



# SAFETY AT WORK BULLETIN

Proudly Sponsored by the Safety Institute of Australia (Victoria Division)  
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## Personal Liability for Directors and Management is Too Onerous

May 1 2006

Changes to the NSW Protection of the Environment Operations Act which came into force today are too sketchy and onerous for company directors and senior management, said David Newhouse, National Leader, Deloitte's Environment and Sustainability Group.

"Organisations will need to ramp up their environmental systems and heavily rely on third party audits," Mr Newhouse said. "Directors and senior management will find it extremely difficult to rely on an "all" due diligence defence without ensuring their organisation is taking action now to put in place internal and external controls.

"The Act removes the "no knowledge defence" so that directors and senior management must now rely on the "all" due diligence defence," Mr Newhouse said.

"This is an extremely uncertain test because there has never been a case in Australia and the NSW Environment Protection Authority has provided little guidance. While the increase in penalties for environmental offences is warranted, there is uncertainty around the scope for director and senior management liability which make these changes untenable."

Company directors and senior management could face fines of up to \$1 million and/or seven years imprisonment for 'serious environmental offences'.

### Background

Changes to the Act were passed by Parliament on 24 November 2005 and commenced today (1 May 2005).

The changes removes the "no knowledge defence" which leaves directors and executive officers exposed and personally liable for the corporation's environmental offences, unless they can show "all" due diligence.

The requirement for internal audit of environmental management systems, incorporation of environmental risks into the overall risk management framework and the need to report accurate information to directors, executive and managers will be more important than ever before.

Other key changes include:

- Increasing maximum penalties
- Maximum penalties for corporations will be \$5 million and individuals \$1 million and/or 7 years imprisonment.
- Expansion that Licence holders must be a fit and proper person

The changes broaden matters that the Department of Conservation and Environment can consider in determining whether someone is a "fit and proper person" to hold an environment protection licence. These changes include, whether the corporation has had a controller or administrator appointed during the previous 3 years.

### New land pollution offence

Under the changes, it will be a strict liability offence to pollute land. The maximum penalty for a corporation will be \$1,000,000 and \$250,000 for an individual.

### New transportation of waste offence

As owners of waste, corporations may be liable for any pollution caused from the transportation of waste by their licensed waste contractors (maximum penalty for a Corporation is \$1,000,000 and \$250,000 for an individual). Accordingly, the corporation can no longer contract out the transportation of waste to a licensed contractor and forget about where the waste ends up.

Source: Deloitte Touche Tohmatsu

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## Building worker summonsed to appear before commission

MELBOURNE, May 2 2006

A union has questioned why a Victorian occupational, health and safety (OH&S) representative has been summonsed to appear before the Australian Building and Construction Commission (ABCC).

Brodene Wardley, an OH&S representative for the Construction Forestry Mining and Energy Union (CFMEU), has been asked to appear before the commission on a date to be fixed, over a strike at a building site last year at Hamilton, western Victoria.

Under the new Building and Construction Improvement Act any building worker can interviewed by the ABCC. The Act, which was passed by federal parliament last year, provides a set of workplace relations reform measures for the construction industry. It was devised by the government in response to the Royal Commission into the Building and Construction Industry. Included in the Act are provisions to deal with unlawful industrial action, including strikes.

CFMEU secretary Martin Kingham said Ms Wardley was one of the first building workers to be summonsed by the commission. But he said he could not understand why she should be summonsed, as she was not directly involved in the strike at the building site and was only an OH&S representative at the site.

"Brodene is not an employee of the union and she is not political," Mr Kingham said. "She is simply a worker that takes on this extra role because of her commitment to safety on the job," he said. Mr Kingham said Ms Wardley faced six months in prison if refused to appear before the commission.

AAP

## \$20,000 fine over death of diver

27 April 2006

A fishing boat skipper has been fined \$20,000 for failing to ensure the safety of a diver working as a deckhand on his boat after the deckhand drowned while attempting to retrieve a lobster pot.

Troy Creyk, the master of a fishing vessel known as "Hunter", was found guilty and fined last week in the Perth Magistrates Court.

In April 2002, Mr Creyk and the 26-year-old deckhand were working on the Hunter near Essex Rocks at Jurien Bay, trying to free a snagged lobster pot in around 2.7 metres of water. They were the only two people on the boat.

The deckhand was using scuba equipment to dive near the snagged pot while Mr Creyk remained on the Hunter to manoeuvre it away from a nearby reef. The boat was not anchored during the dive. When the diver did not resurface after a second dive and Mr Creyk could not find him, he approached a nearby vessel for help and the diver was found.

