

# DUE DILIGENCE & 'LTI DAYS'

## - THE NEED FOR POSITIVE PERFORMANCE INDICATORS



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'Due diligence' is a topical issue which is likely to gain increasing prominence in the realm of workplace health and safety as the introduction of the harmonised legislation looms ever closer and transitional legislation is enacted across the nation. In order to satisfy requirements, effectively manage risk and monitor health and safety performance required for continual improvement, it is necessary to institute performance indicators.

This article discusses these issues including the pitfalls of relying on traditional performance indicators such as 'LTI days' (which are 'lag indicators') in addition to discussing the need for using more proactive performance measures (i.e. Positive Performance Indicators - also known as 'lead indicators') to drive improved safety management within and by organisations.

### EXPLAINING DUE DILIGENCE

Due diligence is a concept which is discussed in the *Model Work Health and Safety Act* however is often misunderstood. In *Universal Telecasters (Qld) Ltd v Guthrie* (1978) 18 ALR 531 it is defined as:

"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".

In *Riverstone Meat Co Pty Ltd v Lancashire Shipping Co Ltd* [1960] 1 All ER 193, Willmer LJ it is defined as:

"An obligation to exercise due diligence is to my mind indistinguishable from an obligation to exercise reasonable care".

Essentially, due diligence and duty of care are inextricably linked and are related to legislated minimum behaviour standards established to achieve desired outcomes of a system.

In regards to workplace safety, it is accepted at the organisational and Director level that due diligence is required to satisfy legislative requirements - in particular regarding the concept of duty of care (the 'Robens Requirement') which was first introduced following the Robens Review of the 1970s. Although individuals have been responsible for their acts and omissions under workplace health and safety laws (i.e. they have had an individual duty of care), these requirements are often

unknown, underestimated or misunderstood; and many Company Officers and Employees have therefore not been meeting their most basic health and safety requirements. This affects not only individuals but the organisation as a whole. The *Model Work Health and Safety Act* and associated transitional legislation recognises this issue, and clearly spells out the requirements of due diligence for Officers.

Essentially the Act recognises that safety performance is not only driven from the top down, but from the bottom up, and effective risk management across an organisation demands that an appropriate safety strategy be implemented in this fashion. Such a strategy should be rigorously and systematically monitored and continually improved.

Although the purchase of Directors and Officers Liability Insurance may transfer some of the risk out of an organisation, it should not be assumed that such insurance cover automatically affords appropriate levels of protection; for example due to the potential for health and safety issues to result in criminal prosecutions, fines, penalties and punitive damages which may be excluded from such cover. Therefore organisations must not lose focus on their internal risk management systems and performance as this is the most appropriate means of satisfying legislative requirements and ultimately preventing workplace accidents and injuries. The adoption of appropriate performance indicators allows actual performance to be monitored and for continual improvement to occur. They are essential for good safety management.

## THE LIMITATIONS OF 'LTI DAYS'

In order to demonstrate that due diligence requirements have been satisfied and achieve required objectives to prevent accidents and incidents in the workplace, performance must be measured. Traditionally the measure of 'Lost Time Injury (LTI)' and 'Lost Time Injury Frequency Rate (LTIFR)' are used. Since these are outcome indicators, however, it can be argued that they are inadequate in monitoring whether or not organisational and legislative requirements are being satisfied as there is no clear and direct correlation with the actions taken to achieve the actual outcome within the scope of those requirements.

Although they are important measures, outcome indicators are reflective of past actions; and it is noted that there is often a time lag between actions taken by an organisation to improve performance and changes in actual performance (Comcare, 2004). Therefore outcome measures are not always indicative of an organisation's current safety management actions and initiatives. A further difficulty with outcome indicators is that they may cloak potential risks; for example having a low injury incidence does not indicate that adequate safety systems and controls are in place, or for that matter being adhered to (Comcare, 2004).

A further and significant limitation of the adoption of traditional outcome measures such as LTI Days is that their adoption may in fact go against the intended outcome of reducing injuries and associated costs by inadvertently encouraging poor safety behaviours such as not reporting injuries due to the links between safety incentive schemes, bonuses and performance indicators (Aickin, Lusted & Whitby, 2010).

