Occupational Health and Safety Practitioner

Learning Guide

UNIT BSOH5408A
ASSIST WITH COMPLIANCE WITH OHS AND OTHER LAWS

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OVERVIEW

Welcome to the Unit of Competence BSBOHS408A – Assist with compliance with OHS and other laws. “OHS” and “health and safety” are used in this guide even though relevant legislation and guidance material in some jurisdictions uses “OSH” and “safety and health”.

This unit specifies the outcomes required to apply an understanding of the OHS legal and regulatory framework in order to provide advice about the legal responsibilities of an OHS practitioner, company director, manager, supervisor and employee.

The unit covers the actions necessary to ensure OHS legal compliance as part of a systematic approach to managing OHS. It includes:

- identification of the common law duty of care;
- appropriate legislation and regulations; and
- the necessary actions to ensure compliance in the workplace.

The unit applies equally to a small, medium and/or large organisation, as well as a micro-business.

The Unit of Competence consists of five elements and 16 performance criteria, which are reflected in the format of this learning guide. Each section covers a competency element and each sub-section covers a required performance criterion. You can access a copy of the actual competency unit from the National Training Information Service at: www.ntis.gov.au

It is important that you read the Course Guide before commencing this learning guide, as it contains important information about learning and assessment. It is particularly important to read it if you feel you may already be able to provide evidence that you meet the performance criteria for this unit. You can access the Course Guide at: www.worksafe.wa.gov.au/institute
Assessment

Assessment is the process of checking your competence to perform to the standard detailed in each element’s performance criteria.

Activities for such assessment are at the end of each element of the learning guide. They are also listed in the assessment section at the back of the guide.

While there should be some access to an actual workplace, part of the assessment may be through simulated project activity, scenarios, case studies, role plays or actual activities associated with complying with OHS laws.

Where possible you should have an OHS practitioner as a mentor or coach to assist you to develop the practical skills to apply your knowledge. The case studies in this learning guide will enable your mentor or coach to take you through a workplace example of the whole element to show you how to achieve the performance criteria and apply the required knowledge and skills. Case study activities can be additional evidence of your competence.

When you have completed this learning guide you should contact a participating training provider (see www.worksafe.wa.gov.au/institute) who will, for a fee, be able to have your competency in this unit assessed by a qualified assessor and subject expert.

When collecting material for your assessment portfolio, please ensure that you protect the confidentiality of colleagues, workers and other persons, and block out any sensitive information. If you have any doubts about confidentiality issues, contact the organisation concerned.

Required readings and resources

The online Readings and Resources section at the Safetyline Institute website provides additional essential material to help you understand and complete the activities in this learning guide.
Further information

Each OHS jurisdiction in Australia has an Internet site to allow easy access to relevant OHS legislation and information. In some jurisdictions mining and petroleum safety is administered by a separate government authority, which has its own website.

- [www.austlii.edu.au](http://www.austlii.edu.au) – for Commonwealth, state and territory occupational health and safety acts and regulations
- [www.atsb.gov.au](http://www.atsb.gov.au) – air safety
- [www.seacare.gov.au](http://www.seacare.gov.au) – Australian seafarer’s health and safety
- [www.arpansa.gov.au](http://www.arpansa.gov.au) – nuclear and radiation safety
- [www.nopsa.gov.au](http://www.nopsa.gov.au) – national oil and gas safety
- [www.comcare.gov.au](http://www.comcare.gov.au) – responsible for workplace safety, rehabilitation and compensation in the Commonwealth jurisdiction
- [www.worksafe.wa.gov.au](http://www.worksafe.wa.gov.au) – WA occupational health and safety
- [www.osh.dol.govt.nz](http://www.osh.dol.govt.nz) – New Zealand health and safety information (act has national coverage)
- [www.worksafe.nt.gov.au](http://www.worksafe.nt.gov.au) - WorkSafe NT
- [www.dme.nt.gov.au](http://www.dme.nt.gov.au) – NT mining health and safety
- [www.whs.qld.gov.au](http://www.whs.qld.gov.au) – Queensland health and safety except mines
- [www.wst.tas.gov.au](http://www.wst.tas.gov.au) – Tasmanian occupational health and safety
- [www.cdc.gov/niosh](http://www.cdc.gov/niosh)
- [www.osha.gov](http://www.osha.gov)
- [www.hse.gov.uk](http://www.hse.gov.uk)
- [www.msha.gov](http://www.msha.gov) - US mining safety
References


Other reference material, if desired

- Standards Australia, AS/NZS 4804. Occupational health and safety management systems – General guidelines on principles, systems and supporting techniques.

Journals

- Minesafe magazine (WA)
- National Safety magazine
- Safety in Australia journal
- Safety Matters magazine (WA)
- Safety Zone newsletter (Queensland)
- Safetyline magazine (WA)

Your feedback

We are committed to continuous improvement. If you take the time to complete the online Feedback Form at the SafetyLine Institute website you will help us to maintain and improve our high standards.

You can provide feedback at any time while you are completing this learning guide.
Glossary of terms

When they are first used, glossary terms are indicated in the learning guide with an asterisk (*).

Make sure that you are familiar with the Glossary of terms before going any further.

Accident
a) unplanned consequence of events, or a missing or inappropriate response.
b) any occurrence/event arising out of and in the course of employment which results in personal or property damage.

[note: some authorities use the term incident in preference to the term accident]

Employee
Person by whom work is done under a contract of employment or apprenticeship.

Employer
Person by whom an employee is employed under a contract of employment or apprenticeship.

Guard or guarding
Physical barrier that prevents the entry of any part of the body into an area that is hazardous.

Hazard
Hazard, in relation to a person, means anything that may result in injury to the person or harm to the health of the person.

Jurisdiction
Geographic area or division of industry or the community in which government has the power and authority to administer and apply certain laws.

Lost time injury/disease (LTI/D)
Occurrences that resulted in a fatality, permanent disability or time lost from work of one shift or more.

Plant
Includes any machinery, equipment, appliance, implement or tool and any component, fitting or accessory.
"Reasonably practicable" means having regard, where the context permits, to:

a) the severity of any potential injury or harm to health that may be involved, and the degree of risk of it occurring;

b) the state of knowledge about:
   
   I. the injury or harm to health referred to in paragraph (a);
   
   II. the risk of that injury or harm to health occurring; and
   
   III. means of removing or mitigating the risk or mitigating the potential injury or harm to health; and the availability, suitability, and cost of the means referred to.

Risk

Risk, in relation to any injury or harm, means the probability of that injury or harm occurring.

Safety

An individual’s perception of risk, or a state of mind where a person is aware of the possibility of injury or harm occurring at all times.

Tort

Wrongful act of one party causing harm to another. The three branches of the law of tort are trespass, nuisance and negligence.

Workplace

Place, whether or not in an aircraft, ship, vehicle, building, or other structure, where employees or self-employed persons work or are likely to be in the course of their work.
INTRODUCTION

**Required knowledge and understanding**

The Activities at the end of each element will guide you to achieve the performance criteria. However, you will also need to acquire and demonstrate the necessary knowledge and understanding. Therefore, you should include relevant notes and supporting evidence in your assessment portfolio and ensure you can explain:

- structure and forms of legislation (acts, regulations, codes of practice and guidance material) including prescriptive and performance approaches and links to workers’ compensation and rehabilitation;
- the concept of common law duty of care and the difference between common law and statutory law;
- obligations and rights under relevant OHS legislation and common law as it applies to employers*, employees*, contractors, third parties, occupiers, installers, designers, manufacturers, importers, suppliers, etc;
- legislation as it applies to health and safety representatives, health and safety committees and OHS inspectors;
- requirements for reporting under OHS and other relevant legislation including obligations for notification and reporting of incidents;
- systematic approaches to managing OHS;
- ways of obtaining evidence of compliance with OHS legislation; and
- professional liability in relation to giving advice.

As you work through the Activities, also include in your assessment portfolio any reports and memos asked for and any relevant documents or downloads you collect – such as a copy of a code of practice or part of one which enabled you to complete an Activity.
Required skills and attributes

You will also need to show you have the necessary skills and attributes for this unit. To do this, you should include in your assessment portfolio as much evidence as possible to show you can:

- analyse relevant OHS information and data, and make observations of workplace* tasks and interactions between people, their activities, equipment, environment and systems in order to meet requirements of OHS legislation;
- write action plans;
- prepare reports for a range of target groups including a safety and health committee, safety and health representatives, managers and supervisors;
- prepare and send e-mails, letters, reports, records and other documents that relate to ensuring OHS compliance;
- communicate effectively with personnel at all levels of organisation, and with OHS and other specialists;
- conduct effective formal and informal meetings; and
- provide advice to others in the workplace and explain specialist advice that has been obtained.
Element 1: DETERMINE OHS LEGAL FRAMEWORK

In order to complete the first element of the competency unit successfully, you will have to show that you have satisfied the following performance criteria:

1.1. Seek current legislation and related documentation relevant to OHS and the organisation’s operations.

1.2 Use knowledge of the relationship between OHS Acts, OHS regulations, codes of practice, associated standards and guidance material to determine legal requirements in the workplace.

1.3 Identify and confirm responsibilities and requirements as specified in legislation.

1.4 Clarify responsibilities and requirements and seek advice from legal advisors where necessary.

After completing this element you should know which OHS act, regulations, codes and standards apply to the organisation in which you are interested. You should be able to use these publications to identify what requirements apply in that organisation.

It is important to be clear about who is responsible for various aspects of OHS in the workplace and to understand how these responsibilities are described in legislation. Not all responsibilities will be relevant; for example, you may or may not use contractors. You will also learn when you need to obtain specialist advice on OHS requirements and responsibilities.

INTRODUCTION

Statute and common law

Occupational health and safety law forms part of the law which is known as statute law, because it is written down in statutes or acts passed by Parliament. There is also a body of law known as common law, because it has been built up over the centuries by the decisions of the various courts.
In Australia there are several levels of courts in each state or territory to which a decision can be appealed, with final appeal available in some cases to the High Court. If the matter relates to Commonwealth (federal) law, in many cases this is first heard by the Federal Court. Common law in some states and territories can involve both criminal matters, and also civil matters, that is: disputes between individuals.

Occupational health and safety falls within the branch of law called civil law in what are known as torts*. In this type of tort, an employee may sue an employer in relation to an injury. The public can also sue in tort law, for example, where someone believes that building work they have paid for is not satisfactory and negotiation with the builder has not worked.

In states such as Queensland and Western Australia criminal matters are covered by a specified code, which forms part of statute law. Certain general areas of the criminal code apply to any offence which is being prosecuted by the state authority, including offences under occupational health and safety law. For example, there are time limits on how long after an alleged offence a prosecution can be commenced.

One key area of common law is of particular significance for OHS as it has been incorporated into OHS acts as statute law. It is called the general duty of care, and one aspect of this general duty is the employer’s duty to an employee, which we will cover later. Further information on the general duty of care can be accessed from the website of your OHS Authority, which is listed in the Further Information section at the beginning of this guide.

**Commonwealth, state and territory legislation**

Because Australia is a federation, OHS is the responsibility of the states and territories. However, Commonwealth law covers the OHS of Commonwealth employees and certain types of employees, such as those on Australian registered vessels and on offshore drilling rigs in Commonwealth controlled areas. In 2006 legislation was passed allowing nationally operating corporations to self-insure under the Safety Rehabilitation and Compensation Act and be covered by the OHS (Commonwealth Employment) Act, not state or territory OHS legislation.
In some states OHS law is further divided into coverage of metalliferous mines and mineral processing plants, coal mines, petroleum facilities and other workplaces, with in some cases separate or partly separate administrative authorities. For example in Western Australia, there are the *Mine Safety and Inspection Act*, the *Petroleum Safety Act* and the *Occupational Safety and Health Act*. New South Wales and Queensland also have metalliferous and coal mines legislation separate from that for general workplaces, and the administration of that legislation lies with a separate government authority. *The Mining Management Act* in the Northern Territory is another example. In most states and territories there is also separate legislation covering what are known as dangerous goods, and this generally applies in all workplaces.

Other important pieces of legislation relating to OHS are radiation safety legislation and energy safety legislation, for example electrical safety legislation, which again applies generally to all workplaces. Safety in marine activities is also covered by separate state legislation, but generally the OHS legislation covering most workplaces also applies. Many aspects of aviation safety are covered by Commonwealth aviation safety legislation.

**Workers’ compensation legislation**

Statistics on state and national injury trends are compiled from workers’ compensation statistics that must be reported under workers’ compensation legislation, which provides for statutory payments to replace wages, and pay medical and rehabilitation expenses in the event of lost time injury at work.