Efforts were made to resuscitate the man by Mr Creyk and a crew member from the other boat and later by ambulance officers, but he could not be revived.

WorkSafe WA Commissioner Nina Lyhne said the incident highlighted the hazards of diving activities and the strict safety measures that must be observed. "Safe diving practices have been developed by the rock lobster industry in WA, and are widely publicised by the WA Fishing Industry Council (WAFIC) in its Diving Guidelines for the Rock Lobster Industry," Ms Lyhne said.

"These best industry diving practices state that a standby diver should be prepared to immediately enter the water at any time should an emergency arise, and that practice was obviously not observed in this case.

"Mr Creyk was operating the boat while his deckhand was diving. He should have ensured the boat was secured and performed the duties of a standby diver. The fact that Mr Creyk is a qualified open water diver and holds a master class 5 skipper's qualification means that he should have known better and followed safe diving practice.

"Instead, a young man has lost his life and his family and friends have to face all the tragic consequences that accompany such an event. This case should serve as a warning to anyone involved with diving, in any way, that it is indeed a hazardous activity. Operators of all commercial fishing vessels should make sure they have copies of the best practice guidelines, available from WAFIC," Ms Lyhne said.

Source: DOCEP

## From The Editor

To celebrate the 50th edition of our Bulletin for the Safety Institute, we have revamped the colour scheme. This update, alongside the recent reduction in column numbers, is in response to SIA member requests. We always welcome efforts from the members to make this Bulletin genuinely reflect the needs and desires of SIA members.

A major focus of the Bulletin is to be a supplement to the regular daily media. Over the last 2 weeks we have not given the Beaconsfield mining disaster much coverage due to this supplementary focus. Of course, when the hard safety questions start to be asked, we will provide you all the possible details.

For various reasons these Bulletins are not able to be archived on-line but we feel that the changes in technology and software allows each member to construct a fully-searchable OHS news research library. The latest version of the free software Acrobat Reader 7.07 allows you to search all of the **SAFETY AT WORK BULLETIN** PDFs that you keep and store on your computer.

Along with some of the desktop search software, it is invaluable for OHS practitioners to search by any word in any PDF - names, diseases, dates, hazards. This capacity can add depth to your reports, assessments and advice. You will never need to guess when such-and-such incident occurred.

The best way to establish your research archive is by nominating a specific folder for the bulletin and save the PDFs to that folder. Then, through Acrobat Reader, you can search through the PDFs in that specific folder for OHS keywords, or any word.

Best Regards

Kevin Jones, BA FSIA

Editor

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## New Asbestos Legislation

May 2 2006

New ACT Government legislation governing the management, awareness and training of people handling asbestos, was today unanimously passed in the Legislative Assembly.

The Asbestos Legislation Amendment Act 2006 establishes new asbestos management regimes for the residential sector and those occupations that handle asbestos on a regular basis or in the course of their work.

"Today, the ACT can stand proud of its achievements in the management of asbestos," Mr Barr said. "This Government has tackled a complex and challenging issue by putting in place a balanced, practical and effective approach to asbestos management, awareness and training."

Mr Barr said the Act gives effect to the Government's response to the ACT Asbestos Taskforce Report that was tabled on 28 August last year, and is widely supported by many community and industry stakeholders.

"This legislation will ensure we provide the best possible standards of safety and advice to home renovators and to our trade, service and maintenance people, by putting in place the most up to date and relevant codes of practice available for the safe management of asbestos," he said.

"The Act introduces new licensing occupations for the asbestos industry, including a new licence for 'asbestos assessors', the first for any jurisdiction in Australia. It will also ensure that those who handle asbestos on a regular basis or in the course of their work, including tradespeople, undertake asbestos training courses."

To support these measures, the Government has developed the most comprehensive package of training initiatives anywhere in the world.

"These courses cater for the broad range of occupations across the asbestos industry and is currently under consideration for national accreditation," Mr Barr said. "The new residential arrangements are the first to commence from 1 July 2006. Under the new laws, home-owners and tenants will receive information about asbestos in their homes at key transaction points such as when buying or renting a home, or undertaking major renovations. At the end of the day, these new regimes will ensure greater awareness and protection for the industry and the community."

Source: ACT Government

## Postie loses \$2.6 million compensation payout from Ambos

SYDNEY, May 3 2006

A Sydney postman awarded \$2.6 million in damages after suing the NSW Ambulance Service over the treatment he received for a bee sting has lost his compensation payout in Supreme Court ruling.

