

Maximising Competency Management

What is your Duty of Care?

Introduction

In common law jurisdictions, such as Australia, a duty of care is a legal obligation which is imposed on an individual requiring adherence to a standard of reasonable care while performing any acts that could foreseeably harm others. It is the first element that must be established to proceed with an action in negligence. The claimant must be able to show a duty of care imposed by law which the defendant has breached. In turn, breaching a duty may subject an individual to liability. The duty of care may be imposed by operation of law between individuals with no current direct relationship (familial or contractual or otherwise), but eventually become related in some manner, as defined by common law (meaning case law).

In Australia (specifically Queensland) under the *Work Health Safety Act 2011*, primary duty of care is defined in Section 19 – Division 2 and is as follows:

(Extract) - 19 Primary duty of care

- (1) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of—
 - (a) workers engaged, or caused to be engaged by the person; and
 - (b) workers whose activities in carrying out work are influenced or directed by the person; while the workers are at work in the business or undertaking.
- (2) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.
- (3) Without limiting subsections (1) and (2), a person conducting a business or undertaking must ensure, so far as is reasonably practicable—
 - (a) the provision and maintenance of a work environment without risks to health and safety; and
 - (b) the provision and maintenance of safe plant and structures; and
 - (c) the provision and maintenance of safe systems of work; and
 - (d) the safe use, handling and storage of plant, structures and substances; and
 - (e) the provision of adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking, including ensuring access to those facilities; and
 - (f) the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking; and
 - (g) that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking.

Competency Management is misunderstood within the industry

Do you require a formal TAE40110 Qualification to conduct Competency related work activities? The short answer is yes. There is no doubt that under the “duty of care” legislative imposed requirements of the Work Health Safety Act and Regulations of 2011, person(s) conducting a business or undertaking must ensure all work is carried out as per the individual’s primary duty of care responsibility.

Let’s look at it from a perspective that a person working for your organization dies during normal working hours working under your HSE management system. We have now found that this specific individual who died did not have adequate competencies in driving a loader as he only got his loader ticket 3 days ago. The question is, did the fact that he got a ticket made him competent? The answer is

no. Let's cut to the chase and say you end up in court. The judge will ask you what measures you incorporated into your Competency Model to ensure that the loader operator was competent. You may say that we use a certain database and upload the qualification as evidence. But what qualifications do you as a competency operator/manager/assistant have to assess the certificates, training and competencies of your employee?

This is where TAE40110 Qualification comes in and is exceptionally important within a legislative framework. Apart from being able to conduct formal training, the TAE qualification teaches you how to assess competency training documentation and plays a vital role whether you are administration, input data analyst or management. Everybody in the chain of competency responsibility in your organisation needs to ensure they have the TAE40110 Qualification. It's not just about protecting yourself and adherence to the "duty of care" rule, no, it's also ensuring you are competent yourself to manage a vast array of training documentation adequately. Below are the units of competency for the TAE40110 qualification and as you can see, it's mainly based around assessment elements.

Units of competency		
Code	Title	Essential
BSBAUD402B	Participate in a quality audit	N/A
BSBCMM401A	Make a presentation	N/A
BSBLED401A	Develop teams and individuals	N/A
BSBMKG413A	Promote products and services	N/A
BSBREL402A	Build client relationships and business networks	N/A
BSBRES401A	Analyse and present research information	N/A
TAEASS301B	Contribute to assessment	N/A
TAEASS401B	Plan assessment activities and processes	N/A
TAEASS402B	Assess competence	N/A
TAEASS403B	Participate in assessment validation	N/A

Competency Management is misunderstood

Hager's definition of competence in relation to professionals is as follows:

"... competence is conceptualized in terms of knowledge, abilities, skills and attitudes displayed in the context of a carefully chosen set of realistic professional tasks (intentional actions) ..."

Hager, P. (1994) is there a cogent philosophical argument against competency standards? Australian Journal of Education. 38: p. 10.

I have conducted in excess of 100 Training Competency Audits over the last 6 years and have come to the conclusion that HSE and Human Resources misinterpret and sometimes misunderstand their own competency model and in some case have an inadequate competency model. From the last 100 audits conducted, only 3 audits were successful with 97% inadequate. We are not trying to place blame as competency management in Australia and New Zealand is fairly young and is evolving while most people working in this industry have extremely limited knowledge regarding this subject.

There is a limited legislative driving force but is rapidly changing and has changed a fair amount during the last 3 years. In the coming years more focus will be placed on competency as we rightly said earlier that a loader operator cannot be deemed competent 3 days later after he got his loader ticket. He should have a certificate of attainment and hopefully not a "Competency Certificate" of which I see often. A competency certificate then should also not be uploaded into a database and the RTO that issued that competency certificate should reconsider changing it to an attainment or attendance certificate. But this in itself is up for debate as well and we should not make it a definitive rule across the industry. That's why an organisation must have a full, adequate, complete and well thought out competency management system.

Competence versus Other Measures of Labour

Following on from my previous statement that competency management is misunderstood, I want to talk about the traditional way of categorizing and analysing labour. This is normally conducted through the following methods:

- By qualifications, including forms of certification such as licenses, “tickets,” course certificates.
- By occupational titles, such as engineer, drillers, tradesperson, machine operator.
- By job titles, such as forklift operator, technician, marketing manager, financial officer.