**Equal opportunity and industrial relations**

Other pieces of legislation which may have an impact on OHS include equal opportunity legislation and industrial relations legislation. For example, some types of work with chemicals may impact on an unborn foetus, and hence have implications for equal opportunity in employment. The Queensland Workplace Health and Safety Reg. 142 requires notification of pregnancy or breast feeding in certain circumstances. Issues such as working hours and shift work, which have implications for OHS, may be dealt with under industrial relations legislation.
State and national coordination

Sometimes there is provision for Ministers to agree on one piece of OHS legislation applying to a workplace where it doesn’t normally do so, for example during construction on a mine site. Australia unfortunately lacks the legislation which Canada has for cross-border operations within the country.

Safe Work Australia tries to ensure common OHS standards throughout Australia and has responsibility for one piece of legislation, the Industrial Chemicals Notification and Assessment System.

1.1 SEEK CURRENT LEGISLATION AND RELATED DOCUMENTATION RELEVANT TO OHS AND THE ORGANISATION’S OPERATIONS

It is important that you identify which OHS laws apply in an organisation. Once you have done this you can identify relevant documents that support these laws.

Identify the jurisdiction*

In order to find out the OHS legal requirements for an organisation, you need to identify whether the organisation’s workplaces are covered by state, territory or Commonwealth OHS legislation.

If it is not a Commonwealth government organisation, or does not fall under Commonwealth OHS law for seafarers or offshore workers, then in New South Wales, Queensland or Western Australia identify if it is a mining or non-mining workplace. Be careful to look in the definitions for what is a ‘mine’. In Western Australia you will need to take the further step of identifying whether it is involved in petroleum operations.

Once you have done this you can identify the particular OHS legislation that applies to the organisation. You can then look up
the details of the legislation by accessing it via the Internet (see www.austlii.edu.au).

**Act and regulations**

There are two essential parts to OHS legislation – the Act and the regulations. An official copy of these can be purchased from the relevant government publisher or government department that administers the legislation.

Government authorities responsible for administering the legislation produce guidance material to explain it further. This may be in hardcopy or available on the Internet.

The Act provides for administration and enforcement of OHS by placing certain duties on employers, employees, self-employed persons, manufacturers, designers, importers and suppliers.

Regulations spell out any specific requirements of the legislation. They may prescribe minimum standards and have a general application or they may define requirements related to a particular hazard* or particular type of work. They may also be for the licensing or granting of approvals, certificates, etc. Regulations may be performance-based (achieve this!), process based (carry this out in this way to achieve safety and health), or prescriptive (do this with a view to achieving safety and health).

**Standards**

In many areas of OHS, the regulations may rely on standards to provide further details on the requirements. Such standards are produced by Standards Australia or jointly by Standards Australia and Standards New Zealand or by Safe Work Australia. If a standard is specifically ‘picked up’ by the regulations in this way, then it forms part of OHS law.

**Codes of practice and guidance notes**

The Act and regulations are supported by non-statutory codes of practice and other guidance material.

Codes of practice provide advice on how to meet the duty of care and their legal status is described in some OHS acts.
It is essential to identify all relevant codes and guidance material relevant to hazards in the organisation of interest.

1.2 USE KNOWLEDGE OF THE RELATIONSHIP BETWEEN OHS ACTS, OHS REGULATIONS, CODES OF PRACTICE, ASSOCIATED STANDARDS AND GUIDANCE MATERIAL TO DETERMINE LEGAL REQUIREMENTS IN THE WORKPLACE

OHS legislation and supporting material is examined further in this performance criterion.

Structure of legislation

It is essential to understand that what is in the Act and regulations, or ‘picked up’ by regulations, is law, which has to be complied with. Key aspects, including duty of care requirements, have offence provisions and therefore breaches may result in prosecution and fines.

Non-statutory codes of practice and other guidance material are there to assist those with a duty of care to comply with the law. The preventive strategies outlined in a code of practice or guidance material do not represent the only acceptable means of achieving the required standard. Codes of practice or guidance material are very important because they illustrate how to identify hazards and assess and control workplace risks*.

The Act provides a framework where consultation, cooperation, regulations, codes of practice, workplace standards and procedures to resolve issues support the general duty of care. The general duty of care is the guiding principle for key parts of nearly all OHS legislation.
General duty of care

The duty of care provisions of an OHS act are the starting point from which all other safety and health measures begin. Under an OHS act, all parties involved with work have responsibilities for safety and health at work. This includes employers, employees, self-employed persons and others – such as people who control workplaces, design and construct buildings or manufacture and supply plant.

The duties under the Act are expressed in broad terms, for example in Western Australia:

- an employer must, as far as practicable, provide a work environment in which employees are not exposed to hazards;
- employees must take reasonable care for their own safety and health, and that of others, at work; and
- self-employed persons must, as far as practicable, ensure the work does not adversely affect the safety and health of others.

Such wide ranging duties are called ‘general duties’ or ‘general duty of care’ – the latter reflecting that a ‘duty of care’ is owed in law by one person to another.

Where a regulation exists, it must be complied with as a minimum requirement. This is a prescriptive minimum requirement, which is not qualified by the phrase “so far as is practicable” (as in Western Australia) or a similar qualification in other jurisdictions, and it must be complied with in all workplaces covered by the relevant OHS act. While regulations must be complied with, the overriding responsibility is to comply with the general duties in that OHS act.

Whenever a hazard poses a risk of harm or injury to persons at work, the general duties as set out in the Act and any relevant regulations should be taken into account.

Employers duty of care

The general duties of care that an employer has to employees and other people will be found in the relevant OHS legislation. For example, an employer has a duty to provide a safe place of work, safe plant or equipment, safe systems of work, adequate instruction and training and consultation with employees.
Other aspects include personal protective equipment in some circumstances, particular requirements for various aspects of plant and equipment, and for handling substances. The Act and guidance material should also be examined to find out just who is responsible for OHS in principal-contractor relationships.

The employer also has a duty of care, generally speaking, towards non-employees in or around the work or affected by it. For example, if a building site has loads being lifted over a footpath, there is a duty of care to pedestrians. A mechanical workshop may have a sign saying ‘no visitors past the front office’. This is because of the duty of care to visitors.

There may also be duties imposed on those who have control of workplaces. A high-rise building may hold many businesses. The building manager has control over certain aspects of these workplaces such as lighting, sanitation, air-conditioning and access and egress, eg the lifts and staircases. There are also duties on designers, manufacturers, importers and suppliers of plant or substances. And importantly, there is a duty of care on employees.

To find out more about the specific requirements of the general duty of care in particular workplace situations, you need to take a look at the regulations and see if they cover the matter in more detail and if there is further guidance material, such as a code of practice. You also need to look at your Act and find out if complying with specific regulations on a matter fully meets your duty of care, or whether there is still a residual duty.

As an example, compare the requirements for manual handling in different jurisdictions:

- Pt 4.4 of the NSW Occupational Health and Safety Regulation 1997
- Reg. 59 of the NT Work Health (Occupational Health and Safety) Regulations
- Div. 2.9 of the SA Occupational Health Safety and Welfare Regulations 1995
The Victorian Occupational Health and Safety (Manual Handling) Regulations 1999
- Reg. 3.4 of the WA Occupational Safety and Health Regulations 1996
- Pt 5 of the Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994

The Queensland workplace health and safety regulations and the WA, NSW and Queensland mine safety regulations do not specifically mention the issue, nor do the maritime occupational health and safety regulations. Queensland, however, has three advisory standards on manual handling and New Zealand has an approved code of practice, which by law in both jurisdictions must be met or exceeded.

Further guidance on duties of care

There will be situations which are not covered by specific regulations and you will need to look further for guidance on the steps to be taken to effectively manage health and safety. As noted earlier, the regulations may refer to a standard – so that is where you must look for further guidance. It is also important to access relevant codes of practice and guidance notes.

Codes of practice are produced by the occupational health and safety authority. They provide guidance on how to comply with the general duty of care and with the regulations in relation to specific matters, for example safe manual handling.

Guidance notes or guides are produced by the occupational safety authority and provide further guidance on meeting the duty of care. Queensland calls them advisory standards.

Health legislation may also be important, for example where it covers place of assembly. An example would be the locking mechanisms on nightclub doors. There have been serious multiple fatalities in Brisbane, Buenos Aires, Shanghai and Dublin.
1.3 IDENTIFY AND CONFIRM RESPONSIBILITIES AND REQUIREMENTS AS SPECIFIED IN LEGISLATION

The OHS laws set out the duties and functions of different people in a workplace or those who service that workplace. Here you learn to identify which laws are relevant for a given situation.

If you are consulting legislation in the way described above, you will of course need to check to whom the particular duty applies. For example, an employee may need specific personal protective clothing or equipment, and instruction in how to use it in particular situations. So you will need to look at the regulations and the standards to see if they apply to the situation, and ensure that the equipment is selected in accordance with the standards to meet the particular requirements.

It will also become clear from looking at the legislation that it is the employer’s (not the employee’s) duty to provide the equipment and that the equipment must be suitable for the task and the person. For example, gloves supplied to an employee would not be suitable if it was found that they disintegrated rapidly in contact with the solvent being used.

In such a case you would need to refer to the standards to make sure that the selection of the gloves is made correctly. It may be that other equipment, methods and procedures are required to handle the solvent, or the solvent needs to be changed.

The employer is also required to:
• facilitate the election of health and safety representatives;
• assist them in their functions where called for under the legislation; and
• set up and facilitate a health and safety committee where the conditions set out in the legislation have been met.

Certain classes of accidents* and injuries must also be reported to the authorities. There may also be a need to agree on an issue resolution procedure.
You should refer to your relevant OHS authority’s website for the specific requirements on the aspects described above, and explanations of them.

1.4 CLARIFY RESPONSIBILITIES AND REQUIREMENTS AND SEEK ADVICE FROM LEGAL ADVISORS WHERE NECESSARY

Sometimes you will need to get extra advice on applying OHS laws. Here some possible lines of assistance are discussed.

Clarifying requirements

The duty of care applies only as far as is ‘reasonably practicable’* or in some jurisdictions ‘as far as is practicable’. That is to say, the effort, time and money put into managing a particular workplace risk arising from an identified hazard, must be consistent with the level of the risk.

You may, after reviewing legislation and consulting with other parties in the workplace, decide that a certain approach to a risk is all that is reasonably practicable and that there is still a small level of residual risk. Or, you may be unclear who is responsible for certain OHS matters in a labour hire or contractor arrangement.

At this point, it may be desirable to look for outside advice, either from a qualified OHS consultant who may have special expertise in particular area, or in some cases to seek advice from a legal practitioner. The latter approach may be particularly important if you are drawing up tender documents, or providing a quotation for a tender which contains an OHS component. If you work for a contractor, watch particularly for ‘hold harmless’ clauses in contracts in which the principal shifts any damages from civil litigation to your company even if the principal may be in breach of the law.

Other assistance may be obtained from personnel in the relevant OHS authority, and from the OHS practitioner network through institutions such as the Safety Institute of Australia.
Competency check for Element 1

Key issues for each performance criterion in Element 1 are as follows.

1.1 Seek current legislation and related documentation relevant to OHS and the organisation’s operations:
   - Identify the OHS administering authority legislation and seek relevant legislation and guidance material. This would include the Act, the regulations and relevant standards, codes of practice and guidance notes.

1.2 Use knowledge of the relationship between OHS Acts, OHS regulations, codes of practice, associated standards and guidance material to determine legal requirements in the workplace:
   - Determine the legal requirements of various relevant workplace parties, including the duty of care requirements of employers, employees, those managing premises, principals, main contractors, subcontractors, the self-employed, importers, manufacturers, suppliers, erectors and installers.

1.3 Identify and confirm responsibilities and requirements as specified in legislation:
   - Carefully apply the relevant OHS act, regulations and associated codes and guidance material to particular situations.

1.4 Clarify responsibilities and requirements and seek advice from legal advisors where necessary:
   - If necessary, seek specialist advice from OHS specialists, other professions such as engineers or legal practitioners, or from the OHS practitioner network through institutions such as the Safety Institute of Australia.
Case Study 1

You are employed in or contracted as an OHS adviser to a light engineering/aged care/open pit mine/offshore rig (you choose) with around 80 employees, working (apart from three travelling staff) at the one site. You have direct responsibility to the general manager and you have been working there for 18 months. The company intends opening a second similar operation in the same state or territory. The company’s injury record has not been good, but the new general manager appears keen to achieve a downward trend.

1. The new general manager, who comes from another state or territory, asks you to provide a two-page summary of the requirements of the duty of care of the company as employer or principal (for contracts) under the relevant OHS legislation. Point out the differences if any which exist between the state or territory the manager came from (select an appropriate state or territory) and their current one.