Stephen Worley was delivering mail in the western Sydney suburb of Glendenning in October 1998 when a bee stung him on the neck. The now 54-year-old suffered an extreme allergic reaction, going into anaphylactic shock.

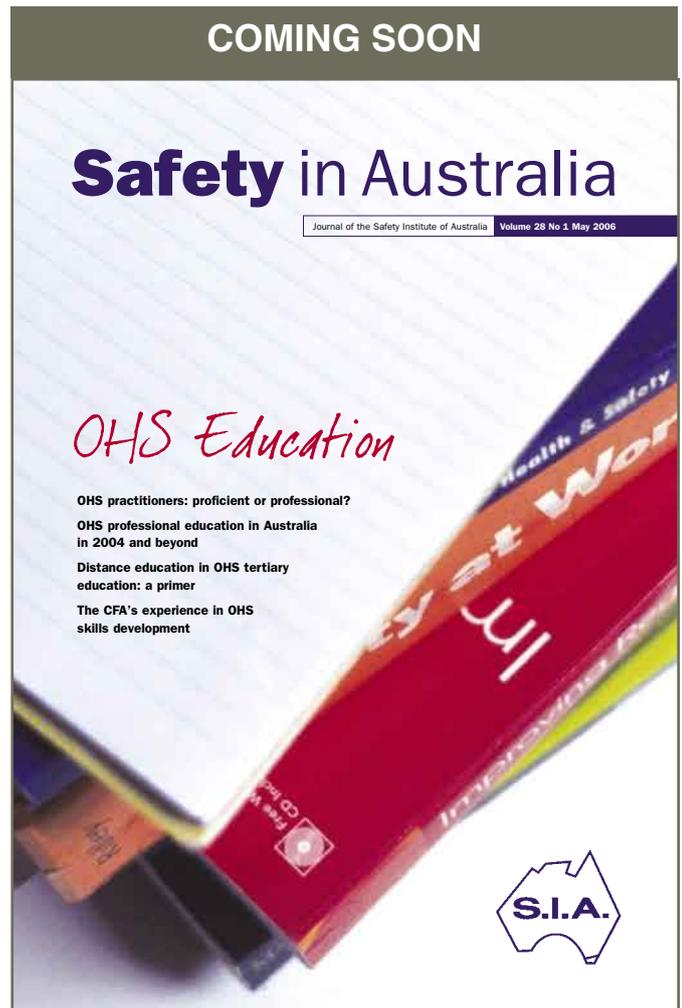
Paramedics called to treat him at the mail centre injected adrenalin directly into a vein. Mr Worley's blood pressure skyrocketed and he suffered a brain haemorrhage after a blood vessel ruptured.

In February last year the veteran postie, who was unable to return to work and still finds it difficult to walk and talk, successfully sued the NSW Ambulance Service for negligence. He had claimed an intramuscular injection would have been more appropriate and was awarded \$2.6 million. But in a majority verdict in the NSW Court of Appeal today, an appeal application by the NSW Ambulance Service was upheld.

"The paramedic was not negligent in intravenously administering the adrenaline," Justice John Basten said in his judgment. "The evidence did not demonstrate that the Ambulance Service failed to exercise due care in its preparation of the protocol."

Mr Worley was also ordered to pay court costs.

AAP



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## Two complaints against mine in 12 months, watchdog says

CANBERRA, May 2 2006

Tasmania's occupational safety watchdog has investigated two complaints in the past year about the Tasmanian gold mine where two workers remain trapped underground. But the industry regulator, Workplace Standards Tasmania, today denied reports the complaints related to safety issues surrounding seismic events such as the one blamed for triggering a rockfall last week at Beaconsfield, near Launceston.

Unnamed miners have reportedly complained to the watchdog about safety concerns linked to earthquakes, but Workplace Standards said the two complaints it had received in 12 months did not relate to seismic activity, the agency's chief inspector said.

"Can't talk specifics, but the complaints have been taken up with the company by Workplace Standards Tasmania and matters have been addressed," the inspector, Don Schofield, told ABC radio. "All I can say is that the matters that were in the complaints were not of a seismic nature."

Mr Schofield said his agency would investigate last week's fatal accident. "The real issue at the moment is that we have to investigate the incident, recognising that we have two people at the mine that need to be rescued," he said. "We need to recognise that the coroner has an investigation in terms of the deceased and we'll be assisting in terms of that investigation. "In addition to that, Workplace Standards Tasmania will be conducting its own investigation in terms of the causation of the incident as a prime focus."

