



# Bellrock.

**STATUTORY LIABILITY:**

Work Health & Safety  
Risk Assessment



Measurably  
**Different**

# Work Health & Safety and Statutory Liability

## WHAT IS STATUTORY LIABILITY INSURANCE?

Statutory liability insurance covers your company, its directors and officers for costs, expenses and penalties which may ensue following attendance at an ‘inquiry’ brought by a Regulator or an incident and subsequent prosecution in connection with a breach of a Statute.

### Example of Statutes include:

- Workplace Health & Safety Legislation
- Environmental Protection Law
- Employment Law
- Corporations Act
- Privacy Legislation

Traditional insurance such as professional indemnity, directors’ and officers’ liability and public liability were designed to cover compensatory damages (and legal costs and expenses in defending same).

## TRENDS IN WORKPLACE INCIDENTS

Regulators in most Australian States have increased activity in the proactive investigative function (site inspections and the issuing of notices) and prosecutions.

There has been a large increase in enforceable undertakings being entered into in NSW, and the ones being accepted by the regulator are more costly. A number of recent EUs have been \$1m and above. This is consistent with our anecdotal experience that enforceable undertakings are being more frequently rejected by SafeWork NSW.

SafeWork NSW *Work Health and Safety Roadmap 2022* states that there were 62 fatalities in NSW in 2017 and 32,998 serious claims in NSW in 2016/2017.

SafeWork NSW have openly stated that they are targeting construction, transport, agriculture, government, health care, social assistance and manufacturing industries.

## Why get an assessment?

- Discharge directors’ duties (enquiring mind test, “we know the risk exists, what have we done to address and mitigate against it?”)
- Understand governance, compliance and risk management
- Ensure compliance with a company’s statutory obligations for Work Health & Safety
- Ensure an adequate response in case of a Workplace Incident
- Ensure mitigation against any personal and strict liability including exposure to criminal sanctions
- Enable Bellrock to obtain appropriate Statutory liability insurance

Bellrock has partnered with Sparke Helmore to provide an independent review to assess our clients’ approach to Work Health & Safety.

Our clients’ who comply with WH&S best practice, will qualify for a bespoke policy, offering a practical and appropriate response to Work Place incidents. This will enable them to be well defended in the event of an Inquiry and any subsequent civil claim.

## WHAT WILL A PROSECUTION COST?

Sparke Helmore has advised that on average:

- A not guilty plea, generally involves a two to 4 week hearing with an average of \$400,000 in defence costs
- A guilty plea, generally involves a half day attendance at a sentence hearing with an average of \$100,000 in legal costs with the addition of SafeWork’s legal costs usually around \$40,000 or more.
- Currently, an “average” fine for a company in NSW is between \$180,000 to \$300,000, in addition to legal costs.

## Regulatory activity 2018-2021



**\$6.4m**

in additional funding to increase ratio to 1 inspector for every 10,000 workers in FY22.

**250%**

increase in enforceable undertakings from 2018-2020.

**448**

penalty notices and 8,504 improvements notices issued in FY21.

**59%**

increase in findings of guilt and conviction following prosecution from 2018-2020.

# WHS Risk Assessment

A WHS “health check” or due diligence gap analysis will assist in identifying shortcomings in your Work Health & Safety policies and procedures. The Health Check will be delivered by Ms Carlie Holt and the WHS Team at Sparke Helmore.

## WHS AT A GLANCE - COMPULSORY, ALL CLIENTS

This is a short, simple one-page WHS health check devised to ensure compliance of your company to understand whether it meets ‘minimum standards’ of WHS so as to qualify for statutory liability cover. The form will serve as a baseline WHS check to provide a high-level snapshot of your WHS risk profile.

## WHS HEALTH CHECK

The health checks are generally conducted remotely via a video or conference call, through open dialog against appropriate question sets. The length and depth of each will vary from assessment to assessment, dependent upon client market segment and operational requirements. Sparke Helmore offer two levels of their WHS Health Check to Bellrock’s clients, these are:

### Initial Health Check (Recommended)

This assessment intends to deliver a scorecard as to your compliance with WHS obligations. It comprises of a list of prompts and questions administered by one of Sparke Helmore’s WHS lawyers while they interview relevant persons within your organisation. The results will provide a measure of the current level of risk exposure and potential liability of the company and its officers.