Remember to identify current legislation and duty of care requirements as an employer or contract principal. Explain how regulations, codes of practice and standards may assist in meeting the duty of care. Identify any areas of special concern in the organisation, for example manual handling, chemicals, noise, electrical, mobile equipment hazards, any associated codes, etc; and who might need to be consulted on these.

2. Identify two OHS practitioners in your jurisdiction who specialise in providing advice on OHS legislation in a proactive way. Gather information on their particular expertise.
Activity 1

Keep a copy of this Activity for your Assessment Portfolio.

Select an OHS jurisdiction and workplace then undertake the following activities.

- Identify an OHS administering authority and workplace of interest. Then seek and note relevant legislation and guidance material, including the relevant OHS act, the regulations and relevant standards, codes of practice and guidance notes.

- Determine and note the legal requirements of various workplace parties, including the duty of care requirements of employers, employees and others as relevant – such as those managing premises, principals, main contractors, subcontractors, the self-employed, importers, manufacturers, suppliers, erectors and installers.

- Apply the Act, regulations and associated codes and guidance material to three different situations and write a report to the safety and health committee.

- Explain with two different examples the circumstances in which you would seek advice from OHS specialists. Ensure the specific questions on which you need advice are clearly explained in a letter to your CEO that seeks authorisation to proceed.
Element 2: ADVISE ON OHS COMPLIANCE

This section focuses on providing information, including information on enforcement processes, and more on the duties imposed on an employer. In order to complete the second element of the competency unit successfully you will have to show that you have satisfied the following performance criteria:

2.1 Provide advice to appropriate personnel about the specific legal responsibilities of employers including duty of care and how it is codified in relevant OHS legislation.

2.2 Provide advice to appropriate personnel about administration of enforcement processes and instruments including penalties that apply to organisations prosecuted under relevant OHS legislation.

2.3 Provide advice to appropriate personnel on how negligence is determined at statutory and common law.

In Element 1, the relevant legislation and associated documentation were identified. In this element you learn to advise personnel on how OHS legal requirements apply to them, how the law is enforced and the penalties for getting it wrong. You also learn about the law on negligence in the workplace.

2.1 PROVIDE ADVICE TO APPROPRIATE PERSONNEL ABOUT THE SPECIFIC LEGAL RESPONSIBILITIES OF EMPLOYERS INCLUDING DUTY OF CARE AND HOW IT IS CODIFIED IN RELEVANT OHS LEGISLATION

Here we consider two things – the various duties of an employer in relation to OHS, and providing advice on that to those in the workplace who need to work on the basis of that advice.
Appropriate personnel

Appropriate personnel to be provided with advice may include employers, company directors, managers, supervisors, employees, health and safety representatives and committees, and contractors. Some discussion of this was given in 1.2 above.

Generally speaking, all members of an organisation need to be aware of the legal responsibilities of the employer. This is to protect their own health and safety at work, and to protect visitors and others, including members of the public, who may be affected by the work being undertaken by the employer.

Communication of this information is very important. It can be made available as part of induction training and in the induction manual for the new employee. It can be in hardcopy or poster form, particularly where it relates to an important and consistently overlooked aspect of the duty of care. An example of this could be the need for good housekeeping – tidying up workshop floors or wiping up oil on them, or wiping up water from wet shoes on marble floors. Electronic means of provision such as Internet and Intranet can be used. Specific aspects can also be reinforced at shift start-up or toolbox meetings.

Key OHS duties of employers

The wording of the key OHS duty will vary depending on the specific OHS act, but will be along the lines of (in Western Australia): “Employers must, so far as is practicable, provide and maintain a working environment where their employees are not exposed to hazards”. In the act, the duty will also be spelt out in specific general duties, which would include:

- safe systems of work;
- information, instruction, training and supervision;
- consultation and co-operation;
- personal protection;
- safe plant and substances; and
- reporting of fatalities, injuries and disease.
Working environment

The focus of the general duty is on the 'working environment'. The term may not be defined in the particular act in your jurisdiction, but it would be taken to include:

- the workplace itself: the building, structure, ship, aircraft, vehicle, etc;
- all plant at the workplace;
- the work process, including what is done and how;
- work arrangements, including the effects of shift work and overtime arrangements;
- the physical environment, including lighting, ventilation, dust, heat, noise, etc; and
- the psychological environment, including overcrowding, speed of process and other stress factors.

Safe systems of work

The emphasis here is on co-ordinating all work activity so that one part does not endanger a person who is working in or on another part. This system of work should take into account the layout of the workplace, the storage and handling of all materials and the location and movement of all people on site. The following matters need to be considered:

- **Planning of the work.** Consideration needs to be given to effective planning of all aspects of the work, from the physical process to the individual tasks carried out by employees. Impact on safety and health needs to be considered for those indirectly affected by the work, as well as those directly involved.

- **Equipment and appliances.** Are these appropriate for the job? Items which are too small, not strong enough, awkward to handle etc, may become hazardous when used for the task. Everyone involved with the task needs to know about the equipment to be used, as well as the task itself.

- **People.** The people carrying out the task need to have appropriate information, instruction, training and supervision.
• Plans and procedures for dealing with problems or mishaps. Some may be foreseeable and can therefore be prevented. Plans also need to be in place for dealing with the unforeseen. Consideration needs to be given to the need for warning devices, emergency stop buttons, evacuation plans and so on. A safe system of work implies that all aspects of the work have been considered as an integrated whole. While the work may be broken into tasks to identify hazards, it is necessary to consider the effects of all components on each other.

Information, instruction, training and supervision

Employers must provide employees with the necessary information, instruction, training and supervision to carry out the work safely. All information, training and instruction should be provided in a way that all employees at the workplace can understand. Where employees do not speak English or are unable to read English, employers should find an alternative method of providing information and training. This would apply to employees for whom English is not a first language and to workers who, for physical, intellectual or cultural reasons, are unable to read.

Information

Employers are required to provide information to employees to enable them to perform their work in such a manner that they are not exposed to hazards. For example, visual warning signs, posters, booklets, brochures and other written or electronic materials could be provided under this duty.

Instruction and training

Instruction and training should be relevant to the safety and health of employees in the workplace and should take the functions of each employee into account.

Training requirements are fully covered in Element 3 of this guide.
Supervision

Employers must provide adequate supervision to ensure employees are not exposed to hazards and take reasonable care of their own safety and health and the safety and health of others. Employers should ensure:

- people in supervisory positions have the skills, knowledge and authority to undertake this role;
- employees are adequately supervised;
- the work is sufficiently monitored and agreed safe work practices are followed; and
- personal protective equipment, such as respirators, garments, eye and hearing protection are used and kept in reasonable condition.

Special consideration must be given to the requirement for supervision of employees working on their own or working in an isolated area, for example, timber workers, exploration geologists and surveyors. As supervision of employees in these circumstances is limited, the employer must ensure that employees have suitable access to amenities and can easily communicate with the employer to obtain instructions and emergency assistance.

An employer is expected, through supervision, to ensure that employees are following safe work procedures and working in a manner consistent with the instruction and training provided. It is not sufficient to introduce safe procedures without monitoring their implementation to ensure they are adopted and effective. Failure to act to rectify unsafe behaviour, or failure to implement an adequate system of supervision to ensure the work is undertaken in a safe manner, would not satisfy the employer’s general duty.

Employers have the major responsibility under an OHS act. In most cases, employers must provide a safe system of work with adequate information, instruction, training and supervision before employees can take reasonable care for their own safety and health at work.
Other duties of employers

One objective of the Act is to foster cooperation and consultation between employers and employees. Employers are required to consult and cooperate with health and safety representatives (if there are any in the workplace) and with other employees on OHS matters. Consultation and cooperation between employers and employees are the keys to providing and maintaining a safe and healthy workplace.

Health and safety committees provide a means for consultation and cooperation. Their establishment is encouraged. The legal responsibility for safety and health decisions at a workplace rests with the employer. The consultation process should help employers to reach decisions which take into account information and recommendations provided by employees or the health and safety committee in the workplace.

A number of OHS authorities publish guides on the requirements in OHS legislation concerning the election of health and safety representatives, the functions of health and safety representatives and committees, and resolution of issues. You should access these for information on the consultative structures established under that act.

Certain cases of injury or disease affecting employees at the workplace must be reported to the OHS authority in the relevant jurisdiction. This includes all cases resulting in the death of an employee. Other injuries and diseases to employees that must be reported would be listed in the regulations. The regulations would cover specific injuries and certain diseases that are known to be caused by occupational factors. Employers are responsible for reporting deaths and these injuries and diseases.

Duties of employees

Employees must take reasonable care for their own safety and health at work and avoid harming the safety and health of other people. General duties include:

- following the employer’s OHS instructions;
- using personal protective clothing and equipment;
- taking good care of equipment;
- reporting hazards;
• reporting work-related injuries or harm to health; and
• cooperating with employers so that employers can carry out their duties under the Act.

The employee’s duty does not stand alone. It complements the employer’s duty, and the employee needs to receive the appropriate information, instruction, training and supervision to properly fulfil his or her duty. Given this, it is the employee’s duty to act in good faith.

**Extent of the employee’s duty of care**

The duty applies to all levels from production worker or clerical worker to senior executive or manager. The employee’s duty to avoid causing harm to others may place greater responsibilities on managers and supervisors than on other staff. For example, a supervisor who directs that a particular task is done in a particular way clearly has responsibilities to the employees who are directly involved in performing the task, and to other employees and members of the public who may be affected by the way in which the task is done.

An OHS adviser will often be called upon to provide specific advice about aspects of the OHS legislation. It is important for the adviser, who may be advising others (such as supervisory staff or the safety and health committee), to discuss how the legislation should be applied with others in the organisation with specialised knowledge – such as engineers, chemists, maintenance personnel, control software specialists and electrical personnel.

Employees must:

• **Follow the employer’s instructions** provided for OHS reasons.

• **Use personal protective clothing and equipment** that has been provided by the employer. This duty is dependent upon the employer providing proper instruction in its care, use and storage.

• **Take good care of equipment** provided in the interests of safety and health. In particular, the employee must not misuse or damage the equipment. It would be an offence to deliberately render fire-fighting equipment inoperative or to
remove guards* from dangerous machinery for no good reason. This point applies when employers have provided the necessary information, instruction and training in safety and health matters, and an employee’s actions to misuse or damage are quite deliberate.

- **Report hazards** that the employee cannot correct. The requirement is to report to the employer. However, there could be a system in the workplace where employees report to their immediate supervisor or area manager. Where that person is also unable to correct the hazard, it should be reported to a more senior management person. Any procedure that sets up a chain of command or delegates the task of receiving hazard reports should ensure there is prompt action to fix the problem or refer it on to someone who can fix it. The legal responsibility to ensure that employees are not exposed to hazards rests with employers. In addition, supervisors who do not follow an agreed reporting procedure could be affecting the safety and health of other people through an omission at work, and may be failing to comply with their duties as employees.

- **Report injury or harm to health** that is connected with the work activity. This applies to physical injuries and to the early symptoms of illness or disease that may be connected with work. For this reporting to occur, employees should have received information from the employer about the early symptoms of which they need to be aware. For example, keyboard operators should be aware of the symptoms of occupational overuse injuries.

- **Cooperate with the employer** to allow the employer to carry out his or her duties under the Act. This complements the employer’s duty and means that employees should actively work with employers with the common aim of improving safety and health at the workplace. This duty means that employees must follow directions given by the employer in the interests of safety and health.
2.2 PROVIDE ADVICE TO APPROPRIATE PERSONNEL ABOUT ADMINISTRATION OF ENFORCEMENT PROCESSES AND INSTRUMENTS INCLUDING PENALTIES THAT APPLY TO ORGANISATIONS PROSECUTED UNDER RELEVANT OHS LEGISLATION

Appropriate people in the workplace who have duties placed on them by OHS law need to know how those duties may be enforced. Here we outline the provision of that advice.

Administrative notices issued by inspectors and others

There are two separate streams of enforcement under most, if not all, the OHS legislation in Australia. The first stream consists of enforcement notices which are binding on the employer. These are known as improvement notices and prohibition notices, and are issued by inspectors or authorised appointees of the relevant OHS authority. There are also steps set out in the legislation if an employer wishes to appeal against a notice. The penalties which apply if the employer fails to implement the requirements of the notice within the time specified are set out in the legislation.

An improvement notice is a written direction issued by an inspector requiring a person to correct an alleged breach of the Act or regulations. The notice must contain a reference to the specific regulation or section of the Act allegedly contravened, the reasonable grounds for forming that opinion and the period of time allowed for the improvement to be made.

Prohibition notices which require a certain type of work or equipment to be stopped as soon as possible are used only where there is an imminent and serious risk of injury or harm to health.

