

# **Corporate governance and undertaking a due diligence review, how the Department of Primary Industries approached managing the OHS risks of emergencies.**

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## **Abstract**

The Department of Primary Industries (DPI) has a range of responsibilities both as a support and control agency for the management of emergencies. During the 2006/07 Victorian fires, DPI employees worked in the fire campaign in various capacities under the direction of the Department of Sustainability and Environment.

Occupational Health and Safety (OHS) during emergencies was identified by DPI senior executives as a key DPI organisational risk. To ensure the health and safety of its employees DPI adopted a due diligence approach to identify and control all health and safety risks associated with the deployment of its employees.

DPI employed a range of short term and long term strategies to ensure positive outcomes for organisational OHS risk management and safety. This paper details the issues faced, the processes undertaken and in particular will discuss what went well and what were the lessons learnt.

## **Introduction**

The 2006-07 Australian bushfire season was one of the most extensive bushfire seasons in recorded history. Vast amounts of land were burnt and Victoria experienced the longest continuous bushfire complex in its history. Fires in the Victorian Alps and Gippsland burnt over 1.1 million hectares of land over the course of 69 days.

The extent and duration of the 2006/2007 fire season presented many challenges to the Department of Primary Industries (DPI). DPI provided almost 800 staff members or approximately 32% of its workforce to the fire campaign in various capacities. DPI staff were deployed across the state for extended periods of time in difficult and demanding working environments.

DPI senior executive identified the management of OHS during the fire campaign as a key organisational risk. It was in this context that the DPI corporate risk management strategy recognised the difficulties in both maintaining effective deployments of staff, meeting the requirements of the OHS Act (2004) and ensuring staff safety.

## Emergency Response Role of DPI

DPI is a lead, support and key support agency for the management of a range of emergencies, including drought, animal disease, plant disease, rural response and recovery and plague/locust, and fire. The challenges faced by the Department in managing the safety of staff are a result of individual uniqueness of these natural resource and agricultural emergencies. Aspects which result in challenges is the rapidly dynamic environment (fire), a slow emergency which can be controlled through restricted movement (animal disease), slow developing emergency (drought), that may be prevalent in the community (drought, plague/locust) for some months before the full scale of implications are known or impacts felt by the community.

## OHS Risks associated with DPI's Emergency Response Role

Containing the spread of an agricultural emergency does not trigger the same response that a road accident or major fire does. The emergency response often goes unseen; however the hazards which may cause harm are still prevalent to both the community and to the emergency workers faced with containment, control and clean-up.

Robust chemical management programs, systems of work and training are required due to the use of pesticides, fungicides, soil fumigants and bactericide. Working and handling of livestock brings it's own unique challenges and brings the ever present risk of zoonosis. Hendra and Australian Bat Lyssa virus are potentially fatal and not all zoonosis have a vaccine available. Staff required to make decisions to euthanize livestock grapple with the psychological toll of destroying a family's livelihood. Dealing with the media, sometimes aggressive landholders are additional psychological risks which need to be managed.

In addition to its lead role in biosecurity emergencies DPI is also a support agency for Victoria's bush fire efforts. A critical challenge facing the Department during the 2006/07 fires was to ensure the health and staff safety of its employees while they were deployed to an emergency controlled by another agency and on their return to DPI.

The *Public Administration Act (2004)*<sup>1</sup> identifies the Secretary of DPI as the employer for all DPI employees on behalf of the crown. Consequently, for the purposes of the *Occupational Health and Safety Act (2004)* (OHS Act) DPI is identified as the employer and has statutory duties in relation to OHS and other employment issues no matter where its employees are working.

“In the employment context, the duty “is that of a reasonably prudent employer and it is a duty to undertake reasonable care to avoid exposing [its] employees to unnecessary risk of injury.”<sup>2</sup>”

Therefore although the employees may be working under the control of another Department, DPI has an obligation to ensure that appropriate processes and procedures are in place to manage their health and safety. This is similar to any employer within a labour hire arrangement.

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<sup>1</sup> State of Victoria, (2004), Public Administration Act, p 24

<sup>2</sup> Creighton, B., Rozen, P., (2007), Occupational Health and Safety Law in Victoria, Third Edition, The Federation Press, Annandale, p 89.