A brief report detailing the findings will be provided to your company by Bellrock. The company may then, at its discretion, directly engage Sparke Helmore for a Comprehensive WHS health check as outlined below.

This approach will be predominantly based on the information which is made available and discussed during the WHS Health check. Please note, it is not intended that the initial assessment will identify or cover all and

every WHS risk that may be prevalent to you. Clients wishing to gain the most benefit from the assessment will be strongly encouraged to provision all information requests through Bellrock in advance of the scheduled assessment. Information available for assessment in advance will ordinarily permit a greater opportunity to focus on key areas during the meeting to provide further and detailed insight on information available.

## Comprehensive Health Check (Larger clients)

Each customer is unique, and Bellrock acknowledges this. We believe that greater clarity can be achieved during focused discussion than completing a similar detailed activity on-line. The outcome is a tailored, unobtrusive and streamlined process, with appropriate recommendations identified for your organisation.

Sparke Helmore’s Comprehensive in in-depth, bespoke review designed to provide a complete WHS gap analysis for your company. One of Sparke Helmore’s senior safety lawyers will conduct the comprehensive health check to ensure objectivity and an independent review of your company’s business operations.

A report will be prepared, based on the findings of the gap analysis, identifying areas for WHS improvement and risk mitigation.

Ultimately, this health check will serve as a diagnostic tool in assessing the risk profile of prospective and existing clients so as to:

- assist with identifying pathways for risk mitigation strategies, and
- assist with assessing the adequacy of insurance coverage.

A strong result from the above assessment for your company, or evidence of appropriate remedial action to overcome an identified risk, may assist Bellrock in the negotiation of better premiums or more advantageous/ favourable terms for your company.

## What information do we need?

In order to ensure efficient analysis of your information security environment, access to the following information is beneficial in ensuring that all parties achieve the most from the assessment process.

Governance, legislation, security controls and best practice respective to information security will vary across industries, organisations and geographical operational boundaries. In this Executive Assessment, the approach will not be finite regarding documentation required. However, we would respectfully ask for the following or similar derivatives which you may have available and appropriate to your organisation;

	FOCUS AREA	CRITERIA
1	Risk Management	Provide evidence that your company has sought to eliminate identified risks and has applied the hierarchy of controls, evidence of hazard related data and how it is reviewed
2	Incident Notification	Provide any template documents around notification requirements and evidence that records are retained for at least 5 years. Provide evidence of how site preservation requirements are clearly articulated to workers
3	Consultation	Provide evidence of how key duty holders and stakeholders are consulted regarding health and safety
4	Information Training and Instruction	Provide evidence of governance structure and arrangements and supervision arrangements Provide evidence of toolbox talks or how information is conveyed to staff regarding WHS
5	First Aid	Provide evidence of first aid coverage at your sites
6	Person Protective Equipment (PPE)	Provide evidence of how appropriate PPE requirements are identified and provided to staff Provide evidence of maintenance, repair and instruction with respect to PPE
7	Officer Due Diligence	Provide evidence of how WHS issues, incidents, and near misses are communicated to officers Provide evidence of training provided to officers about due diligence requirements
8	Audits	Provide evidence of any audits conducted in past 3 years regarding WHS
9	Incidents or Near misses	Provide evidence of LTIs in past two years Has your organisation been investigated or prosecuted in relation to an incident in the past 5 years?



# Assessment process

## CONFERENCE CALL - HOW LONG DOES IT TAKE?

Ordinarily the conference call and assessment should be scheduled ordinarily for around 1.5 - 2 hours. The time and content can be ordinarily adjusted dependent upon the dialog stakeholder preferences and information provisioned in advanced. The key aim is to make available key individuals whom have operational knowledge of data security in particular in the discipline areas as outlined within What Information Do We Need on page 4.

## WHOM SHOULD ATTEND?

As an indication, the following stakeholder positions or equivalents should be considered;

### Client;

- Head of safety and/or;
- Appropriate safety manager

### Broker;

- Client Manager (not essential)

### Sparke Helmore;

- Specialist WHS lawyer



## Structure of the call

The conference call will aim to follow a standard format but may be varied slightly in line with advance information provision or any time constraints. It is important that advance quality information is provided succinctly a minimum of 48 hours prior to the call.