On the spot fines can also be applied by authorised staff of the OHS authority in some jurisdictions.
Provisional improvement notices issued by representatives

Under some OHS acts there is a second stream of enforcement – a safety and health representative (or those who meet certain conditions) can issue a provisional improvement notice (called in South Australia a default notice, and in New Zealand a hazard notice). In some jurisdictions, the notice must be confirmed or lifted by authorised staff of the OHS authority. In other jurisdictions, the authority may become involved only if the notice is not accepted by the employer. In NSW a trained OHS committee chair or OHS representative can issue a safety recommendation notice (SRN).

Enforceable undertakings

Some jurisdictions, for example Queensland, also allow for enforceable undertakings on an employer, issued by an authorised person in the OHS authority, but which can be backed up with a court order. In Western Australia such undertakings may apply only after conviction for certain offences and in lieu of a fine.

Prosecution

Where an authorised staff member of an OHS authority believes there has been a breach by an employer (or other person) of the duty of care or of a specific aspect of the OHS legislation, they may recommend prosecution. Access the web site of your OHS authority and look for information provided on their enforcement and prosecution policy. Prosecution is not used on every occasion and may occur whether or not there has been serious injury. Penalties set out in the Act for breaching the legislation vary with the “person” charged (a company is a corporate “person” in law). For example, penalties for employees are lower than those for an employer. For breaches of the legislation involving death, some jurisdictions have now introduced a charge of industrial manslaughter or gross negligence, which may involve imprisonment.

It is important to be aware that serious breaches or repeat offences may result in a prosecution.
2.3 PROVIDE ADVICE TO APPROPRIATE PERSONNEL ON HOW NEGLIGENCE IS DETERMINED AT STATUTORY AND COMMON LAW

In simple terms, negligence is either failing to do something a person should have done or doing something a person should do in the wrong way. Here we examine this from the point of view of OHS law and common law. ‘The law’ stands as interpreted by the courts and announced in court decisions.

Statutory law

Statute law is developed through the process of government and includes Acts and their supporting regulations. Statute law is enforceable and breaches may result in prosecution. Key parts of statute law have offence provisions for which penalties can be imposed.

Negligence is probably the wrong term to use in relation to breaches of OHS legislation. It is more correct to refer to breaches of the duty of care, or breaches of a specific requirement in the legislation. If, as an OHS practitioner, you are required to brief managers, supervisors, or other employees on the employer’s duty of care, it can be put in terms of a key requirement to carefully investigate a particular problem, identify hazards, and assess and control the risks which those hazards pose in the particular circumstances.

The general duty of care requires decisions by the responsible people on what it is reasonably practicable to do to manage the risks. Specific requirements in the regulations may give further guidance on what to do, but increasingly the emphasis is on the process of identification, assessment and control to meet the duty of care requirements – rather than on what to do, such as ensure a particular guard is on a machine, which is a prescriptive approach, or how to do it, which is a process approach.

As noted earlier, further assistance may be available from codes of practice, guidance notes and standards. In addition to this there may be information available within your industry, or in the case of,
for example equipment, more information may be available from the supplier or manufacturer.

Accessing health and safety literature and databases can also enable you to find out if there have been similar problems and how they were solved. It is also useful to look at summaries of court cases, both prosecutions and common law claims, which involved similar issues.

The meaning of ‘practicable’

Some of the general duty provisions in the Act are qualified by the words ‘so far as is practicable’ or something similar depending on the specific Act. This applies to general duties for employers, self-employed people, people with control of workplaces, designers, manufacturers, importers, suppliers, erectors and installers. These people are expected to take measures that are practicable and reasonable. If something is ‘practicable’, it is capable of being done. Whether it is also ‘reasonable’ takes into account (in Western Australia for example):

- the severity of any injury or harm to health that may occur;
- the degree of risk (or likelihood) of that injury or harm occurring;
- how much is known about the hazard and the ways of reducing, eliminating or controlling it; and
- the availability, suitability and cost of the safeguards.

The risk and severity of injury must be weighed up against the overall cost and feasibility of the safeguards needed to remove the risk. Common practice and knowledge throughout the relevant industry are taken into account when judging whether a safeguard is ‘reasonably practicable’. Individual employers could not claim that they did not know what to do about certain hazards if those hazards were widely known by others in the same industry, and safeguards were in place elsewhere.

The cost of putting safeguards in place is measured against the consequences of failing to do so. It is not a measure of whether the employer can afford to put the necessary safeguards in place. While cost is a factor, it is not an excuse for failing to provide appropriate safeguards, particularly where there is risk of serious, or frequent but less severe, injury.

What is considered reasonable in any particular case will depend on the specific circumstances.
Common law

There is another body of law called common law, which has developed as a result of civil actions. This occurs when a person believes that he or she has been wronged by another party and takes that party to court, seeking justice. Common law is the law developed over hundreds of years as a result of court decisions on disputes between two parties. Case law on OHS did not appear until the 19th century, when industrialisation led to a rapid rise in work-related injuries. In 1840, a young female mill worker successfully sued her employer and was awarded damages [Cottrell v Stokes (1840) Liverpool Assizes].

The general duties of care in OHS acts are based on principles built up under common law. Because of this similarity it is important not to confuse common law and statute law. In statute law, the requirements are written down in the legislation as approved by Parliament. Common law is built up over time through decisions made by the courts.

The courts have determined the common law duty to mean that all employers must take reasonable care for the health and safety of their employees. This assumes that control of working conditions rests largely with the employer, and consequently responsibility for OHS also rests largely with the employer. Sometimes this common law duty is split into categories such as:

- safe work practices (eg, use of appropriate hand tools for the task);
- safe place of work (eg, equipment is well laid out and lighting is suitable for the task); or
- safe system of work (eg, tagging procedures exist to maintain equipment).

But the overriding general duty always remains. The courts recognise that the actions of an employee may contribute to an injury and may reduce the size of a damages payout for ‘contributory negligence’. Under common law, there must be some damage to a person or property before action can be taken. Under an OHS act there is no need for an injury to occur before enforcement action can be taken to have an unsafe situation fixed. The focus is on preventing such unsafe situations, because the duties are enforceable. Under an OHS act, the courts may impose fines for breaches of the legislation, but there are no payouts for negligence to injured parties.
The ‘reasonable person’

In common law, each case is decided on its merits and the courts determine whether the action taken by the employer is reasonable in any particular case. They consider the way a hypothetical ‘reasonable person’ might behave in each situation, to determine the standard of care which should apply in any particular case. The judgement is based on the values of the society of the day and, in the end, will involve a value judgment.

There is no legal definition of how a reasonable person would behave, and the final decision depends on the facts of each situation. For employers, there is an emphasis on the increased level of care that would be considered reasonable by today’s standards. In a High Court decision, the following comment was made regarding the employer’s obligation:

“...what reasonable care requires will vary with the advent of new methods and machines and with changing ideas of justice and increasing concern with safety in the community ... What is considered to be reasonable in the circumstances of the case must be influenced by current community standards.”

Source: Bankstown Foundry case final appeal: Mason, Wilson and Dawson JJ (160 CLR 301).

The employer’s position is covered very well in the following summary:

- “The overall test is the conduct of a reasonable and prudent employer taking positive thought for the safety of his workers in light of what he knows or ought to know;
- where there is a recognized and general practice which has been followed for a substantial period in similar circumstances without mishap, he is entitled to follow it unless in the light of common sense or newer knowledge it is clearly bad;
- where there is developing knowledge, he must reasonably keep abreast of it and not be too slow to apply it;
- where he has in fact greater than average knowledge of the risks, he may therefore be obliged to take more than the average or standard precautions.”

Source: Statement by Swanwick J. in Stokes v Guest, Keen and Nettlefold (Bolts and Nuts) Ltd (1968) 1 WLR 1776
The standard of care which the courts require is that degree of care which a reasonable person would exercise in those particular circumstances. Therefore the degree of care varies quite a lot. For instance, the courts have found that if an employer knows an employee has vision in only one eye, then the employer's duty of care to protect the other eye becomes correspondingly greater. The risks and the injury must be reasonably foreseeable and reasonably avoidable.

**Negligence**

Tort (negligence) duties are important when it comes to determining compensation in the form of a quantum paid for damages for things such as pain and suffering arising from injuries sustained at work (applies only in those jurisdictions which allow the employee to sue under common law).

In negligence claims the injured party (plaintiff) can be helped by procedural rules and rules of evidence. One of these rules saves them from having to show exactly how an incident occurred if all the circumstances show that there would not have been an injury except for lack of reasonable care on the part of the person being sued. This is known as *res ipsa loquitur* 'let the facts speak for themselves', an illustration of which is a load falling from a crane onto a pedestrian passing by on a footpath, where one would say that *prima facie* the incident could not have happened without someone's fault.

**Vicarious liability**

An employer can be held liable either directly for breach of their own duties or 'vicariously'. Vicarious liability arises where an employee or an agent of the employer has acted negligently and caused injury to another employee. The employer is legally liable for the wrongful act or omission where it has been performed in the employer's interest. However, the employer is not liable if the employee acts negligently on a frolic of their own independently of their employment. Smith v Crossley Bros Ltd illustrates this, where, as a joke, two apprentices injected compressed air into the body of another. In this particular case the employer was not held liable. In cases where the employer is aware of 'horseplay' behaviour and has not taken appropriate action to prevent it, liability has been found.
An employer is therefore responsible for negligent actions by an employee which cause injury to someone else, employee or not. An employee injured at work may also sue for damages if there has been a breach of a statutory provision relating to OHS at work by the employer. However an employer has a defence where the employee has contributed to these injuries by their own negligent actions.

As noted earlier in Element 1, it is possible, in a particular incident, for a contractor to be found liable for breach of the common law duty, while the principal is found guilty under statutory law for breach of the duty.

**Competency check for Element 2**

Key issues for each performance criterion in this section are as follows.

2.1 Provide advice to appropriate personnel about the specific legal responsibilities of employers including duty of care and how it is codified in relevant OHS legislation:

- Communicating the legal requirements covered in Element 1.

2.2 Provide advice to appropriate personnel about administration of enforcement processes and instruments including penalties that apply to organisations prosecuted under relevant OHS legislation:

- Administrative notices are designed to correct identified breaches of an OHS act. In some jurisdictions there are on the spot fines. In all jurisdictions there is the possibility of prosecution, with a range of penalties.

2.3 Provide advice to appropriate personnel on how negligence is determined at statutory and common law:

- It is important to convey the differences between statutory and common law when it comes to breaches of the duty of care.
Case Study 2

In the workplace described in Element 1, there is a maintenance fitter’s workshop or work area where two employees work, the fitter and an apprentice. It is also occasionally used by contractors engaged to carry out shutdowns or maintenance requirements set by the supplier or manufacturer of equipment. It contains workbenches, grinders, a welding set, lathe and drill press. The general manager is particularly concerned about this area because of its relatively high potential for injury, and its occasional use by non-employees.

1. Summarise in a two-page memo for the general manager, the specific legislative requirements and associated support material which you would like to have permission to obtain in hard copy to assist in meeting the duty of care in the workshop. Include an explanation of the types of enforcement notices and (where applicable) on the spot fines, which apply to the workshop.

2. Explain the penalties for breaching the duty of care. Outline the range of penalties which apply under your relevant OHS legislation. Include:
   - employers and employees;
   - those having control of premises;
   - importers, manufacturers and suppliers;
   - erectors and installers of equipment; and
   - principal contractors and self-employed.

3. Powers of inspectors. It is essential you have a good working knowledge of the powers of an OHS inspector. Access and add to your assessment portfolio the section of the relevant OHS act which describes when, where and how inspectors may enter a workplace, and what they are legally empowered to do in the way of interviewing, examining and taking samples,taking photographs and copies of documents, and noting names and addresses.
Activity 2

Keep a copy of this Activity for your Assessment Portfolio.

Select an OHS jurisdiction and workplace; then undertake the following activities.

- Prepare an information leaflet for supervisors and managers at your workplace to communicate the legal responsibilities of employers, including the duty of care. Ensure you convey the differences between statutory and common law when it comes to breaches of the duty of care.

- Include in your presentation, information about enforcement notices, processes and penalties that operate in that jurisdiction.

- Access from the OHS authority in your jurisdiction, guidance information explaining the duties of care as it applies to employers, employees, contractors, third parties, occupiers, installers, designers, manufacturers, importers, suppliers, etc. Make notes and ensure you understand the information so you can explain the concepts to others.
Element 3: COMPLY WITH LEGAL REQUIREMENTS

As you will have gathered by now, the general duty of care is open-ended. Part of the reason is to ensure that legislation does not hold back progress in implementing new knowledge and techniques in managing risk – that is, risk management stays up-to-date. If the regulations are prescriptive and say, for example, that a photoelectric sensor must be built into a certain type of machine to alleviate risk, that will rule out a machine designed to be safe but using a different method which makes the sensor unnecessary. With duty of care performance-based legislation, a code of practice may recommend a photoelectric sensor, but the legislation allows for a company to use another effective risk control measure.