## What is Due Diligence?

Butterworths Concise Australian Legal Dictionary<sup>3</sup> defines due diligence as

*“a close examination, particularly in a legal sense, of a transaction and its related documentation. A minimum standard of behaviour involving a system which provides against contravention of relevant regulatory provisions and adequate supervision ensuring that the system is properly carried out.”*

WorkSafe New South Wales<sup>4</sup> defines due diligence in OHS context as *“...taking care. In the workplace, it means taking every precaution reasonable in the circumstances to protect the health, safety and welfare of your workers.”*

The Canadian Centre for Occupational Health and Safety states that “to exercise due diligence, an employer must implement a plan to identify possible workplace hazards and carry out the appropriate corrective action to prevent accidents or injuries arising from these hazards.”<sup>5</sup>

A combination of the above definitions and the requirements of the *Occupational Health and Safety Act (2004)*<sup>6</sup> can be used to construct a useful working definition of what may constitute due diligence on the part of DPI (particularly when its employees are working under the control of another organization). Due diligence may therefore be seen in this context as:

1. Implementation of a plan to identify possible workplace hazards and carry out the appropriate corrective action to prevent accidents or injuries involving a close examination of the system and documentation;
2. The provision and maintenance for employees of the employer a working environment that is safe and without risk to health so far as is reasonably practicable<sup>7</sup> (with particular attention to systems of work, information, instruction, training, supervision, reporting systems, communication, resources, monitoring and audit);
3. Adequate supervision that the system is properly carried out. This involves on-going monitoring, review and audit of the system to ensure compliance to the planned arrangements.

## DPI Due Diligence Program

“Due diligence is a powerful and proactive management tool that when used properly will foster the careful and systematic identification and assessment of specific workplace hazards and the establishment of control measures to prevent costly injuries and illness at work.”<sup>8</sup>

The effective management of OHS is a core DPI value. Management recognized that responding to emergencies could place its employees into dynamic and potentially hazardous environments. The DPI senior executive wanted to ensure that every available opportunity to control or minimize potential OHS risks was identified and controlled.

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<sup>3</sup> Lexis Nexis Butterworths, (2003), *Butterworths Concise Australian Legal Dictionary, Second Edition*, Chatswood, NSW, p 139 .

<sup>4</sup> WorkCover New South Wales (1997) *Due Diligence at Work, A Checklist for Action on Workplace Health and Safety Issues for Company Directors and Managers*, WorkCover New South Wales, Gosford, pp 5-6.

<sup>5</sup> Canadian Centre for Occupational Health and Safety (2009), OH&S Legislation in Canada - Due Diligence, <http://www.ccohs.ca/oshanswers/legisl/diligence.html>, accessed 24/01/2009

<sup>6</sup> Occupational Health and Safety Act (2004) State of Victoria, p. 22

<sup>7</sup> Occupational Health and Safety Act (2004) State of Victoria, p. 22

<sup>8</sup> WorkCover New South Wales (1997) *Due Diligence at Work, A Checklist for Action on Workplace Health and Safety Issues for Company Directors and Managers*, WorkCover New South Wales, Gosford, p 5.

DPI management also realised that often the employees would be working on emergencies not under the direct control of DPI. It was known based on past history that emergency management is potentially hazardous and required extra vigilance for the management of OHS risks. The very nature of emergency management often dealing with ambiguous and time pressured situations reinforced the need to make sure all possible steps had been taken to ensure the safety of DPI employees.

The senior management of DPI developed a due diligence program that involved a thorough review of OHS legislative requirements including an assessment of OHS management systems of both the DPI and the host agency including:

- A review and assessment of key documents including the adequacy of OHS and operational policies, procedures and records assessed against the OHS Act and the hazards and risks associated with the emergency;
- Identification of OHS issues. DPI used its 12 key OHS risks<sup>9</sup>, expert advice and incident data from previous fire and other emergencies to identify potential OHS issues;
- Analysis of the issues.
- Ranking of identified issues into high, medium and low risks;
- Investigation and audit sequence of the risks based on high, medium and low risks to establish priorities for review;
- Delivery of weekly progress reports to accountable managers and the DPI executive;
- Improvements to DPI policies and procedures
- A quality assurance program where staff were interviewed on three key areas general health and wellbeing, fatigue management and medical and physical fitness management;
- Statewide debrief process to identify an concerns from employees;
- Consolidation of all findings from quality assurance and legal review and development of recommendations;
- Identifying and implementing immediate actions to respond to the plan; and
- Establishing and appropriately resourcing a team of staff to lead the response to the recommendations to:
  - Establish minimum requirements for emergency management across all types of emergencies; and
  - Undertake a risk management program focusing on emergency management to drive continuous improvement through DPI.

The due diligence program adopted by DPI provided the assurances to senior management within DPI on the adequacy of the safe systems of work and risk management approaches in place for it's employees when deployed to emergencies where it was not the lead agency.