It is therefore necessary for organisations to adopt performance indicators that facilitate appropriate review of actions undertaken within the organisation as a whole and down the line. Positive Performance Indicators (PPIs) achieve such outcomes and should therefore be adopted as a supplement to traditional outcome indicators such as 'LTI Days'. This is not to say that 'LTI Days' do not have a place in measuring an organisation's safety performance; simply that additional measures should be determined and adopted that are representative of actual safety performance throughout the organisation to drive results delivery through appropriate safety behaviours down the line.

## EXPLAINING POSITIVE PERFORMANCE INDICATORS (PPIs)

Positive Performance Indicators (PPIs) measure the actions taken by an organisation to achieve targets, and complement outcome indicators by measuring how an organisation has achieved their overall performance. PPIs have a number of characteristics, and these are indicated in the following table (adapted from Comcare, 2004):

CHARACTERISTIC	EXPLANATION
1. Relevant	Linked to organisation's OHS strategic goals
2. Clearly defined	Easy to understand and collect
3. Measurable	Able to be measured objectively
4. Acceptable	Perceived as fair by staff and managers
5. Comparable	Allow for comparisons over time and to other organisations
6. Unambiguous	Indicate improvement or deterioration in OHS performance
7. Attributable	Allow management to influence results by taking action
8. Statistically valid	Based on a significant number of occurrences
9. Timely	Representative of current performance
10. Cost effective	Balances the costs of collection with their usefulness

PPIs are designed to positively impact on outcome performance and are a useful means of measuring how an organisation is performing in safety. Examples include:

- Number of safety inspections undertaken
- Proportion of hazards identified and corrected
- Percentage of staff who have completed required OHS training
- Percentage of staff who participated in emergency preparedness exercises such as evacuations

## DUE DILIGENCE, THE ROLE OF OFFICERS & THE RELEVANCE OF PPIS

Simply put, all Officers must clearly demonstrate that they are active in supporting and facilitating the organisation in meeting its reasonably practicable OHS obligations, and must demonstrate that they have done so. According to s.27(1) of the *Model Work Health and Safety Act* which relates to the duty of Officers:

"If a person conducting a business or undertaking has a duty or obligation under this Act, an Officer of the person conducting the business or undertaking must exercise due diligence to ensure that the person conducting the business or undertaking complies with that duty or obligation."

Many people are unclear about what 'Due Diligence' means, both for them and the organisations for whom they work. This is clarified within the *Model Work Health and Safety Act*, in particular s.27 (5) which refers to duties of Officers as follows:

"In this section, **due diligence** includes taking reasonable steps:

- (a) to acquire and keep up-to-date knowledge of work health and safety matters; and
- (b) to gain an understanding of the nature of the operations of the business or undertaking of the person conducting the business or undertaking and generally of the hazards and risks associated with those operations; and
- (c) to ensure that the person conducting the business or undertaking has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking; and
- (d) to ensure that the person conducting the business or undertaking has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information; and
- (e) to ensure that the person conducting the business or undertaking has, and implements, processes for complying with any duty or obligation of the person conducting the business or undertaking under this Act; and

#### Examples

For the purposes of paragraph (e), the duties or obligations under this Act of a person conducting a business or undertaking may include:

- reporting notifiable incidents;
  - consulting with workers;
  - ensuring compliance with notices issued under this Act;
  - ensuring the provision of training and instruction to workers about work health and safety;
  - ensuring that health and safety representatives receive their entitlements to training.
- (f) to verify the provision and use of the resources and processes referred to in paragraphs (c) to (e)."

Clearly, then, PPIs are a useful tool in monitoring the performance of Officers in satisfying their legislative and operational requirements; in demonstrating that this has occurred; and in specifying that the organisation as a whole has been proactive in satisfying such requirements.

## ESTABLISHING PPIs

A good PPI measures what is relevant and valuable to the organisation, although there are many desirable characteristics in a PPI which have been previously mentioned in the above table. Regular refinement against these characteristics should ensure that useful and effective PPIs are in place. (Comcare, 2004)

When establishing PPIs for an organisation it is noted that a range of measures should be developed to custom-fit an organisation, partly because information requirements vary at different levels and

in different areas of an organisation. As an example, a chief executive's requirements about OHS performance differs in the detail, nature and frequency of information from that needed by a line manager in a particular location. Senior managers require key PPIs confirming the effective functioning of health, safety and return to work management systems. At an operational level, indicators for the monitoring of the implementation and effectiveness of risk controls are required by line management.