The work system contains five main overlapping areas. These are people (including management), equipment or tools, the work environment, work methods, and substances or materials used.

In order to complete this element successfully you will have to show that you have satisfied the following performance criteria:

3.1 Take action is to ensure that the workplace, including systems of work and work organisation, is appraised against and complies with relevant legislation.

3.2 Identify training needs of those with OHS responsibilities and provide training as required according to legal requirements.

3.3 Identify requirements for other training under OHS legislation and arrange training as required.

3.4 Recognise limits of own professional expertise and consult legal advisors as required.

In this element we consider the management system to see if it is aimed at ensuring safety and health in the organisation. A critical part of making the system work and addressed here, is staff selection and training, both OHS training and other training having an impact on OHS. We also consider when you should obtain extra assistance on these matters.
3.1 TAKE ACTION IS TO ENSURE THAT THE WORKPLACE, INCLUDING SYSTEMS OF WORK AND WORK ORGANISATION, IS APPRAISED AGAINST AND COMPLIES WITH RELEVANT LEGISLATION

A whole range of planned actions are needed to ensure compliance and this includes identifying hazards, assessing risks and controlling risks. Control is supported by the way the work is organised. Undertaking inspections, investigations and audits will also be part of the management system to ensure compliance, as is the provision of information, instruction, training and supervision.

Workplaces

A workplace is viewed in many OHS acts as meaning any place where employees or self-employed persons work or are likely to be in the course of their work. The definition includes such places as aircraft, ships, vehicles, farms, forests, buildings and other structures. It is not limited to traditional workplaces such as factories, shops, warehouses and construction sites.

An employer’s responsibility is limited to those aspects of the employment where the employer is capable of exercising some control. The definition of a workplace is therefore very broad and could apply to places such as streets where the employed person is a driver or delivery person, or a public oval where the employee is a teacher supervising school sports. In the example of the delivery person, an employer could have control over the maintenance of the vehicle and the system of work, but would be unlikely to have any control over the streets, buildings or sites where the goods were to be delivered. Similarly, an employer would have little control over the public oval in the second example.

In the same way, an employer may not have any control over public transport used for interstate or international travel or over hotels or other workplaces outside the state where employees could be in the course of their work. (Note that where an employee
undertakes work in another state, the employer may have duties under that state’s legislation.)

**Safe system of work**

A safe system of work implies that all aspects of the work have been considered as an integrated whole. While the work may be broken into tasks to identify hazards, it is necessary to consider the effects of all components on each other. Safe systems of work would ensure that:

- workers are relocated elsewhere in an excavation while a crane lifts materials over their work area;
- a workplace is designed with a one-way circuit to avoid industrial lift trucks reversing towards workers on site;
- a product is packaged to avoid strain injuries when the packages are handled; and
- data entry operators are given other clerical duties to limit the time spent at keyboards and to reduce the risk of occupational overuse injuries.

Any relevant regulations must be complied with. Regulations may address only part of the work, so compliance with a regulation does not necessarily ensure a safe system of work as required by the employer’s general duties.

**Example 1:**

Certain regulations may apply to spray painting. The regulations may cover specific aspects of the spray painting process, including the requirement to carry out spray painting in a booth. A safe system of work would require compliance with these regulations and further consideration of other factors, such as the proximity of other workers to the spray painting process, information on spray painting hazards, fire precautions, storage and handling of hazardous substances, isolation of areas where workers may be eating or drinking, provision of washing facilities, and provision and cleaning of personal protective clothing and equipment.
Example 2:
All dangerous parts of a hydraulic press must be securely fenced or guarded or set up in accordance with regulations. To ensure a safe system of work, other factors, such as safe storage and movement of the metal sheets pressed on the machine, good housekeeping to keep the floor clear of debris, maintenance procedures and operator training and supervision, should all be carefully planned to protect the operator and all other people on site.

Identification of hazards, risk assessment and risk control

Three basic steps should be taken to ensure a healthy and safe workplace. They are based on the concept that the workplace should be modified to suit people, not vice versa. The three steps are:

- **Identifying the hazards** – involves recognizing things that may cause injury or harm to the health of a person, for instance flammable material, ignition sources or unguarded machinery;

- **Assessing the risk** – involves looking at the possibility of injury or harm occurring to a person if exposed to a hazard; and

- **Controlling the risk** – by introducing measures which will eliminate or reduce the risk of a person being exposed to a hazard.

Employers should consult with health and safety representatives (if any) and employees during these steps. It is important to review the steps regularly, especially if there are changes in the work environment, new technology is introduced, or standards are changed.
Inspections

When you check the workplace to identify any hazards and appraise how well it meets duty of care requirements, you need to take into account each of the areas of the work system and their interactions with the other areas. There are several well tried methods for doing this. They include informal inspections, more formal inspections using checklists, the safety survey (which is a detailed look at one specific area) and audits.

Informal inspections

The informal inspection, which can be carried out during a walk-through, by range of people, can certainly check some of the more obvious issues, for example:

- spilt oil creating a slippery floor surface;
- workers who are not wearing ear plugs or ear muffs but are working in an area designated as a hearing protection zone; or
- guarding not replaced on a machine after maintenance.

Checklists

Checklists can be used to identify hazards so the risks associated with them can be assessed. Actions to control those hazards and who should do this, can then be decided on. Quite often the basis for a checklist in your workplace can be found in a code of practice; for example, the Safe Work Australia code of practice on Manual Handling has checklists. Properly designed checklists offer the opportunity to tackle relevant aspects of the duty of care in a systematic way.

Checklists may include a range of questions set out in the different categories of hazard, such as electrical, mechanical, chemical, biological, gravitational, hydraulic or physical (for example radiation).

An example of a gravitational hazard on a building site is a missing guard rail on scaffolding or no kickboard to stop bricks or tools falling. However, the checklist can also cover areas such as work methods, effective supervision and training.
Answers to checklist questions can be a simple yes/no, followed by a comments column. Alternatively, a grading system, say 1-5, can be used.

The questions need to be constructed properly, and the answers are much easier to assess if a yes (or a 4-5) always indicates that something meets the standard set. An example is given here, which uses another rating system, but you could assign a numerical score:

<table>
<thead>
<tr>
<th>Workplace Inspection Sheet</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Poor</strong></td>
</tr>
<tr>
<td>1. LIGHTING</td>
</tr>
<tr>
<td>Comments</td>
</tr>
<tr>
<td>2. VENTILATION</td>
</tr>
<tr>
<td>Comments</td>
</tr>
</tbody>
</table>

(from Enhancing Safety Chapter 4)

Note that with these inspections, the visual or subjective inspection could be backed up by measurements with a light meter or for the ventilation an air flow meter.

An OHS act itself, the regulations, codes of practice, guidance notes, standards and other sources of information can all be used to help create an effective and useful checklist. For the OHS practitioner, a range of checklists is available from various sources; however, these should be examined critically, because they may be based on standards which don't apply in your jurisdiction, or because in any case they may need to be amended to suit the needs of your particular workplace.
When it comes to checking the actual methods of work used, these depend on the procedures developed by the organisation, the training provided in the procedures, and the attitude of the workers. The procedures themselves depend partly on undertaking risk analysis through tools such as job safety analysis. All of these issues can be dealt with, at least in part, during an inspection if a properly constructed checklist is used. For example procedures are specifically raised in Queensland workplace health and safety regulations as mandatory method statements for some types of work, and (also in Queensland) mine safety regulations as standard work instructions.

You will need to ensure that a system is set up to carry out these inspections regularly, preferably without notice being given, and that responsibilities for doing this are assigned. The checklists need to be designed to identify items that require action and who is responsible for that action, and by when. A follow-up to ensure that the actions have occurred is essential, and the workplace records system needs to reflect this. Part of this system includes keeping a hazard register. Risk prioritisation is important to make sure that effort and resources are applied where they are most needed. The Pareto principle states that approximately 80 per cent of the injuries arise from 20 per cent of the hazards. So, applied here, it means that 80 per cent of the effort should go into those risks which are likely to cause 80 per cent of injury and property damage costs.

Audits

On a less regular basis, a thorough and detailed check of the OHS management system in an organisation is carried out by means of an audit. More detail on this is given later in this guide, and in later units of the Certificate IV in OHS.
Incident investigation

Incident investigation will also supply important information to help ensure compliance with duty of care requirements. Examples of factors contributing to an accident are a faulty wire rope and failure to check the ropes regularly for kinks and broken strands.

The results of all the steps taken above need to be discussed on a regular basis by management in consultation with health and safety representatives, and also at meetings of the health and safety committee, where there is one.

3.2 IDENTIFY TRAINING NEEDS OF THOSE WITH OHS RESPONSIBILITIES AND PROVIDE TRAINING AS REQUIRED ACCORDING TO LEGAL REQUIREMENTS

Suitable training is a very important aspect of any workplace. Here we examine the training needed by those in the workplace who have various responsibilities for OHS.

Those with OHS responsibilities may include directors of a company or organisation, managers, supervisors, health and safety representatives and health and safety committee members.

Health and safety representatives and committees

Training for health and safety representatives (or for the equivalent health and safety committee members) is specified in most Australian OHS legislation.

Workplace health and safety officers / practitioners

In one state, Queensland, training is specifically required for the workplace OHS officer (where a workplace is required to have
It is a feature of Australian OHS legislation that training requirements for comprehensively trained OHS practitioners are not specified.

Those who are required to undertake specific tasks such as noise surveys, risk management, OHS audits, inspections or investigations will also require training. It is important to note that specialist areas of OHS, if required in the workplace, will involve university studies; for example, occupational hygiene and ergonomics, although a good introduction to these areas is available in the Advanced Diploma in OHS.

**Supervisors and managers**

It is essential that those with responsibilities as managers or supervisors have OHS training where required. There is mandatory training for key responsible positions within a mining organisation. Codes of practice or guidance material may also specify training requirements. In addition, regulations, such as for confined space entry, may require specific training for those having control of the work process with employees under their supervision. Managers and supervisors may also require training in the administration of OHS and the organisation of systems of work so employees are not exposed to hazards, as well as to meet their responsibilities (if they are health and safety committee members).

In any organisation supervisors form the critical interface between management and the workforce as a whole, and in ensuring safe work practices, so their training is vital. Some jurisdictions are now recognising the importance of allowing them to attend part or all of health and safety representative training courses. That is by no means all the training they need, but it is a response to a problem which has existed for quite some years.

**The training function**

Large organisations will have a training officer with an effective training records system which identifies completed training and training needs, and who will organise training to suit the requirements. In other organisations, if they have an OHS practitioner, their role may also involve that of training officer with responsibility for ensuring adequate and timely training. On the job training requires suitable records systems. Some types of training
cannot be provided within the organisation and must be carried out by recognised or approved external providers.

3.3 IDENTIFY REQUIREMENTS FOR OTHER TRAINING UNDER OHS LEGISLATION AND ARRANGE TRAINING AS REQUIRED

Aside from providing training to those with OHS responsibilities, other forms of training are required to ensure all those in a workplace can work safely.

Induction programs

Adequate instruction and training of employees includes instruction and training in safe working procedures. An important feature of this is induction training, which any new employee should receive before they commence work. Induction programs are essential as they can be the first experience for a person new to the job or particular work environment. Information given during an induction should include:

- introduction to people with OHS responsibilities at the workplace;
- workplace policies and procedures;
- how to identify hazards;
- reporting of hazards;
- how to carry out the job in a healthy and safe manner;
- information on hazardous work practices;
- where applicable, details of any isolation or “tag-out” procedures;
- reporting of accidents or incidents;
- selection, use, fitting, storage, and maintenance of personal protective equipment;
- where to obtain OHS information;
- information regarding health and safety committee meetings; and
- emergency evacuation procedures.
In some states, inductions are mandatory in the construction and mining industries. For the mining industry, organisations such as MARCSTA in Western Australia (www.marcsta.com) ensure a common standard for such training, based on a unit from a national metalliferous mining training package. Risk assessment training at all levels is also important.

‘On the job’ training

After induction, employees also require ‘on the job’ training to ensure they can not only do the work but do it safely. This might include:

- showing the employee the task and a safe way of doing it;
- explaining the reasons, steps, key points and safety considerations;
- having the person practise;
- giving feedback on the practice; and
- correcting errors as they occur.