Sparke Helmore will ordinarily coordinate the discussions between all parties, asking relevant questions. Nonetheless, our experience would suggest that all parties engage in open dialog, to ensure the optimum information exchange can be achieved, in the time allocated assessing the key areas under discussion.

### Introductions: 5 mins

- Broker makes introductions.
- Sparke Helmore confirm format, attendees and agenda.

### Assessment: Up to 90 mins

- Sparke Helmore will lead with question and answers dialog on security matters outlined in Delivering the Assessment.
- Timing is ordinarily kept to 90 mins in the maximum, and should be comfortably completed in this time frame. Answers should be clear, concise and precise and supported by evidence where appropriate.
- Open dialog between all participants.

### Conclusion : 5 mins

- Summary and opportunity for stakeholders to understand and seek clarifications on the content or process ongoing.



## DEALING WITH CONFIDENTIALITY

Sparke Helmore Lawyers, specialise in information security, governance, assurance and risk. We have a specialist team of engineers, lawyers and risk professionals, whose experience is second to none. You can rest assured, that information which is shared with us during the course of the engagement is controlled and managed securely using a range of technical and best practice solutions.

The services which are provisioned to you, are subject to a strict duty of confidentiality between Sparke Helmore Lawyers and Bellrock. We will only use the data for its intended purpose, and do not directly or indirectly use, exploit, sell or otherwise disseminate information obtained (unless legally required to do so), without written consent. In the event that you have a preference for a direct Non Disclosure agreement between Sparke Helmore and yourselves, we are happy to provision our own mutually Non Disclosure Agreement.

Please note, that ordinarily conference calls (audio, video or collaboration notes etc) are not recorded. If there is a specific request from a participating party, then express consent from all attendees, must be agreed in advance.

## Stakeholder involvement

**Suggested Stakeholder Involvement and Responsibilities:**

### **Client**

- Provision info and make key personnel available for assessment.

### **Bellrock**

- Co-ordinate preferred time for assessment between stakeholders
- Provision preferred communication details for conf call
- Provision all information from client one week in advance of conf call (where possible)
- Ensure outstanding Q&A between parties are facilitated.

### **Sparke Helmore**

- Understand stakeholder preferences and suggested scope
- Administer assessment
- Generate and provision a WHS

# Your Bellrock team

Our team of experts are here to assist you. Click to view staff profiles.



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# Sparke Helmore

Sparke Helmore's dedicated national safety team is focused on developing a genuine understanding of the culture, risk appetite and operating challenges within their clients' working environment. Their client base covers many of Australia's largest public and private sector organisations from mid-tier construction companies to international corporate groups and entities operating in a range of high risk industries.

Their diverse experience and exposure to WHS best practices on an international scale enables them to provide their clients with advice and assistance that is innovative and at the forefront of emerging trends and strategies. Sparke Helmore use their industry knowledge to proactively advise on workplace risk mitigation and, when an incident does occur, how to minimise the exposure of the organisation and its officers. They have extensive experience advising on WHS obligations, defending work health and safety prosecutions and negotiating enforceable undertakings.

## WHS SERVICES

- Bullying—policy development, investigations, training and legal proceedings.
- Commissions of Inquiry—Royal Commissions and Commissions of Inquiry.
- Contractor management—compliance, contract, policy and system reviews, and training.
- Coronial inquests & inquiries—investigations, legal proceedings, strategy and litigation management.
- Fatigue management—compliance, investigation and enforcement actions, notices, policies and procedures, and legal proceedings.
- Food safety—compliance, investigation and enforcement actions, notices, policies and procedures, and legal proceedings.

- Improvement & prohibition notices—response, review and appeals.
- Incident response & management—Safety Incident Response Hotline, investigations and crisis management.
- Legal briefings & training—tailored training packages, board and executive briefings, training for staff and managers, court and interview simulations.
- Policies & procedures—policy and system reviews and document development.
- Regulatory investigations & prosecutions—investigation and enforcement actions, legal proceedings, strategy and litigation management.
- Safety governance & assurance—due diligence, legal reviews, executive and board briefings, and legal risk management.
- Transport chain of responsibility—compliance, investigation and enforcement action, notices, policies and procedures, and legal proceedings.

## Claims assistance and incident management

- 24 hours / 7 days a week Incident Response Hotline
- Emergency response plan

For further details regarding WHS, please contact:

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For other service deliveries documents and capability statements see [sparke.com.au](http://sparke.com.au) ■



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