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## Officers under the Health & Safety Wellbeing at Work Act (2015) designated Auckland Transport roles

For decision:  For noting:

### Ngā tūhonga / Recommendations

That the Auckland Transport Board (board):

- a) notes that members of the Auckland Transport (AT) Board (board), the Chief Executive and select Executive Leadership Team (ELT) members are considered Officers under the definition of the Health and Safety at Work Act 2015 (HSWA) and are therefore responsible for a range of due diligence duties.
- b) notes that, in the event of a serious incident, ELT members are more likely to be prosecuted as workers and should therefore take a health and safety-centric approach to all aspects of their daily decision-making and management practices.
- c) notes that the Key Performance Indicator (KPI) dashboard will assist with directors meeting their due diligence duties, however each director will need to take additional reasonable steps to be personally satisfied that AT is meeting all of its health and safety obligations.
- d) notes the attached legal opinion provided by Buddle Findlay for a full understanding of the due-diligence activities that may be considered to enhance Officers due-diligence activities (please refer to Attachment 4).
- e) notes that the committee work programme agreed in March 2022 has been designed to further support directors health and safety due-diligence activities.

### Te whakarāpopotanga matua / Executive summary

1. The primary objective is to draw the board's attention to the Buddle Findlay legal opinion regarding the positions within AT that are considered to be Officers in the context of the HSWA. All members of the board and the Chief Executive will be deemed Officers and the Executive General Managers (EGMs) of Service Delivery, Integrated Networks and Customer Experience could be considered as Officers under the HSWA. For clarity, the two Council Controlled Organisation liaison councillors will not be deemed Officers (they are not members of the board).
2. The board and Chief Executive must exercise due diligence to ensure that all of AT complies with its duties and obligations under the HSWA. However, the due diligence duty of the EGMs of Service Delivery, Integrated Networks and Customer Experience will be mostly limited to their functional areas, having regard to their positions and responsibilities.

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- The Health and Safety reporting dashboard will assist Officers with compliance; however, it does not allow Officers to satisfy their full due diligence duty as obtaining relevant health and safety information and monitoring health and safety performance is only one aspect of compliance. Each Officer will need to take additional reasonable steps to be personally satisfied that AT is meeting all of its health and safety obligations.

**Ngā tuhinga ō mua / Previous deliberations**

Date	Report Title	Key Outcomes
March 2022 Board	KPIs and Reporting	The new Health Safety and Wellbeing Dashboards were approved for standardised monthly and board reporting.
June 2022 Safety Committee	Incident Reporting	The Committee acknowledged the legal advice provided and stressed the importance of the committee receiving regular incident reporting to ensure directors are undertaking the due diligence requirements.

**Te horopaki me te tīaroaro rautaki / Context and strategic alignment**

**Officers**

- AT is a PCBU and therefore has a primary duty of care to ensure, so far as is reasonably practicable, the health and safety its workers and other persons are not put at risk by its work (s 36, HSWA). Every Officer of a PBCU holds a duty of due diligence to ensure that the PCBU complies with its primary duty, as well as all of its other duties and obligations under the HSWA.
- Officers are defined in HSWA as persons who exercise significant influence over the management of the business or undertaking. The designation of ‘Officer’ is limited to those in very senior governance or leadership roles (such as directors or chief executives) and senior executives who make decisions that affect the overall operation of an organisation.
- EGMs with direct operational responsibilities at AT are the EGM Service Delivery, the EGM Integrated Networks and the EGM Customer Experience as their ability to influence core operations is significant.
- EGMs of functions that support or complement the operational areas of the business (such as Business Technology, Finance and Culture and Transformation) are unlikely to be deemed Officers as their decisions are ultimately influenced by the operational executives responsible for the implementation of systems and processes at the frontline. This in no way diminishes the importance of their respective roles; it is purely related to interpretation of the Officer role under the HSWA.

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### Due diligence duty

8. An Officer's due diligence duty is limited to the care, diligence and skill that a reasonable Officer would exercise in the same circumstances, taking into account the nature of the business or undertaking, the position of the Officer and the nature of the responsibilities undertaken by the Officer. Officers cannot be held liable for failures in areas of the PCBU that they had no influence over.
9. Officers must take into account the nature of the business or undertaking, include AT's large size and expected maturity, its provision of services to the public and increased risk of death or serious injury posed by its transport operations.
10. Due diligence includes taking reasonable steps to acquire knowledge about AT health and safety matters; understanding AT's operations, hazards and associated risks, ensuring AT has available for use (and uses) appropriate resources and processes to eliminate or minimise risks to health and safety, ensuring AT has appropriate processes for receiving and considering information regarding incidents, hazards and risks for responding in a timely way to that information and ensuring AT has and implements processes for complying with health and safety duties.
11. Officers do not have to ensure the health and safety of AT's workers but must exercise due diligence to ensure that AT does so (i.e., verification).
12. Officers are not required to be involved in AT's day-to-day management but are required to take an active interest in making sure that AT has appropriate and safe systems of work.
13. It is recommended that alongside the review of dashboard information, Officers consider a range of activities to assist with meeting the due diligence duty such as: developing a charter outlining the vision for health and safety, governance responsibilities and expectations, developing a calendar of health and safety-related activities that Officers will undertake (e.g. training or examination of a critical risk); maintaining a log of due diligence activities, undertaking site visits that include engagements with frontline workers, attending AT health and safety workshops or training; and discussing health and safety with Officers from other PCBUs. Refer to Attachment 2 for further examples of due diligence activities that could be considered.
14. The range of activities identified to assist officers due-diligence activities are commensurate with established practices such as the committee charter, learning reviews and safety leadership walks, or are focus areas proposed in the existing work programme which have been designed to increase due-diligence activity.