When setting these PPIs, consultation between stakeholders such as Management, Staff, Health and Safety Representatives and Unions should occur; as is required by law. Engaging Employees (for example Company Officers) in this process assists in the acceptance of PPIs and facilitates health and safety improvements in the workplace; and discussing performance against PPIs highlights areas for improving health, safety and the rehabilitation of injured Employees. (Comcare, 2004) This is not to say that agreement must be reached in order for consultation to have occurred - simply that stakeholders must have been involved in the process of setting PPIs.

Individual PPIs should reflect the characteristics of the OHS and injury management issues and strategies relevant to an organisation. However, there are a number of core indicators that will be common to most organisations which reflect the basic activities that all organisations should undertake in managing OHS and the return of their injured Employees to work. These are organised into five different categories as shown in the table below (adapted from Comcare, 2004):

Category	Description	Examples
<b>Risk Management</b>	Workplace hazards are identified and associated risks are eliminated or controlled	% of planned risk assessments completed  % of planned workplace OHS inspections completed  % of reported incidents investigated
<b>Management of work</b>	Safe systems of work and effective injury management practices processes are implemented	Results of inspections - ratings  % of risk assessment recommendations implemented  % of the OHS annual action plan achieved
<b>Participation, communication</b>	Employees are trained and educated and are actively involved in and skills problem solving	% of attendance at OHS committee meetings  % of OHS committee recommendations implemented  % of managers and supervisors trained in return to work management
<b>Planning, design and procurement</b>	OHS is addressed in the design, planning and procurement phases and activities of projects	% of services contracts with OHS clauses  % of major purchases made with OHS risk assessment  % of new design changes with OHS risk assessment

<b>Monitoring and review</b>	OHS and injury management is self-assessed and/or independently audited for effectiveness of systems and practices	% of planned OHS systems audits undertaken  % of OHS systems audit recommendations implemented  % of recommendations from claims management systems audits implemented
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It is important to note that PPIs must be carefully chosen to ensure that they actually measure performance and not simply activity. The Audit Commission (UK) advises the following pitfalls as the most common when developing and implementing PPIs:

- **too many PPIs** - risk of collecting so many indicators that it becomes hard to focus on the true performance of the organisation
- **unnecessary PPIs** - risk of defining PPIs which detract from important performance issues
- **irrelevant PPIs** - risk of using indicators which are not relevant for the user
- **obsolete PPIs** - risk of not refining indicators over time. (Comcare, 2004)

Therefore chosen PPIs should be carefully selected, focused, relevant and aligned with issues and risks faced by an organisation and the overall health and safety strategy. They should be continually reviewed for relevance and performance also. Essentially, as an organisation matures in its safety culture so too should the selected PPIs.

## FACILITATING DUE DILIGENCE WITH PPIs IN YOUR ORGANISATION

PPIs have an important role to play in facilitating and monitoring due diligence. They should relate to the organisation (including functional areas) and individuals (such as specific roles including Company Officers). Robust and reliable data collection systems incorporating a range of sources are required, and useful sources of data may include:

- records compiled by other systems (for example payroll or HR training records management systems)
- workplace inspections and audits
- work practice and behaviour observations
- survey questionnaires and interviews with Employees and managers (Comcare, 2004)

When implementing health and safety PPIs for individuals it is necessary to consider the role occupied by an Employee and the human resources management landscape (including employee engagement and performance management practices). As PPIs relate to performance, they should incorporate key accountabilities into job descriptions and should link to performance management processes such as performance reviews. By setting expectations about required safety behaviours through PPIs and monitoring and measuring performance, these indicators are a powerful tool for driving due diligence in workplace health and safety.

It is noted that Employees may occupy a number of roles within an organisation. An example is when a member of staff also occupies a position within the life safety team, for example when they are a Health and Safety Representative or a Fire Warden. By instituting PPIs for each role (incorporated into the relevant job description), an organisation is able to ensure that individuals are effective in all roles they occupy and continual improvement in performance occurs; positioning these staff to function at an optimal level in all roles.