Industry or ‘in house’ training

As part of induction and on-the-job training or as refresher training when a process changes, employees, managers and supervisors may require OHS training, which is delivered on an industry or ‘in house’ basis and should cover areas such as:

- hazards;
- operation of all relevant equipment;
- work procedures to minimise exposure to hazardous substances;
- safe systems of work to prevent an accident or injury;
- safe operation and maintenance of plant or equipment;
- work procedures relevant to the job being performed;
- any isolation or “tag-out” system, including persons authorised to use it;
- correct selection, use, care, fitting, storage and maintenance of personal protective equipment;
- correct use, care, maintenance and storage of tools and equipment;
- electrical safety;
- fire prevention and precautions;
• procedures in the event of an emergency, such as an accident, rescue or fire;
• maintaining agreed record keeping procedures and systems; and
• hazard and accident reporting systems.

The type of training that suits each workplace may vary from place to place and should be determined following consultation with employees and health and safety representatives.

**OHS instruction to experienced employees**

Employers should continue to provide information, instruction and training to experienced employees who have previously had relevant OHS training. An employer should not assume that an experienced person does not need to be instructed about the obvious, but equally training should be designed along adult learning principles and so the trainer should assess up front the skills which are already possessed. The employer’s duty to instruct and warn employees covers all employees, including experienced ones. Further training or re-training is needed when:

• new methods, equipment, policies or procedures are introduced;
• the type of operation or environment changes;
• the particular job requirements change; and
• new laws come into effect.

**National licensing for high risk work**

Do you carry out scaffolding, dogging or rigging work?
Do you operate a forklift, crane, hoist or pressure equipment?
Do you employ workers who do this work or operate this equipment?

If you answered YES to any of these questions, you need to know that new Australia-wide licensing rules apply to this ‘high risk work’. Licences issued under the new National Standard for Licensing Persons Performing High Risk Work replace the National Certificates of Competency, and will allow work anywhere in Australia.
Safety is the main priority of the new licensing system. Its part of a national program designed to ensure that those involved in high risk work hold competencies in units from an industry training package. The new licence resembles a drivers' licence – complete with photograph and high risk work list of classes. The licence will be valid for five years.

**Industry training packages**

Competency-based training packages have had a major impact on training in Australia. One reason for this is that such packages place much greater emphasis on acquiring and assessing skills on the job than traditional methods of training in some areas did formerly.

Most qualifications in these industry training packages will include a unit reflecting the OHS competencies required for the relevant job role (employee, supervisor or manager).

The new system can place major demands on training officers and supervisors in organisations, because of the need to organise an effective system of in-house mentoring and assessment. This in turn requires qualified workplace assessors, who now need a recognised training qualification, either to carry out the assessment themselves or to sign off on the assessment carried out by someone expert in the particular skills.

Some of these packages, for example the package for OHS practitioners (of which this unit is a part), may give substantial credit towards a university qualification.

An important feature of competency-based training is that the training must be provided by an organisation registered to do so with the state or territory training authority. This registered training organisation (RTO) may be a training organisation as such, or it can be the company for which the employee works. RTOs are audited externally to meet Australian Quality Training Framework (AQTF) standards.
3.4 RECOGNISE LIMITS OF OWN PROFESSIONAL EXPERTISE AND CONSULT LEGAL ADVISORS AS REQUIRED

In section 1.4 you considered the matter of obtaining further advice about the responsibilities and requirements of employers and other persons at workplaces. Here we again consider obtaining advice, but this time in the context of compliance with OHS legislation.

Consult experts

The codes of ethics for most professional organisations, including those for OHS advisors, caution against advising beyond one’s area of competence. There are going to be occasions where an OHS problem needs specialist expertise or advice if it is to be dealt with properly. The OHS practitioner needs to be aware of this, and may call on, for example, the services of a psychologist, electrical engineer, rehabilitation consultant, ergonomist, management consultant, occupational hygienist, or occupational physician. Advice on who to contact can be sought from the relevant professional organisations, for example the Ergonomics Society, the Australian Institute of Occupational Hygienists, or the College of Occupational Medicine. Some OHS authorities also have such contact lists, for example for noise control experts.

In the normal course of events, it is more probable that an OHS practitioner will call on the services of people like those above, or an OHS inspector from the OHS enforcement authority, rather than consult a legal practitioner. Few legal practitioners are expert at providing advice on very specific areas of OHS. However, there will be occasions, such as after a serious injury, or where emissions from a plant are affecting the community, where the company may need to seek expert legal advice.

One area where the OHS practitioner may be in more frequent contact with a legal practitioner is in cases where an employee has lodged a workers’ compensation claim. The legal practitioner may be engaged by the employee to manage his claim. The company person handling the case may be the OHS practitioner who will be looking for a resolution between the company, the insurer and the employee (represented by their lawyer).
 Competency check for Element 3

Key issues for each performance criterion in this section are as follows.

3.1 Take action is to ensure that the workplace, including systems of work and work organisation, is appraised against and complies with relevant legislation:

- Such action would include inspections, use of checklists, audits and incident investigations. Implementing consultative mechanisms in accordance with the Act, such as a health and safety committee, is also important.

3.2 Identify training needs of those with OHS responsibilities and provide training as required according to legal requirements:

- Those with OHS responsibilities who are required to have training include worker-elected health and safety representatives, health and safety committee members (in some jurisdictions), workplace health and safety officers (in Queensland) and mining management.

3.3 Identify requirements for other training under OHS legislation and arrange training as required:

- This includes those requiring certificates of competency (tickets to work), induction and job-specific training, and competency-based training for supervisors and managers in accordance with OHS units in industry training packages.

3.4 Recognise limits of own professional expertise and consult legal advisors as required:

- Advisers on practical application of OHS law may include OHS consultants including specialist practitioners, OHS inspectors and, in some cases, legal practitioners.
Case Study 3

Within the workplace that you previously selected for the case study is an office area with five staff, each with a computer workstation. There have been complaints of tiredness, sore eyes and sore necks. The two staff who do keyboard entry for other staff complain of erratic workflow, and demands for work to be done yesterday.

1. Access or draw up a suitable checklist to assess this part of the workplace. Search and refer to national and state guidance material to assist you.

2. If possible, gain access to a workplace and use the checklist. Comment on your findings. Also, find out how much an appropriate consultant would charge to undertake a workplace appraisal. Provide the general manager with the price do this and explain why the consultant has the appropriate expertise. Briefly explain whether this expertise should be used.

3. In respect of the organisation as a whole, not just the office area, identify seven areas where there may be OHS training needs. Draw up a table to illustrate types of staff and corresponding areas of possible OHS training requirements. Research and explain whether there are parts of recognised training packages or entire qualifications to meet these training needs. Refer to www.ntis.gov.au to find details of training packages units developed for a whole range of occupations. If there are no suitable units, provide an explanation as to why and detail how you intend to meet the training needs.

4. Find out the cost of a private provider for the training identified in point 3 and provide details and the price to the general manager in a memo.
Activity 3

Keep a copy of this Activity for your Assessment Portfolio.

Select an OHS jurisdiction and workplace then undertake the following activities.

- Prepare a report after appraising two different areas of the workplace for compliance with OHS legislation. To do this you will need to prepare and use checklists to assist you during an inspection.

- Prepare a training presentation to a group of supervisors on their OHS responsibilities. Give the presentation and get written feedback from your coach, mentor or supervisor.

- Write a report explaining the training requirements for forklift drivers in your jurisdiction as specified in regulations and guidance material. Find out course details, dates and cost from an organisation that provides such training and include this information in the report.

- For two hazard areas detail the limits of your knowledge. For each hazard area give details of an OHS consultant who offers professional expertise. Explain typical aspects on which you would consult them.
Element 4: REPORT NON-COMPLIANCE

This element deals with effective responses to hazards and other matters which may be in breach of OHS legislation. It also deals with the importance of reporting incidents and injuries both within the organisation and, if required by legislation, to government authorities.

In order to complete this element of the competency unit successfully you will have to show that you have satisfied the following performance criteria:

4.1 Raise promptly with responsible persons possible breaches as required.

4.2 Provide advice on arrangements for incident reporting to government authorities in accordance with relevant OHS legislation and organisational procedures.

4.3 Raise in accordance with OHS procedures inadequacies which may contribute to non-compliance in systematic approaches to managing OHS procedures and/or practices.

Hazards such as a broken electrical socket, use of personnel not trained to fix the socket, or failure to adequately supervise repairs to the socket, are all possible breaches of the legislation and in this element you learn how to address them. Also covered in this element is the requirement for some incidents to be reported to the relevant OHS authority; for example, if a person receives an electric shock from the faulty socket. In the last part we consider how inadequacies in the OHS management system in an organisation can lead to non-compliance, for example poor supervision of the electrical work. Is it, for example, poor staff selection, lack of staff or poor rostering of staff?
4.1 RAISE PROMPTLY WITH RESPONSIBLE PERSONS POSSIBLE BREACHES AS REQUIRED

Non-compliance with OHS laws has to be raised with responsible persons and if necessary resolved through workplace consultative and issue resolution mechanisms and procedures.

Responsible persons

Responsible persons may include OHS practitioners, managers, supervisors, or other people who have delegated authority to do certain things or ensure that risk control measures or revised risk control measures are implemented in the organisation, such as a contractor or electrical or mechanical superintendent.

Positive performance

The use of the term ‘breaches of OHS requirements’ really places the wrong emphasis when compared with the philosophy of the legislation – which is that of self-regulation. The emphasis should be on positive performance and active processes for identifying hazards – assessing their risks either alone or in combination and taking the correct steps to manage them. A good OHS management system will ensure that there are effective arrangements for promptly communicating OHS problems, and for the channels to be used.

Resolution of issues

Generally the requirement will be that an employee with a concern raises it with their supervisor. If the employee is dissatisfied with the resolution of a problem after that, the matter should be referred to the workplace-elected health and safety representative, where there is one. In Queensland a legal alternative is to raise it with the workplace health and safety officer.

If there is no health and safety representative it is unlikely that there will be a health and safety committee formed in accordance with the legislation. However, where there is a health and safety
representative and a health and safety committee, the health and safety committee should not be approached by the employee in the first instance.

If there isn't a health and safety representative, the employee needs to take the problem to higher level, and if still not satisfied to call on assistance from authorised staff at the government OHS authority. Some employees who are not satisfied with the resolution of an issue may wish to take it to their union, if they are a union member. It is essential that you find out and understand requirements in legislation to resolve OHS issues in your jurisdiction.

**Health and safety committees**

A health and safety committee provides a forum for the employer and employee representatives to meet and decide what should be done to improve OHS in the workplace. It provides a mechanism for developing policy and procedures, and for discussing issues which have significance for the whole organisation or are unresolved. A committee is not the best vehicle for the resolution of day-to-day OHS issues, which are best handled promptly by those directly involved.

**Health and safety representatives**

In checking for non-compliance there can be various types of inspections, not only by OHS practitioners but also by health and safety representatives, including:

- regular general inspections of the workplace;
- regular inspections of particular activities, processes or areas;
- specific inspections arising from complaints by employees;
- inspections following substantial changes to the workplace; and
- when an incident or dangerous occurrence occurs.

Following an inspection, the health and safety representative should bring to the employer’s notice any OHS issues identified during the inspection. Representatives are advised to report issues in writing. However, hazards or potential hazards requiring prompt remedial action should be raised directly with the employer.
Representatives should also inform the employees they represent, of issues identified during the inspection.

Following an incident or dangerous occurrence, the employer should take immediate steps to safeguard against the incident happening again. Where any incident or dangerous occurrence takes place in a part of the workplace where employees are represented by a health and safety representative, the employer must ensure that the representative is notified immediately. This may require developing formal notification procedures.

The purpose of an investigation in an emergency situation should be to examine the cause of the incident or dangerous occurrence to ensure that action is taken to prevent a recurrence. The health and safety representative may carry out their own investigation, or the representative and employer may develop agreed arrangements for joint investigations.

A health and safety representative should immediately report any hazard or potential hazard to the employer. This complements the requirement for the employer to notify the representative of any incident or dangerous occurrence.

All employees should be informed of the correct procedures for reporting hazardous situations. Depending on the size and structure of the organisation, the line of reporting may be through the immediate supervisor to more senior levels of management.

Matters which a health and safety representative might refer to a health and safety committee include:

- a list of potential hazards such as unguarded machinery, poor lighting, electrical hazards, excessive noise, heat or cold, fumes and vapours or dust;
- follow up action into previously reported hazards;
- the provision of personal protective clothing or equipment;
- methods for inspecting the workplace;
- incident reports;
- changes and intended changes; and
- strategies to reduce risk.
4.2 PROVIDE ADVICE ON ARRANGEMENTS FOR INCIDENT REPORTING TO GOVERNMENT AUTHORITIES IN ACCORDANCE WITH RELEVANT OHS LEGISLATION AND ORGANISATIONAL PROCEDURES

Certain types of incidents in a workplace must be reported to government authorities. This includes all cases resulting in the death of an employee. Other injuries and diseases which must be reported will usually be listed in the regulations rather than the act. The listed diseases will be those known to be caused by occupational factors.

