



MEMO

To: Board of Directors
From: Company Secretary
Subject: **AMENDING FINANCIAL REPORTS**

As you know Mr R has pointed out that the details of his shareholding interests in the company – and that of Mr C – are incorrectly stated in the Directors' Report which formed part of the financial report that has been audited, lodged with ASIC, and sent to shareholders.

It is noted that the directors' share interests shown in Note 20 to the accounts are correct – as at 30 June – but the Directors' Report, as you know, must show the holdings as at the date of that report (29 September) – and since 30 June we have undertaken a rights issue which has increased their shareholdings to the extent of their rights applications.

The question is: what should we/are we going to do about this matter?

My suggestion is that we do nothing on the basis that this matter is not material – there are no changes to any of the financial or other information about the company itself, only to 2 directors' shareholding interests, and we have at least given details of the rights issue in the subsequent events notes (so a reader could reasonably deduce that those 2 holdings have gone up proportionately to the total additional shares on the basis of the general 1:8 rights issue entitlement).

Also, those 2 directors have already said that they are not personally concerned about the error.

Re-lodgement of Amended Report

If we do decide to amend the Directors' Report, then under section 322(1) of the Corporations Act, we must:

- (a) *lodge the amended Directors' Report with ASIC within 14 days after the amendment* – but no guidance is given as to what “after the amendment” actually means. I would take it that it means “after the board formally decides to amend” the Directors Report, because until that time nothing has actually happened other than there has been discussion on the matter.
- (b) *give a copy of the amended Directors' Report free of charge to any shareholder who asks for it* – although one wonders how they might even know about the amendment to ever ask for a copy. However, sec.322(2) requires that if the amendment is ‘material’ (which is not defined) then



shareholders must be 'notified as soon as practicable' (but nothing in this section says how they should be notified, nor specifically within what time frame) of the nature of the amendment and the availability of an amended copy of the Directors' Report.

Offences

Any contravention of Section 322 is a *strict liability offence*, which essentially means it is not necessary to prove intention, knowledge, recklessness or negligence (see Section 6.1 of Criminal Code).

DISCLAIMER

The comments in this memo reflect some commercial aspects and observations on the matter experienced or observed by the writer in practice as he understands them. The information is given as a guide only and does not represent a definitive or legal view of any of the issues raised, covered or referred to and the reader is urged to seek his own professional advice on all aspects of, or pertaining to, this and any related matter.