Particular consideration was given to understanding those items which DPI could control. These items primarily focused on the pre and post deployment phases included staff were adequately prepared for the deployment, met medical and physical requirements, ensure staff were adequately equipped and trained appropriate to the roles they were deployed and then after deployment the systems were present to manage issues arising with their physical and psychological health and wellbeing.

The need to ensure adequate systems in place for DPI's own staff had broader implications. As the employer DPI would also have to consider and ensure that the adequacy of the host agency's safety management system during the bush fire season provided a working environment that is safe and without risk to health so far as is reasonably practicable.

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<sup>9</sup> Department of Primary Industries (2008) DPI wide OHS Risk Assessment, unpublished.

Such an approach may result in identifying gaps, differences in acceptable levels of risk, policies and procedures as well as the understanding of what is an acceptable risk and what is reasonably practicable. In the context of a bushfire emergency where DPI employees are working in a host agency under different policies and procedures to those of DPI this has the potential to cause friction within the relationship. However ultimate responsibility for the health and safety of its employees lies with DPI.

Following the OHS due diligence review undertaken by the Department over the 06-07 fire season, the Department found itself not only questioning its own processes and practices, but also that of the host agency. This continual improvement process<sup>10</sup> was to ensure that DPI was meeting its OHS obligations, to identify any gaps and to create an action plan to improve the management of OHS.

The process created several challenges, however the process was managed effectively by identifying key senior management to have governance over organizational wide issues facing DPI, identifying and allocating specific dedicated resources, establishing strong communications channels and being able to establish minimum Departmental standards, then integrating the approaches as a part of normal business.

Although the Department had OHS management systems, policies and procedures in place to manage emergencies the Department used a risk management approach to identify any potential gaps. Drawing on the experience of its OHS personnel, emergency management and operational teams the review identified several areas for improvement. Improvements to DPI's OHS policies and procedures were categorized into immediate and longer term priorities.

The risk management approach used a multidisciplinary approach to gather data from many sources including document reviews, interviews with staff and medical monitoring to ensure that all aspects of the program were robust and could stand up to scrutiny.

## Implementation

*"All of the elements of a "due diligence program" must be in effect before any accident or injury occurs. If employers have questions about due diligence, they should seek legal advice for their jurisdiction to ensure that all appropriate due diligence requirements are in place. Due diligence is demonstrated by your actions before an event occurs, not after<sup>11</sup>."*

DPI developed an OHS due diligence implementation strategy that could be used across a variety of emergencies and situation that is also applicable for other organisations. DPI recognised that it had to drive cultural change within its emergency management operations to improve health and safety. The strategy involved:

1. Identifying issues and areas for improvement;
2. Developing strategies for the proposed improvements;
3. Understanding and identifying the drivers for change within DPI and the host agency;
4. Implementing the strategies;
5. Monitoring the implementation; and
6. Reviewing the effectiveness of the controls.

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<sup>10</sup> Standards Australia, (2001) Occupational Health and Safety Management Systems, General Guidelines on principles, systems and supporting techniques, Standards Australia International Ltd, Sydney.

<sup>11</sup> Canadian Centre for Occupational Health and Safety (2009), OH&S Legislation in Canada - Due Diligence, <http://www.ccohs.ca/oshanswers/legisl/diligence.html>, accessed 24/01/2009

## Success Factors

The success factors of the program were:

1. Senior management leadership and commitment. DPI senior management were clearly committed to the process and personally involved. The DPI Emergency Management Sub-Committee met regularly and received reports on issues and followed up on action items;
2. Resources – DPI developed a project plan to undertake the due diligence review. Management provided adequate resourcing in dollars and expertise for an independent review of DPI and the host agencies OHS processes and procedures;
3. Understanding what is happening in the organization – The accurate and timely collection of data was critical to understanding what was happening on the ground. The collection of data used the proper design of questionnaires and analysis of data;
4. Involvement of the people doing the tasks as a reality check as to what was going on at the coal face. Again there was independent collection of data so staff could speak freely and management would receive unfiltered feedback on the emergency operations;
5. Consultation with Health and Safety Representatives on the appropriateness of risk controls and the development of procedures;
6. Access to independent expertise to assist the organization to understanding the difficulties in managing the hazards and the practicability of proposed controls;
7. Educating employees and line managers on the risk and controls; and
8. Following up and regular reports. The Executive were constantly updated on the program, actions and impacts and were prepared to put resources into resolving issues.