Reporting of incidents both within the organisation and to government authorities is critical to the success of improving OHS, both within the organisation and within workplaces generally. It is important to ensure that the organisation has procedures and record systems in place to facilitate this.

Reporting of injuries of certain types and degrees of seriousness to appropriate government authorities:

- triggers workers’ compensation processes;
- enables enforcement agencies to investigate, if they want to, to assist with spreading the prevention message and/or with a view to possible prosecution; and
- enables the collection of statistics which can be analysed for trends, with a view to improving health and safety at work generally.

In addition, some OHS legislation also requires reporting of what are called ‘critical incidents’ or ‘dangerous occurrences’. Mining legislation for example may require mandatory reporting of fuming (that is exposure of employees to a toxic gas), or of an explosion or a fall of ground (eg, the collapse of underground workings or a pit wall or bench).
The penalties for failure to report can be severe, and so you should refer to the relevant legislation to be quite clear about what must be reported to government authorities.

Within many organisations, emphasis is placed on including in the reporting all minor injuries and near miss incidents, because these can provide valuable information to assist the prevention effort. An important role for the OHS practitioner is to advise other staff of these requirements and to make sure that the incident and injury reporting systems are in place, effective and working, and that the incident and injury investigations are carried out properly and the recommendations from them followed up.

4.3 RAISE IN ACCORDANCE WITH OHS PROCEDURES INADEQUACIES WHICH MAY CONTRIBUTE TO NON COMPLIANCE IN SYSTEMATIC APPROACHES TO MANAGING OHS PROCEDURES AND/OR PRACTICES

It is important to manage properly the systems in a workplace which aim to ensure health and safety. Here you consider ways to raise system management issues when these issues may affect compliance with OHS laws.

Raising inadequacies

A systematic approach to managing OHS within an organisation is essential, and this system should form an integral part of the general systems used to operate the business, just as much, for example, as the financial part of the business system does. Badly managed OHS can make a significant dent in the bottom line just as much as poor financial management, or poor management of business risk.

Often the identification of system problems with OHS will be made during an audit. However, collected data from routine inspections and from diary entries made by supervisors during informal inspections may show a pattern which reflects a system problem.
For example, repeated failure by an employee to fit a personal danger tag when they should (which is while working on servicing or repairing equipment), may indicate a failure relating to safe work procedures, training or supervision.

Several OHS authorities have workplace auditing systems, for example Victoria's SafetyMAP, WA's WorkSafe Plan and Queensland's Workplace Health and Safety Management Self-Assessment. Details of these can be found on the relevant websites.

**Role of health and safety committees**

In addition to resolving issues, health and safety committees can make recommendations to the employer on a wide range of programs, measures and procedures which assist in ensuring that inadequacies in OHS management systems and procedures are examined and rectified. These may include such things as:

- programs to set priorities for the elimination of hazards from the workplace;
- monitoring trends in incident and illness reports;
- programs to reduce the number of particular incidents which occur in the workplace, for example eye injuries, back injuries;
- procedures for the frequency and type of regular inspections of the workplace, or parts of it;
- procedures for management, the health and safety representative and the employer’s safety officer to be notified immediately of incidents and dangerous occurrences;
- emergency evacuation and fire procedures;
- a regular and systematic process to identify hazards and for reference to the employer for assessment and control of risk;
- developing ways to ensure all employees are kept informed of the committee’s decisions;
- long-term monitoring of employees who work with hazardous substances;
- developing systems to ensure safety and health issues are considered during the selection of new plant and equipment;
- planning for important changes in the work environment to ensure safety and health issues are considered and included in the planning of work processes; and
• identifying training necessary to be provided to persons at the workplace.

It is important to have proper recording and reporting systems and that these are used effectively. This means good training in the procedures set up to do this. It also requires developing and maintaining arrangements for follow up and review, including bring-up of items which have not been actioned.

**Competency check for Element 4**

Key issues for each performance criterion in this section are as follows.

4.1 Raise promptly with responsible persons possible breaches as required:

• The emphasis should be on positive OHS performance as an integral part of the organisation’s approach to its business, rather than just avoiding breaches of OHS law; and the organisation must develop and use issue resolution procedures that are in accordance with legal requirements.

4.2 Provide advice on arrangements for incident reporting to government authorities in accordance with relevant OHS legislation and organisational procedures:

• It is of crucial importance from the point of view of an organisation’s legal exposure, from the point of view of an injured worker, and from the point of view of incident and injury reduction overall, that incidents and injuries are reported promptly and correctly.

4.3 Raise in accordance with OHS procedures inadequacies which may contribute to non compliance in systematic approaches to managing OHS procedures and/or practices:

• Diary entries, checklists, and audits can identify these inadequacies, but there must be an effective procedure to deal with identified inadequacies and ensure proper use of that procedure.
Case Study 4

With the backing of the new general manager, over the next 12 months you are to improve and develop the OHS management system, in consultation with the elected health and safety representatives and other members of the health and safety committee.

1. Draw up a schedule for inspections and an internal OHS audit. The frequency of inspections depends on how quickly changes can occur in the workplace and how high risk it is; eg, a construction site or mine development heading can change rapidly.

2. Draw up a flow chart to show how an OHS issue involving managing the risk of a hazard is to be dealt with within the organisation. Refer to the requirements of your jurisdiction’s OHS legislation.

3. Draw up a flow chart to show the sequence of events which should occur following an injury that is likely to be a lost time* injury. This needs to include what happens to the incident site immediately, what happens to the injured person(s), the options for investigation, changes to control measures, reporting to the authorities and compensation and return to work provisions.
Activity 4

Keep a copy of this Activity for your Assessment Portfolio.

Select an OHS jurisdiction and workplace, then undertake the following activities after accessing relevant information from the relevant OHS authority.

- Write a report to the health and safety committee explaining two different breaches you have detected. Fully detail the circumstances of the breaches and how you detected them.

- Identify how you raised the breaches with the appropriate and responsible persons and relate this to requirements of legislation. Outline the issue resolution procedures for the workplace or those specified in legislation.

- Detail the action you propose in order to achieve compliance. Ensure you explain whether or not the incidents you refer to require reporting under legislation. Keep a copy of the actual reporting requirements.

- Explain how a systematic approach to managing OHS would have assisted compliance and avoided the two breaches. Provide specific recommendations to the health and safety committee.

It is important that compliance is part of a strategy of continuous improvement of control measures.
Element 5: MONITOR COMPLIANCE

This section deals with ways to monitor compliance with OHS legislation, both existing and new, and with ways to resolve compliance issues.

In order to successfully complete this element of the competency unit you will have to show that you have satisfied the following performance criteria:

5.1 Monitor compliance with OHS legislative requirements.

5.2 Resolve or refer compliance issues in accordance with OHS policies and procedures, and relevant OHS.

In this element we consider programmed arrangements to check that the organisation meets the requirements of OHS legislation, and look at the means which should be used to deal with OHS issues which arise.

5.1 MONITOR COMPLIANCE WITH OHS LEGISLATIVE REQUIREMENTS

It is essential to maintain vigilance in complying with OHS law. Here we consider ways in which OHS in the workplace can be checked constantly, and the importance of meeting new OHS requirements. So there are two aspects to achieving compliance. Firstly there is compliance with the existing legislation and secondly there is a need to keep abreast of changes in the Act, in regulations, and in codes, standards and guidance material.

Existing requirements

As noted earlier, the safety of plant and equipment can be monitored by the use of checklists and inspections on a routine basis, and these can include checks for items such as maintenance schedules, and the correct application of these schedules.
Safe methods of work can be monitored by a competent supervisor on a daily basis. However, it is also possible to use more structured techniques such as job performance sampling to check on just how closely actual work methods correspond to those laid down in workplace instructions or safe work procedures. In some cases it may be that the problem does not lie with the worker, but with the procedure, and suitable changes may need to be made. Using a checklist to check on work methods may also identify gaps in training.

On a longer timescale, auditing can be used to check the various aspects of the management of OHS within the organisation, and hence its degree of compliance with the legislation. While it is usually not possible to check every aspect out in great detail, a selective approach can be used for certain items. Full verification can then be carried out on these items, following the statements made in interview, to ensure that they are borne out in reality. An example of an area an audit may cover includes the ways in which procedures are developed, reviewed and amended and how the new version is communicated within the organisation, and whether that communication is effective. A second example is whether there are checklists and how they are developed and reviewed.

More information on safety management systems is available in Advancing Safety Chapter 6, in AS/NZS 4804 and in the systems for auditing used by other health and safety authorities, which include Victoria's SafetyMAP, WA's WorkSafe Plan and Queensland's Workplace Health and Safety Management Self-Assessment.

**Changes to legislation**

Staying abreast of legislative changes ensures that the organisation's approach to the various OHS risks in its operations is up-to-date and uses current approaches and technology as far as possible. This is an important role for the OHS practitioner in an organisation, who must also ensure that the impact of these changes is passed on to those in the organisation who need to know and make the necessary changes.

Staff in smaller organisations must either keep abreast themselves, or use the services of an OHS consultant. One example is changes in occupational hygiene standards, such as hazardous substance exposure standards, or noise action levels.
Similarly, monitoring of legislative requirements is an important aspect of the work of health and safety representatives and committees.

5.2 RESOLVE OR REFER COMPLIANCE ISSUES IN ACCORDANCE WITH OHS POLICIES AND PROCEDURES, AND RELEVANT OHS LEGISLATION

We considered this issue in 4.1 when looking at how to address possible breaches of OHS law. Here we examine it further.

Dealing with compliance issues

As noted earlier, your organisation, large or small, needs to have developed a procedure for handling OHS issues that arise. OHS legislation generally provides for calling in an authorised staff member or appointee of the government OHS authority where the matter can’t be resolved in-house, or where there has been a provisional improvement or default notice issued. OHS legislation then generally provides a route for further appeal. This varies with the jurisdiction.

In a small organisation, if an employee identifies a hazard, they can usually discuss it directly with those in a position to rectify the matter. In larger organisations, if contact with the supervisor fails to achieve an improvement, the employee can contact the health and safety representative, where one has been elected. In some cases, the representative may choose to bring the matter to the attention of the health and safety committee.

As noted earlier, there are a variety of sources of information and guidance on managing the various types of risk which arise, and which therefore place a duty of care on the employer, or one of the other parties in legislation owing a duty of care. The Queensland Mining and Quarrying (Health and Safety ) Regulation 2001 and the NSW Mines Inspection Rule 2000 deal specifically with risk management.
The concepts of breach and compliance are crucial from a legal viewpoint, but it needs to be repeated that the organisation should focus on positive OHS performance as an integral part of its approach to its business, rather than on simply meeting legal obligations.

**Competency check for Element 5**

Key issues for each performance criterion in this section are as follows.

5.1 Monitor compliance with OHS legislative requirements:

- Use all available means to familiarise yourself with relevant OHS legislation, and use seminars, membership of professional organisations and other methods to acquaint yourself with changes to legislation.

5.2 Resolve or refer compliance issues in accordance with OHS policies and procedures, and relevant OHS legislation:

- This re-emphasises the matters dealt with in Performance Criterion 4.1 but also requires a knowledge of internal procedures and relevant OHS legislation, which will specify the role of the OHS authority in resolving issues.
Case Study 5

At the beginning of the second year after their appointment, the general manager has heard of a friend in a similar business whose organisation won an award for good OHS management from the OHS authority. The general manager decides that your organisation should try for a similar award under the OHS management recognition system of the jurisdiction in which it operates.

Find out about the government OHS authority award system for good OHS management. Provide written advice to the general manager describing what needs to happen for the organisation to enter and be judged under the arrangements for the award system. Explain the link between the award system and compliance with OHS legislation. (If your state or territory or the Commonwealth does not have an OHS management award system, provide an explanation about one that does.)
Activity 5

Keep a copy of this Activity for your Assessment Portfolio.

Select an OHS jurisdiction and workplace, then undertake the following activities.

- Draw up a plan for the health and safety committee so that workplace OHS compliance can be monitored. Include procedures so that changes to legislation can also be monitored.

- Detail OHS legislation for resolving issues in the workplace. Document OHS policies and procedures for meeting these requirements. Provide an example to show how typical issues may be resolved. Provide a detailed example to show what happens if an issue remains unresolved and in what circumstances an issue may be referred to the OHS authority for resolution.
Online unit test questions

As a final Activity, check your understanding of assisting compliance with OHS laws by answering the online test questions for the unit, which you can access at the SafetyLine Institute:


The test questions have been taken from the Readings and Resources for this unit as well as from this learning guide.