Each of these means of analysing labour has its deficiencies as briefly outlined below.

Qualifications

Qualifications may not be current. A qualification might have been attained many years ago and some of the knowledge and skills it supposedly represents may have diminished over time. Qualifications may not be relevant to the work, specifically the work required to be performed in organization- and job specific contexts.

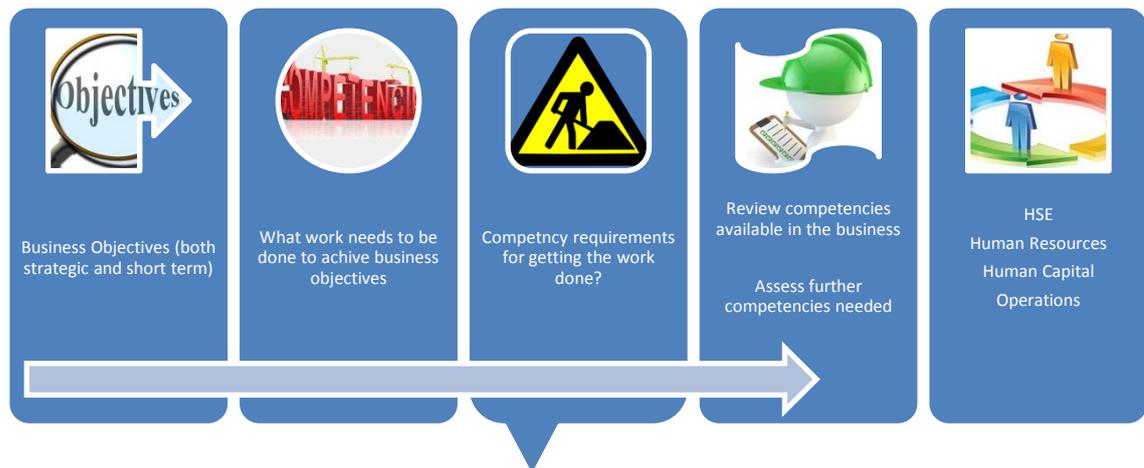
Occupational titles

Similar to qualifications, an occupational title may be a poor indication of skills and knowledge possessed to satisfy specific work contexts. For example, the occupational title of civil engineer would not necessarily mean the holder had strong skills and knowledge in building bridges. Much of the worst forms of restrictions on labour flexibility are tied to occupational titles—for example, the line between doctors and nurses on what forms of work each is allowed to perform, or the disputes between different forms of tradesperson about what each is appropriately skilled to perform.

Job titles

There is a closer correlation between job titles and work, but this can be misleading because job titles are used differently within and even more so across organizations. For example, the job title “supervisor” might refer to workers with a high level of technical competency in one situation but refer to those who possess more generic front-line management competencies in another. It could be used to identify those who may have reporting subordinates or those who supervise only processes.

Competencies can become the building blocks or “units of analysis” for understanding, describing and categorizing labour and labour requirements. They form the best way of easing the translation of business objectives into appropriately applied human resources and capital management. In this sense I would suggest that competency management should be conducted by both HSE and Human Resources with HSE taking responsibility for competency management. My model is laid out below:



HSE must take the main responsibility to ensure adherence to legislative training and competency modelling. Human Resources plays a part in this process and is not segregated from responsibility. This in itself is open for discussion as HR plays a vital role in employment hiring workforce matters. This is why I state that the Competency Model adopted by your company is paramount and should be well thought out and executed. Business risk should be considered and well articulated with taking legislative requirements into account.

Managing Business Risk

Central to adopting an HSE, HR and business approach to competency management is the concept of business risk. Interviews of a significant number of Australian employers have found that they are continually assessing the risks of incomplete competence and making judgments on a worker's need for, and level of competence in relation to, some type of risk to an enterprise.

That's why the role of a Competency Management Specialist is of paramount importance and consideration should be given to ongoing training, attendance of seminars and conferences and professional development.

In relation to the above and if you require any further details on risk management regarding your competency management please contact us on M: 0420 739 893.

We also conduct TAE40110 Qualification Training – for more details please visit:
www.wellsitepermittowork.com

Audit, Assurance and Compliance

We also conduct HSE Audits and are well experienced within the oil & gas, linear and rail, construction and military industries. The following audits are a speciality:

- AS2885 pipeline compliance audits
- Rail and Linear Infrastructure
- Performance standards verification
- Engineering systems and process plant audits
- International Marine Contractors Association Common Marine Inspection Document (IMCA CMID) audits
- Oil Companies International Marine Forum Ship Inspection Report Programme (OCIMF OMVID OMVIQ) audits
- Diving systems safety support audits
- Asset integrity management
- CAP437 Helideck auditing and certifications
- Scaffolding audits
- Commissioning and decommissioning audits

Specialist third party lead auditors

- Safety case and safety report audits
- Management of Change (MOC) audits
- Management Systems audits
- Post incident audits
- Fixed and rotary wing aviation auditing
- Shipyard contractor compliance audits

Legislative specialist audits

- Legislative compliance audits - EPBC Approvals and Coordinator-General EIS
- Prequalification audits and workplace inspections - includes Safety Audits

- Operational HSE audits
- Health and hygiene audits
- Permit to Work system audits
- Due diligence and Manual handling audits
- Environmental audits and Quality audits

Please feel free to visit www.mariuslandman.com.au for further details.

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