## Opportunities for Improvement

Whilst the journey DPI has undertaken to improve OHS management at emergencies has strengthened its position to meet the requirements of the OHS Act and improve the health and safety of its employees, there have been a number of strengths and opportunities for improvement of the due diligence process were identified:

- Preparation - Have your due diligence systems in place prior to the emergency. Although the process worked well greater preparation and planning may have yielded better results. During an emergency the organisation will be focused on the emergency and in the heat of the battle coordinating a due diligence exercise is difficult. The next time DPI faces an emergency it will be better prepared.
- Schedule the collection of data and arrange access to personnel involved in the emergency at appropriate times. When evaluating the OHS systems in place and interviewing employees there may be a time lag. Employees are tired when they come off the fire ground and don't have time to talk or want to. It is not always possible to do it between shifts.
- Scheduling debriefs and interviews close to the rotation so that knowledge is not lost. A significant delay may alienate employees and valuable insights may be lost.
- Relationship management - Establish understanding and links with all agencies involved. Better communication with all stakeholders and ongoing joint meetings to resolve any issues or differing standards across the departments prior to an emergency.
- Clarification of each department's own responsibilities and how this will be approached during the emergency, prior to the heat of battle.

## **Strengths of the Program**

The strengths of the due diligence program included:

- The debriefing program for staff was held close to the end of a rotation. DPI staff appreciated the opportunity to debrief that someone cared and were genuinely prepared to listen to their experience.
- The communication strategy that closed the loop and informed staff that their concerns had been heard and were being acted on.
- The accurate collection of data provided an evidence based approach to the management of OHS issues. This allowed management to analyse the data and be sure that they were acting on the right issues.
- Issues that staff raised were discussed at the highest levels within DPI and action plans were developed to address these issues.
- Available Expertise – There is a need to identify and have in place expertise prior to the emergency. DPI was fortunate that it had already a well developed network of key people and expertise to call on at short notice.
- The monitoring by senior management and their follow up to ensure issues were being acted on.

## **Improvements to Health and Safety**

Many factors were identified that provided opportunities for improvement based on the significant amount of evidence collected and then content analysed. Through this process it was possible to highlight areas of concern from a health and safety management perspective to senior management for action.

What did go well during the due diligence program was the development of an immense knowledge base surrounding safety in emergencies achieved through undertaking a comprehensive review of OHS risk in emergency response relating to fire over the 2006/07 fire season. Whilst some issues identified are specific to fire, the majority of risks translate into many of the other type of emergency response environments. Departmental processes have been reviewed and improved to ensure:

- A strengthening of OHS in incident action planning;
- The effective and rapid deployments of DPI employees to emergencies;
- Adequately trained and competent staff are placed in to the roles they are to perform;
- Emergency management responsibilities are fully integrated into staff professional and personal development programs;
- Staff are appropriately briefed and supervised during the emergency;
- Procedures developed for the management of safety during fire emergencies were refined during the recent the equine influenza emergency and are currently being used for the management of the locust response;
- Fatigue management procedures were modified, auditing and inspection or checkpoints was supervised, health and safety planning was integral to the operation; and
- Safety advisors were imbedded into the Incident Management Team.

One of the unforeseen benefits from the due diligence program resulted in the improvement understanding of OHS management outside of emergency management. The general principles of OHS management, accountabilities and responsibilities of managers, supervisors and staff communicated during the emergency are much clearly understood across DPI.

## Conclusion

Due diligence in the OHS context is about taking every precaution reasonable in the circumstances to protect the health, safety and welfare of your workers. It is hard work.

The DPI OHS due diligence program has resulted in a number of positive changes which will improve not only DPI's ability to manage emergencies but also the health and safety of its employees undertaking emergency management roles. By using a systematic risk based approach to identify issues, select priorities and implement actions major issues have been resolved and key improvements implemented.

A critical success factor in the program was the commitment of senior management to the process from day one. The support of senior management meant that the program was thoroughly planned with outside independent expertise to provide DPI management with an unfiltered view of their operations and compliance with the OHS Act.

The accurate and timely data collection meant that DPI management was able to understand what was happening within their organization and make evidence based improvements to their OHS management systems. This along with monitoring and audits to test the efficacy of the systems in place was critical to obtaining accurate knowledge and understanding of how effective was DPI's OHS management systems.

The OHS due diligence process has also reinforced throughout DPI the need for a culture of continuous improvement, and improved business practice within the management of emergencies.

Overall the focus of the program was not just to ensure compliance with legislation but to identify real opportunities for improvement in business processes and to improve the health and safety of DPI employees involved in emergencies.

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