Keep a copy of your student record in your Assessment Portfolio as evidence you have correctly answered the online test questions. Please note that you may be further questioned about the test questions during your Assessment Interview.
Integrated project

Keep a copy of this Project for your Assessment Portfolio.

By completing the Activities you have undertaken the actions necessary to ensure OHS legal compliance as part of a systematic approach to managing OHS.

While these activities have to be individually identifiable for assessment purposes, you should also present them in a way that provides an integrated report for your workplace and demonstrates that you can take the actions necessary to ensure OHS legal compliance.

This will also give you the opportunity to check that you have provided evidence that you have:

- the required knowledge and understanding; and
- the required skills and abilities, which are outlined in the Introduction to this unit.

You should try and integrate evidence of the required knowledge and skills into your report.

Summative presentation

In addition to the written report, you are required to make an oral presentation to a workgroup (or a simulated workgroup), on the actions necessary to ensure OHS legal compliance. You may select the format and approach that you consider is most appropriate to the workgroup, but you should take account of the Project Review Checklist that will be used to assess you.
ASSESSMENT

Assessment portfolio from learning guide

For BSBOHS408A – Assist compliance with OHS and other laws.

Note to participant

Any documentation provided as evidence must be prepared by you to a satisfactory standard and be in accordance with workplace procedures.

When collecting material for your assessment portfolio, please ensure that the confidentiality of colleagues, workers and other persons is protected, and block out any sensitive information. If you have any doubts regarding confidentiality issues, contact the organisation concerned.

Participant’s name: _______________________________
Date: _______________________________

☑ the box when you complete an activity from the Learning Guide. Add the material from the activity to your assessment portfolio.

☐ Activity 1
☐ Activity 2
☐ Activity 3
☐ Activity 4
☐ Activity 5
Assessment portfolio from learning guide (cont.)

☐ Online test questions
☐ Integrated project and presentation

Note:
Attach a copy of this document to your assessment portfolio, so that your assessor can see you have completed all the activities.

Assessor's signature: ____________________________
Date: ____________________________
Project review check-list

For BSBOHS408A – Assist compliance with OHS and other laws.

Participant’s name: _______________________________
Date: _______________________________

✓ the box if the learner has completed the following:

☐ Presented a written report on ensuring OHS legal compliance.

☐ Gave a summary oral presentation to a workgroup (or a simulated workgroup), that included and explained the following required knowledge and understanding:

☐ Structure and forms of OHS legislation (acts, regulations, codes of practice and guidance material) including prescriptive and performance approaches and links to workers’ compensation and rehabilitation.

☐ Concept of common law duty of care and the difference between common law and statutory law.

☐ Obligations and rights under relevant OHS legislation and common law as it applies to employers, employees, contractors, third parties, occupiers, installers, designers, manufacturers, importers, suppliers, etc.

☐ Legislation as it applies to safety and health representatives, safety and health committees and OHS inspectors.

☐ Requirements for reporting under OHS and other relevant legislation including obligations for notification and reporting of incidents.

☐ Understanding of systematic approaches to managing OHS.

☐ Ways of obtaining evidence of compliance with OHS legislation.

☐ Understanding of professional liability in relation to giving advice.

Assessor’s Signature: _______________________________
Date: _______________________________
Third party (manager/mentor) report

For BSBOHS408A – Assist compliance with OHS and other laws.

Note to participant

Where possible you should have an OHS practitioner as a mentor to assist in developing the practical skills in applying your knowledge. Your manager is also an important source of feedback on your competence, although from a different perspective.

The assessor will arrange to meet with you and your mentor, coach or manager to discuss completion of the third party report. The third party report will support integrated assessment of this unit.

The mentor, coach or manager is required to provide the Assessor with any relevant information. This report will be forwarded by the Assessor to the candidate for inclusion in their assessment portfolio.

The following list of questions is provided as the basis for a checklist for you and your mentor, coach or manager. Where you have both mentor and manager, separate forms should be completed.

The checklist has been designed to reflect the performance criteria and to collect information about your demonstration of competence in the workplace. The assessor may use additional questions to address any need for supplementary evidence to support your competence.

Checklist

<table>
<thead>
<tr>
<th>Did the Candidate satisfactorily:</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Determine the OHS legal framework</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1 Seek current legislation and related documentation relevant to OHS in the organisation's operations?</td>
<td></td>
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<tr>
<td>1.2 Determine legal requirements in the workplace by using knowledge of the relationship between OHS acts, OHS regulations, codes of practice, associated standards and guidance material?</td>
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</tr>
<tr>
<td>Did the Candidate satisfactorily:</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>1.3 Identify and confirm as relevant, responsibilities and requirements of the legislation?</td>
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<tr>
<td>1.4 Clarify responsibilities and requirements and seek advice from legal advisers where necessary?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Comments:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Provide advice on OHS compliance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.1 Provide advice to appropriate personnel about the specific legal responsibilities of employers, including duty of care and how it is codified in relevant OHS legislation?</td>
<td></td>
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<tr>
<td>2.2 Provide advice to appropriate personnel about administration of enforcement processes and instruments, including penalties that apply to organisations prosecuted under relevant OHS legislation?</td>
<td></td>
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<tr>
<td>2.3 Provide advice to appropriate personnel on how negligence is determined at statutory and common law?</td>
<td></td>
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<tr>
<td>Comments:</td>
<td></td>
<td></td>
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<tr>
<td>3. Comply with legal requirements</td>
<td></td>
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<tr>
<td>3.1 Ensure action is taken so that the workplace, including systems of work and work organisation, is appraised against and complies with relevant legislation?</td>
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<tr>
<td>Did the Candidate satisfactorily:</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>3.2 Identify the training needs of those with OHS responsibilities and provide training as required, according to legal requirements?</td>
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<tr>
<td>3.3 Identify requirements for other training under OHS legislation and arrange training as required?</td>
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<td></td>
</tr>
<tr>
<td>3.4 Recognise limits of own professional expertise and consult legal advisors as required?</td>
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<tr>
<td><strong>Comments:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>4. Report incidents of non-compliance</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.1 Raise possible breaches promptly with responsible persons, health and safety representatives, health and safety committees or other parties/agencies as required?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.2 Provide advice on arrangements for incident reporting to government authorities in accordance with relevant OHS legislation and organisational procedures?</td>
<td></td>
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</tr>
<tr>
<td>4.3 In accordance with OHS procedures, raise inadequacies in systematic approaches to managing OHS procedures and/or practices which may contribute to non-compliance?</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Comments:</strong></td>
<td></td>
<td></td>
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<tr>
<td>Did the Candidate satisfactorily:</td>
<td>Yes</td>
<td>No</td>
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<td>---------------------------------</td>
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</tr>
<tr>
<td><strong>5. Contribute to ongoing monitoring of compliance with OHS legislation</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.1 Monitor compliance with OHS legislative requirements?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.2 Resolve or refer compliance issues in accordance with OHS policies and procedures, and relevant OHS legislation?</td>
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</tbody>
</table>

Comments:

**Comments:** further comments by assessor (if required)

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**Keep a record of the following:**

Name of person completing checklist: ___________________________

Background/experience in topic (if any) ___________________________

Date: ___________________________

Relationship to person being assessed (tick)

- [ ] Mentor/coach for _______ Months
- [ ] Manager for _______ Months
- Other _______ Months (explain) ___________________________

Team Manager/Mentor's Signature: ___________________________

Assessor's Signature: ___________________________

Date: ___________________________
## Skills checklist

For BSBOHS408A – Assist compliance with OHS and other laws.

<table>
<thead>
<tr>
<th>Candidate's name</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessor’s name</td>
<td></td>
</tr>
<tr>
<td><strong>Work activity</strong></td>
<td>Workplace OHS compliance</td>
</tr>
<tr>
<td><strong>Unit of competency</strong></td>
<td>Assist compliance with OHS and other laws BSBOHS408A</td>
</tr>
<tr>
<td><strong>Location</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Instructions:**
The candidate undertakes workplace OHS compliance (may be simulated).

<table>
<thead>
<tr>
<th>During OHS compliance did the candidate demonstrate or provide evidence of the following abilities:</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ability to analyse relevant OHS information and data, and make observations of workplace tasks and interactions between people, their activities, equipment, environment and systems in order to meet requirements of OHS legislation?</td>
<td></td>
<td></td>
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<tr>
<td>Ability to write action plans?</td>
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<tr>
<td>Ability to prepare reports for a range of target groups including safety and health committees, safety and health representatives, managers, supervisors?</td>
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<tr>
<td>Ability to prepare e-mails, letters, reports, records and other documents that relate to ensuring OHS compliance?</td>
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<tr>
<td>Ability to communicate effectively with personnel at all levels of the organisation, and with OHS and other specialists?</td>
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<tr>
<td>Ability to conduct effective formal and informal meetings?</td>
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<td></td>
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<tr>
<td>Ability to provide advice to others in the workplace and explain specialist advice that has been obtained?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The candidate's overall performance met the standard:</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>---------------------------------------------------</td>
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</tr>
<tr>
<td>Comments / observations:</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Assessor’s signature</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Candidate’s signature</td>
<td></td>
</tr>
<tr>
<td>Date of assessment</td>
<td></td>
</tr>
</tbody>
</table>
Interview questions

For BSBOHS408A – Assist compliance with OHS and other laws.

Note to participant

The questions listed below cover the performance criteria for this unit and support your required knowledge and skills. The assessor can add to or modify these questions to suit the particular context.

<table>
<thead>
<tr>
<th>Candidate’s name</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessor’s name</td>
<td></td>
</tr>
<tr>
<td>Work activity</td>
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</tr>
<tr>
<td>Unit of competency</td>
<td>Assist compliance with OHS laws BSBOHS408A</td>
</tr>
<tr>
<td>Location</td>
<td></td>
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</tbody>
</table>

Instructions:

The candidate is required to provide verbal answers (using examples where possible) to the following questions that will be asked by the assessor. It is suggested that the interview should be a ‘conversation’. The interviewer should be prepared to insert his or her own questions to explore weaknesses, or other queries, that arise during the ‘conversation’.

<table>
<thead>
<tr>
<th>Did the candidate satisfactorily answer the following questions:</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Explain the key features of the duties of care of an employer, employee and a person in control.</td>
<td></td>
<td></td>
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<tr>
<td>Did the candidate satisfactorily answer the following questions:</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>---------------------------------------------------------------</td>
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</tr>
<tr>
<td>2. How would you go about resolving the risk associated with hazards which have been referred to you as an OHS practitioner by the health and safety committee after they could not be resolved between the health and safety representative and the employer? Select two from these hazards: welding flash, lifting patients, thermal comfort in a courier vehicle cab, violence to night staff at a drive-in liquor store.</td>
<td></td>
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</tr>
<tr>
<td>3. Out of the following key features of current OHS legislation in Australia, select three and explain them: consultation, administrative notices, codes of practice, coverage of all workplaces unless covered by separate legislation, responsibilities for OHS at all levels in a workplace.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. How often does the supervisor carry out informal OHS inspections in the parts of an organisation you are familiar with? Is it too little, enough or too much?</td>
<td></td>
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</tr>
<tr>
<td>5. Where could you expect to find information about a hazardous substance used in the workplace so that you could assist in developing a safe working procedure? What would you do if it could not be found there?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Did the candidate satisfactorily answer the following questions:</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>---------------------------------------------------------------</td>
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</tr>
<tr>
<td>6. Describe three situations to illustrate the employer’s duty of care to non-employees.</td>
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<tr>
<td>7. In your opinion, does the general duty of care make it difficult to know how far to go to comply with OHS legislation?</td>
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</tr>
<tr>
<td>8. Give us a few examples of matters where you as a general OHS practitioner would seek approval to get specialist advice.</td>
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</tr>
<tr>
<td>9. How valuable do you think regulations, as opposed to a code of practice, would be in relation to dealing with issues involving two of the following: workplace violence, truck driving hours, emergency medical or nursing staff shifts, working hours, harassment, smoking, supervised tourist snorkelling and diving?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10. Describe three things which you think make for an effective relationship between an OHS practitioner and the organisation he or she works for (or contracts to).</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Did the candidate satisfactorily answer the following questions:

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>11. What approaches should you take as an OHS practitioner to stay abreast of legislation and health and safety technology? What difficulties do you anticipate and how would you address them?</td>
<td></td>
</tr>
</tbody>
</table>

The candidate’s required knowledge was satisfactory:

Notes / Comments:

Assessor’s signature

Candidate’s signature

Date of assessment