

Heightened Exposures for Company Directors

Pike River Coal Mine Disaster Royal Commission

The Royal Commission identified many shortcomings and failures which contributed to the disaster. In its report it was particularly critical of the Pike River Coal Limited board of directors. The report observed that:

“The board needed to have a company-wide risk framework and keep its eye firmly on health and safety risks. It should have ensured that good risk assessment processes were operating throughout the company. An alert board would have ensured that these things had been done and done properly. It would have familiarised itself with good health and safety management systems. It would have regularly commissioned independent audit and advice. It would have held management strictly and continuously to account.”

Under the Heading of “Improving Corporate Governance” (Report pg 324) the following points are made:

“Protecting the health and safety of workers is not a peripheral business activity. It is part and parcel of an organisation’s functions and should be embedded in an organisation’s strategies, policies and operations”

“The board and directors are best placed to ensure that a company effectively manages health and safety. They should provide the necessary leadership and are responsible for the major decisions that most influence health and safety: the strategic direction, securing and allocating resources and ensuring the company has appropriate people, systems and equipment”

“The directors should:

- *ensure the company has a comprehensive health and safety management plan*
- *ensure that plan is fit for purpose and reviewed regularly*
- *provide adequate resources and time for the plan to be implemented*
- *obtain independent evidence of the effectiveness of the plan”*

Amongst the Commission’s sixteen recommendations three are specific to company boards:

- Recommendation 5: The statutory responsibilities of directors for health and safety in the workplace should be reviewed to better reflect their governance responsibilities.
- Recommendation 6: The health and safety regulator should issue an approved code of practice to guide directors on how good governance practices can be used to manage health and safety risks.
- Recommendation 7: Directors should rigorously review and monitor their organisation’s compliance with health and safety law and best practice.

Directors already have legal responsibilities under Health & Safety legislation, highlighted in a recent tragic case where a “non-operational” director was charged following the capsizing of the “Easy Rider” in Foveaux Strait resulted in eight drowning.

Vero Liability is of the opinion that even without the eventual implementation of the Royal Commission regulatory recommendations there will be increased scrutiny of directors on Health and Safety issues. It will become a matter of “seeing how the cookie crumbles”.

In the meantime we should all be conscious of improving “risk profiles” by reminding directors and managers of insured organisations of their obligations in the Health & Safety area.

As a tangible measure Vero Liability has amended its relevant proposal forms to include the following question specifically aimed at encouraging active and effective governance in this important area.

Do the Proposer’s Directors/Proprietors/Partners regularly review Health & Safety risk assessment & compliance?

If you wish to discuss any aspect of this measure please contact your [VL Underwriter](#).