Occupational Road Risk – Corporate Responsibility

Speaker: Elena Fry
Health & Safety Team
Brodies LLP
7th December 2011
Occupational Road Risk – Corporate Responsibility
Occupational Road Risk – Corporate Responsibility
Occupational Road Risk – Corporate Responsibility

- Police remain primarily responsible for investigating RTIs
- Road Traffic Act 1988
- Driver responsibility
- HSE involved in specific “on road” work activities but also:
  “significant and demonstrable failures to manage the health and safety of work activities”

HSE O/M 2009/02
Occupational Road Risk – Corporate Responsibility

The law:
- HSWA 1974
- Employees: S2(1): “It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.”
- Public: S3(1): “It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health and safety.”
- Potential unlimited fine (100k +; compensation order)
Occupational Road Risk – Corporate Responsibility

The law:

• MHSW Regs 1999

• S3(1): Every employer shall complete a suitable and sufficient assessment of:
  (a) the risks to the health and safety of his employees to which they are exposed whilst they are *at work*; and
  (b) the risks to the health and safety of *persons not in his employment* arising out of or in connection with the conduct by him of his undertaking…
Occupational Road Risk – Corporate Responsibility

The law:

- CMCHA 2007

- S1(1): “An organisation to which this section applies is guilty of an offence if the way in which its activities are managed or organised (a) causes a persons death, and (b) amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.”

- Activity includes “the use or keeping…of any plant, vehicle or other thing.” (s2(1)(iv))

- Unlimited fine (500k +), publicity and remedial orders
Occupational Road Risk – Corporate Responsibility

Golden rule: assess ORR like any other operational risk.

- Plan (vehicle, driver, journey)
- Deliver
- Monitor
- Review
Occupational Road Risk – Corporate Responsibility
Occupational Road Risk – Corporate Responsibility

Potential outcomes:
- Driver prosecuted under RTA 1988 (potential custodial sentence)
- Organisation prosecuted for “causing or permitting” offence
- Organisation prosecuted under HSWA and/or CMCHA
- Senior manager/director prosecuted under s37 HSWA (potential custodial sentence up to 2 years)
- Enforcement notices issued by HSE
- Compensation claim in civil courts
- Fatal Accident Inquiry
- Operator’s licence revoked
- Directors disqualified
“The police will, in most cases, continue to take the lead on the investigation of road traffic incidents on the public highway. Enforcement action by HSE will usually be confined to incidents where the police identify that serious management failures have been a significant contributory factor in the incident.”
Occupational Road Risk – Corporate Responsibility

Thinking about compliance:

• Duty to look after safety of staff/public applies to “on road” activities
• What operational risk does your organisation have?
• How are you going to manage that risk?
• Can you evidence your active management of ORR?
• Serious incidents, get immediate legal advice/representation

Questions?
Occupational Road Risk – Corporate Responsibility

Speaker: Elena Fry
Health & Safety Team
Brodies LLP
7th December 2011