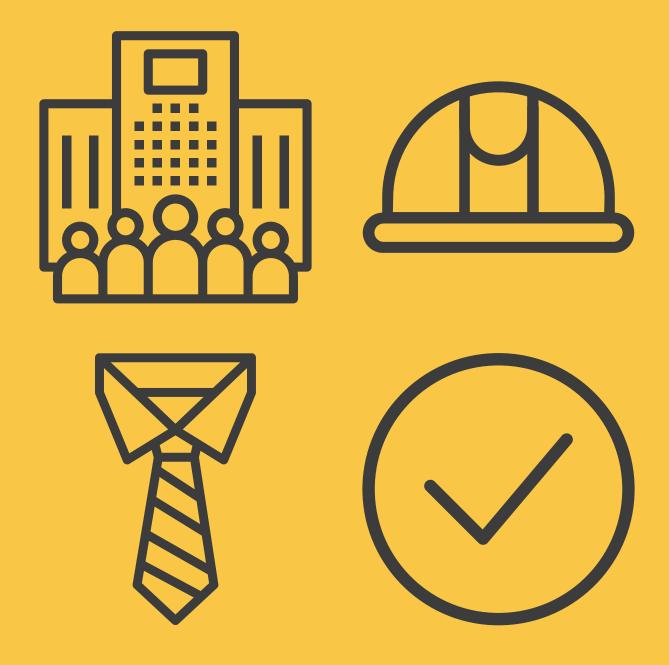# A Work Safety Guide to Duty of Care

What is duty of care?

It takes a village to protect workers, customers, and the public. The actual legal obligation is referred to as the duty of care. What is it?

In common law, the duty of care stands for the obligation placed on certain actors to act towards others in a certain way, in accordance with certain standards. The standards themselves vary depending on context.

In the context of duty of care in workplace health and safety, the obligation usually means the employer responsibility (or duty) to do whatever is "reasonably practicable" to protect the health, safety, and wellbeing of employees.

Threats that must be mitigated include physical, mental, or emotional risks. And so, employers must take documented steps to protect their people from identifiable harms.

Not just full-time workers, either. The duty of care health and safety at work obligation extends to contracted workers, volunteers, clients, and members of the public, as well.

Why is it the employer's responsibility? Courts have enshrined the employer duty of care work health and safety obligation to avoid injuries likely to be caused by carelessness and neglect.

Understanding the WHS Act: Duty of Care

How then can employers protect themselves, their workers, clients, and communities?

Firstly, employers and their safety management teams must know the law. In Australia, for instance, most state safety regulators adhere to model federal legislation.

Passed in 2011, the Work Health and Safety Act lays out concrete health and safety duties, including the primary duty of care imposed on persons conducting a business or undertaking (PCBUs).

By law, PCBUs must ensure, so far as is reasonably practicable, the health and safety of:

- Workers engaged, or caused to engaged, by the person
- Workers whose activities in carrying out work are influenced or directed by the person

In the context of these rules, the duty of care responsibility is not defined in terms of presence at a specific workplace. Instead, the duty relates to the health and safety or workers when they are "at work."
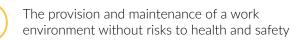
How to parse this duty of care responsibility difference? Employers should consider workers "at work" when the latter are performing duties or functions that they were engaged or caused to be engaged to do.

Simple enough.

Specific measures to meet duty of care obligations

Employers, however, don't just need to know who counts as workers for the purposes of duty of care. They also need to know what measures to take to ensure they meet their legal obligations to those workers.

Here, the PCBU must ensure, so far as is reasonably practicable, that the following is done:

- The provision and maintenance of a work environment without risks to health and safety

- The provision and maintenance of safe plant and structures

- The provision and maintenance of safe systems of work

- The safe use, handling, and storage of plant, structures, and substances

- The provision of adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking, including ensuring access to those facilities

- The provision of any information, training, instruction, or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking

- That the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking.

Challenges to consider in maintaining duty of care

Of course, maintaining the obligations isn't easy, especially in moments of crisis.

After all, PCBUs experiencing crisis aren't exempted from their duty of care obligations. Unfortunately, safety teams often find themselves at a disadvantage during these moments. Why is that?
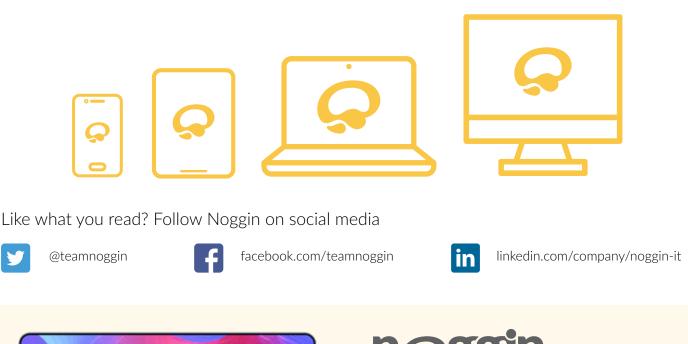
Well, safety teams have traditionally focused on internal, unintentional workplace hazards. Those tend to be risks arising from unsafe work practices, hazardous industrial conditions, or exposure to harmful chemical, biologic, or physical agents.

On the other hand, common hazards, such as violent acts, natural disasters, and public health events, have long been the provenance of other departments, e.g., Crisis, Security, or HR.

Because of siloing effects, those teams don't often share relevant information with the safety function, even if the hazards they seek to prevent, respond to, and recover from can and do impact employee safety.

What can be done?

Here is where integrated safety management software comes in handy.

Built in line with the latest version of industry standard ISO 45001, these platforms provide all the functionality necessary to integrate data to help employers maintain their duty of care obligations – even in moments of crisis. In the process, organisations can increase efficiency, reducing the risk of injury, illness, and regulatory infraction.

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