### Enforcement action / prosecution

15. WorkSafe indicates it is likely to engage with Officers when there is evidence of systemic failure in the PCBU's governance, or when the Officer's failure is preventing the PCBU from meeting its duties (such as failures across multiple sites, or a series of incidents over time).
16. If a serious incident occurred, WorkSafe's focus from a due diligence perspective is more likely to be on the board and Chief Executive and it is likely that this would extend to one of the three operational EGMs, provided the incident occurred in their operational area. A prosecution of any

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Officer is only likely if there has been a systemic failure and the Officer has a direct responsibility for that or otherwise prevented AT from fulfilling its duties.

17. The Chief Executive and each EGM holds a separate duty as a "worker" under s45 of the HSWA to take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons/themselves. Given their seniority in the organisation and leadership of functional areas, this duty is likely to be applied more stringently to all ELT members. WorkSafe is more likely to prosecute senior managers as workers, as it avoids having to first prove that they are Officers. It is therefore recommended that all ELT members take a health and safety-centric approach in their everyday decision making and management practices.

### Dashboard/health and safety reporting

18. The Health and Safety dashboard has been reviewed by Buddle Findlay to ensure that it will assist the Officers of AT with meeting the due diligence duty under the HSWA.
19. The dashboard includes the relevant information required by Officers of AT and it is appropriate that the dashboard is separated into three distinct categories of AT's People, Physical Works Contractors and Public Transport Operators.
20. The high-level dashboard is appropriate; however, more detailed information should be accessible so Officers can drill deeper if they wish – including explanatory notes/commentary.
21. Each Officer must fully review the health and safety dashboard and ensure they are personally satisfied with the information presented. Officers should query any areas they do not understand or where they consider further action is required and should aim to understand patterns and trends. Further investigation/reporting should be commissioned by Officers where trends are identified.
22. The dashboard alone only satisfies one aspect of the due diligence duty. Officers can seek advice from internal and external experts in order to test the information they are receiving. If the Officers chose to rely on the dashboard advice, they must be able to show that it is reasonable to do so and must have enough prior health and safety knowledge to be able to challenge the advice, ask the right questions, obtain the correct information, and verify the advice.

### Key initiatives and deliverables

23. Roles and responsibilities:

- Full review of legal obligations undertaken (please refer to Attachment 3), and policy approved and attached.

24. Dashboard:

- To be populated with measures in accordance with Buddle Findlay legal opinion to assist Officers with meeting the due diligence duty (see attached).

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## Ngā tūraru matua / Key risks and mitigations

Key risk	Mitigation
Due diligence duties not being met	Please refer to Attachment 4 on the range of additional activities Officers can complete to ensure duties are met.
In the event of a serious incident, EGMs are prosecuted as individual workers	EGMs to ensure health and safety is considered in all decision-making processes and the day-to-day management of the organisation.

## Ngā ritenga-ā-pūtea me ngā rauemi / Financial and resource impacts

25. Population of the health and safety dashboard is currently a manually intensive task. Work is underway to automate this work wherever possible, but it should be noted that provision of this information in an accurate and meaningful format will require a significant resource investment on an ongoing basis.

## Ngā kiritaki / Customers

26. Safety across all of AT's activities is fundamental to the experience that customers have no matter what product or service they use. Accelerating progress in safety will lead to a better experience for customers, therefore improving trust in AT.

27. While not customers in the traditional sense, those who work in our broader supply chain will benefit from AT accelerating its efforts in respect to safety. AT as a large client in Aotearoa can have a significant impact on safety standards across several industries.

## Ngā whaiwhakaaro haumaruru me ngā whaiwhakaaro hauora / Health, Safety and Wellbeing considerations

28. The central tenet of this paper is about health and safety. The legal opinion provided and AT's response to this are key to improving health and safety for our people, supply chain, the public and our customers.

## Ā muri ake nei / Next steps



29. Officers to consider legal advice provided and determine if further activities are required to meet due diligence duties.

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## Ngā whakapiringa / Attachments

Attachment number	Description
1	Letter to Auckland Transport – HS Dashboard – April 2022(62552576.2)
2	Letter to Auckland Transport – HSWA Officers – May 2022
3	Roles and Responsibilities Policy – Jan 2022
4	Health & Safety Governance – Legal framework and guidance by Buddle Findlay

## Te pou whenua tuhinga / Document ownership

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