Use of PPIs in this context are also able to assist organisations in proactively identifying when changes to staffing arrangements for these roles (following appropriate performance management) may be warranted in order to ensure that critical support functions continue to perform at a required level. For example, when a health and safety representative participates in 50% of required meetings and inspections, a change to the health and safety representatives may be required and the organisation should consider acting through the appropriate channels to facilitate this change. Such an approach supports a bottom-up approach to health and safety management in the workplace. Also, the setting and satisfaction of PPIs up the chain facilitates and demonstrates the meeting of safety performance criteria and drives the establishment of appropriate safety behaviours and, ultimately, the safety culture and performance of the organisation as a whole.

At the organisational level, PPIs should relate to functional areas rather than specific people. Essentially, they should encapsulate the performance of the group within the functional area as a whole in satisfying these performance indicators. Rather than driving PPIs through specific channels such as job descriptions and performance reviews, indicators should be driven through reporting means such as the development and implementation of Scorecards incorporating health and safety measures, and reporting on PPIs in management Monthly Reports or Annual Reports. In this regard, PPI's are also a useful tool for bringing health and safety management into the scope of the Corporate Governance framework.

The implementation of functional and organisational PPIs accompanies the top-down management of health and safety, reflect the overall performance in health and safety, and should affect the safety culture of an organisation. They provide a greater real-time reflection of health and safety performance than lag indicators such as LTI days and therefore have significant relevance to an organisation's ability to demonstrate satisfaction of due diligence requirements which are inherently linked to 'duty of care'.

## CONCLUSION

'Due diligence' is a requirement which must be satisfied by organisations and their Employees, including Company Officers. As indicated, performance indicators are necessary to drive and reflect a commitment to health and safety by individuals and organisations as a whole.

Traditionally, indicators such as 'LTI Days' (i.e. lag indicators) have been relied upon by organisations to measure performance however such indicators have a number of limitations that have been discussed. It is therefore necessary to look to the adoption of additional indicators, and this is an area where 'Positive Performance Indicators' (or lead indicators) are gaining attention; particularly since they are perhaps a more appropriate reflection of real-time health and safety performance than traditional indicators.

In essence, PPIs are a very useful tool for both driving and demonstrating due diligence. The increasing prominence of the issue of due diligence that accompanies the *Model Work Health and Safety Act* and transitional legislation highlights the need for PPIs to be more widely adopted by industry.

In setting performance indicators. key points to remember are:

1. Selected performance indicators should not be limited to traditional indicators such as LTI Days which are lag indicators reflecting past performance
2. Due diligence requires verification of resources and processes and lead indicators (PPIs) facilitate this and are therefore necessary
3. As with all areas of health and safety continual improvement is required and PPIs should therefore be regularly reviewed and improved upon to ensure they are focused and relevant
4. PPIs should be developed at the individual (Staff) level and the functional level
5. PPIs should be appropriate to the area and level of responsibility - high level responsibilities demand high-level PPIs
6. Existing data collection systems such as HR information systems should be leveraged to collect data on PPIs
7. Data trends should be acted on appropriately in order to facilitate and demonstrate satisfaction of due diligence requirements

By following these pointers you should be well on the way to satisfying the due diligence and ultimately duty of care requirements. This allows for the mitigating of both individual and organisational risks; and more importantly, the prevention of accidents and workplace injury (the ultimate aim of all health and safety legislation) through the driving of increasingly proactive safety behaviours and management.

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## REFERENCES:

Aickin, C., Lusted, M. & Whitby, L. (2004). Musculoskeletal disorders in NSW mines: Validation workshop. Retrieved from [http://www.dpi.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0004/362407/MSD-validation-workshop-report.pdf](http://www.dpi.nsw.gov.au/__data/assets/pdf_file/0004/362407/MSD-validation-workshop-report.pdf)

Comcare (2004). *Positive performance indicators: Measuring safety, rehabilitation and compensation performance*. Retrieved from [http://www.comcare.gov.au/\\_\\_data/assets/pdf\\_file/0018/41346/Positive\\_performance\\_indicators\\_PUB\\_10\\_sept04\\_v3.pdf](http://www.comcare.gov.au/__data/assets/pdf_file/0018/41346/Positive_performance_indicators_PUB_10_sept04_v3.pdf)

*Model Work Health and Safety Act (Cwlth) (Austl.)*

*Riverstone Meat Co Pty Ltd v Lancashire Shipping Co Ltd* [1960] 1 All ER 193 (Austl.)

*Universal Telecasters (Qld) Ltd v Guthrie* (1978) 18 ALR 531