

# First “officer” charged under model Work Health and Safety legislation



**Directors have always been in the firing line in WHS prosecutions. More recently though, with the introduction of the model WHS legislation, “officers” have also been placed in the spotlight. And now, following the death of a worker, the first officer has been charged.**

Officers are expressly required to exercise due diligence to ensure that a company complies with its obligations under the legislation. Due diligence includes gaining an understanding of the risks faced in the organisation; acquiring up-to-date knowledge of WHS matters; ensuring appropriate resources are available to eliminate or minimise risk; that there is a process for receiving, considering and responding to information regarding incidents, hazards and risks; and verifying that risks and hazards are being properly controlled.

So just who is an “officer”? Well, under the model WHS legislation, we’re directed to the definition of that term under the Corporations Act. This includes “a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking”.

Has the potential to have pretty broad reach, doesn’t it?

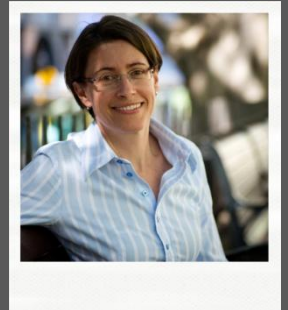
This week, following the death of a worker in the ACT, Kenoss Contractors Pty Ltd was charged for failure to comply with its health and safety duties. A senior manager, alleged to be an “officer” under the legislation, was also charged. The charges laid are category 2 offences, meaning the company and manager face maximum penalties of \$1.5 million and \$150,000 respectively.

The matter is yet to be heard, so it remains to be seen what, if any, penalties will be imposed, and significantly, whether the issue of whether the senior manager is in fact an “officer” will be subject to contest.

So watch this space. But in the meantime, certainly a timely reminder to make sure that your organisation has identified all “officers” for the purposes of the WHS legislation, and brought them up to speed on their obligations.

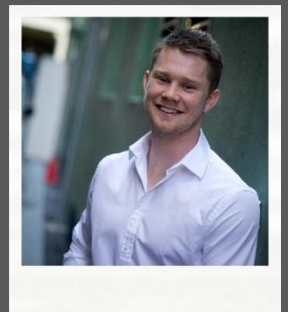
Sounds like something worth getting right.

Questions? Give us a call.



**Amber Sharp**  
Partner

+61 2 8216 3099  
[amber@marquelawyers.com.au](mailto:amber@marquelawyers.com.au)



**James True**  
Lawyer

+61 2 8216 3087  
[jamest@marquelawyers.com.au](mailto:jamest@marquelawyers.com.au)

**Marque Lawyers Pty Ltd**  
Level 4, 343 George St  
Sydney NSW 2000

Ph: +61 2 8216 3000  
Fax: +61 2 8216 3001

[www.marquelawyers.com.au](http://www.marquelawyers.com.au)