

Brokers' clients face million-dollar fines and bankruptcy

Brokers have been urged to ensure their commercial clients comply with the new Work Health & Safety Act 2011, as they may be at risk of being slapped with penalties running into millions of dollars.

The Work Health & Safety Act 2011 came into force at the beginning of the year in South Australia and Tasmania, following in the footsteps of NSW, Queensland, Northern Territory and ACT. It is likely to be introduced in Western Australia before the end of next year, but despite its almost nationwide implementation, it is thought that few businesses understand its implications.

Under the new law, commercial property is considered a workplace and the commercial property owner is a person who is conducting business or involved in the management of the workplace. Both the real estate property manager and the owner have a duty to ensure the workplace is safe including completing a WHS audit and an essential annual safety measures report.

"It has significant implications for property owners and managers," said Stephen Silk, general manager at Australian Property Compliance. "Building owners are not aware of the new obligations. There is the potential for non-claim payments."

The law means directors and officers are potentially liable for any breach. If the company engages in conduct that exposes an individual to the risk of death of serious injury or illness, the company could be forced to pay up to \$3m and individuals up to \$600,000 and sentenced to five years in jail.

Failure to comply where a person is exposed to risk of death of serious injury can result in a corporation paying up to \$150,000 and \$300,000 for individuals.

Companies that fail to comply when a duty, whether or not an individual is exposed to a hazard of risk, will be slapped with a fine of up to \$500,000 while individuals risk paying \$100,000.

Silk stressed the insurance consequences of flouting the regulations could be just as costly.

"Breaching the obligations may render professional indemnity on behalf of the manager and building, and public liability on behalf of the owner void," he said. "It may affect the acceptance of claims. It may result in a no claim payment or the reduction of a claim, and if an injured person takes their case to court, the owner and manager are liable for the medical costs."

Silk, whose company works with Honan Insurance Brokers in ensuring its clients comply with the regulation, urged intermediaries to check the relevant audits were complete.

"With respect to professional indemnity insurance of a licensed real estate agent acting as a property manager for their commercial property owners, a broker should ask the real estate agent if all their commercial properties have completed WHS safety audits and annual Essential Safety Measure Reports."

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