and applied. This level of maturity often directly correlates in financial performance associated with workers' compensation and indirectly into productivity, absenteeism or employee retention.

In addition, a low sophistication or maturity level has a direct and immediate impact on the exposure level faced by the directors and officers. A mandatory legal requirement for every director and officer is to ensure due diligence is undertaken or can be demonstrated.

Aon has a number of solutions for the independent validation or 'peace of mind' for directors and officers. Our solutions have been customised to ensure:

- Critical exposures are identified and reported back in simplistic terms
- Risks and governance frameworks are rated in accordance with the Australian Standard, with commercial advice on rectification
- Validation of current positive resourcing, investment and risk management practices are clearly represented
- Our approach aligns to your industry, risk profile and size – as oppose to a 'one size fits all' approach.

Key Benefits and Considerations:

In the event that you engage an Aon WHS practitioner to conduct due diligence, key benefits and considerations may include:

- Immediate enhanced protection for directors, officers and employees.
- Wholly or partially subsidised consulting cost to conduct independent due diligence, resulting in a reduced financial outlay whilst optimising protection.
- Reduced cost of the WHS liability policy through greater representation of the positive attributes or 'maturity' or assurances that a defined risk improvement plan is in place.

Contact your Aon representative today.

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