



## MEMO

To: Board of Directors  
From: Company Secretary  
Subject: **WORK, HEALTH & SAFETY ACT**

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The Work Health & Safety Act 2011 affects all companies (and other organisations/businesses) in Australia – through template legislation which has been adopted nationally.

This legislation is designed to harmonise WH&S across all jurisdictions – to minimize corporate costs, reduce the regulatory burden, ease compliance and improve efficiencies for all companies. It also provides workers with standardised health and safety rules and regulations across the country.

### **Officers Obligations**

This Act imposes duties on ‘officers’ to ensure that the health and safety of workers is not put at risk from work carried out as part of a business or undertaking. Further, these persons, in conducting the business, have a duty to ensure, as far as reasonably practicable, that the health and safety of workers engaged by the person – and also workers whose activities are influenced by that person – are protected.

The definition of ‘officer’ under this Act is broader than that under the Corporations Act (Section 9), and includes directors, the Company Secretary and other persons (eg, CEO, CFO) who ‘influence or make decisions that affect the whole, or a substantial part of, the business or undertaking of the body’, even though such persons may have no direct influence on a work environment (eg, non-executive directors).

Any person who is considered to be an officer has a positive obligation to manage workplace health and safety and exercise due diligence. Their duty of care extends to ensuring compliance with the Act, and if not they may be personally liable. Hence there is a need for all directors to be conversant with the Act and its implications.

In fact, it is incumbent on all officers to ensure they have a good working knowledge of the Act and its ramifications, to which end they should consider attending an appropriate training/accreditation course. Officers, including directors, are required to have and keep updated general knowledge of workplace health and safety matters.



## Remote Directors

The decision in *Inspector James v Paul* (2011) confirmed that company directors cannot rely upon their apparent remoteness from the day-to-day operations of their business to avoid liability for a WH&S incident.

## Due Diligence

In summary, all officers are required to take reasonable steps to:

- acquire and keep up-to-date knowledge of WH&S matters
- gain an understanding of the nature of the operations of the business or undertaking, particularly the hazards and risks associated with those operations
- ensure that appropriate resources are available to minimize risks in relation to WH&S and processes are in place to adequately deal with situations that may arise
- overview information gathering, assessment and reporting on compliance with WH&S requirements.

## Board Reporting

To give comfort to directors all boards should require management to report to every meeting, identify any matters which may conflict with the Act, and actions being undertaken to rectify the situation.

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### **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.*