Mr Schofield said Tasmania's mines were legally bound to act on valid complaints. He refused to give any details of the two complaints about the Beaconsfield mine in the last year. AAP

## Man stabbed at construction site by co-worker

SYDNEY, May 4 2006

A man has been stabbed by a workmate during an argument at a Sydney construction site, police say.

A Hurlstone Park man, 47, allegedly attacked another worker, a 29-year-old Earlwood man, during an altercation at Rhodes in Sydney's inner-west about 3pm (AEST) yesterday. The younger man was taken by ambulance to Westmead Hospital for treatment and is currently in a satisfactory condition. His alleged attacker was charged with malicious wounding and granted conditional bail to appear in Burwood Local Court on May 24. AAP

## Multiple operations needed after injury

May 3, 2006

It took five operations including a knee re-construction and seven-and-a-half months off work for a man to recover from a September 2003 workplace injury suffered at Benalla Wool Spinners.

The company was convicted and fined \$20,000 by Wangaratta Magistrate Reg Maron after pleading guilty to one charge laid under the Occupational Health and Safety Act. Costs of \$7538 were also awarded against the company.

WorkSafe told the court the man was struck by a 460 kg door measuring four metres by four metres which fell from its track at the carpet manufacturer's Benalla premises. Although the company had conducted a manual handling risk assessment on the task of moving the doors, it did not address or identify the risk of a door falling.

WorkSafe's investigation could not determine why the door came off its track however there was evidence of previous incidents where one roller of a door had come off due to the accumulation of wool and debris. There was no previous incident of a door coming completely off the track as it did on this occasion.

Magistrate Maron said it was a "chilling" matter which could have been foreseen because of the previous incident. In this case there was nothing holding the door in place other than gravity, he said.

A number of engineering controls were immediately installed to prevent the bin doors falling again. Brackets were welded to the rollers to prevent the door rollers leaving the

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## SIA EVENTS

### The Visions Conference 2006

Venue: Rydges International Resort, Yeppoon  
August 30, 31 - September 1 2006  
[www.sia.org.au](http://www.sia.org.au)

### The Safety Conference, Sydney NSW

17 - 19 October 2006  
[www.thesafetyshow.com](http://www.thesafetyshow.com)

### Safety in Action 2006

Venue: Melbourne Exhibition Centre,  
2 Clarendon Street Southbank  
16-18 May 2006  
<http://www.safetyinaction.net.au>

## OTHER EVENTS

### Waves of Change

Australian Institute of Occupational Hygienists, Inc.  
Venue: Surfers Paradise Marriott Resort, Gold Coast QLD  
2-6 December 2006  
For more information email mailto:  
[conference@aioh.org.au](mailto:conference@aioh.org.au)



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tracks, a safety lanyard which ran along the top of the bin doors was installed to keep the doors from falling if the rollers left the tracks and support lugs for the door pin handles were also fitted.

WorkSafe's Executive Director, John Merritt, said hazard identification needed to be comprehensive and consider all the potential risks, particularly when there was evidence of past problems.

Source: WorkSafe

## Man critical after industrial explosion

MELBOURNE, May 3 2006

A Victorian man is in a critical condition after being badly burned in an industrial explosion at Geelong.

Police say the 65-year-old man was welding a 44-gallon drum at a workshop in an industrial estate in Essex Street when the explosion occurred about 3.30pm (AEST) today.

The man was taken to Geelong Hospital with serious burns and later airlifted to The Alfred hospital in Melbourne. A hospital spokesman tonight said the man remained in a critical condition.

WorkSafe is investigating. "Given that we've had seven deaths in the past fortnight it's yet another reason for people to look at the work they're doing before they do it and understand the hazards and eliminate them," WorkSafe spokesman Michael Birt said.

AAP

## ABC responsible for young escapees, judge says

May 3 2006

A labour law expert said the court decision was a win for childcare workers.

University of Melbourne Law School senior lecturer John Howe said it would protect workers from shouldering the blame when children ran away or were injured while in childcare. Had the appeal been upheld, the individual childcare workers would have been liable, setting a damaging precedent for the industry, Dr Howe said. He said the threat of legal action would be a disincentive for people working in the childcare field.

"There's potentially an enormous compensation claim and large penalties under the act that companies would try and shift on employees," Dr Howe said. "The purposes of the act making the company liable is to ensure that they're responsible and accountable for being involved in that industry."

Dr Howe said the childcare provider was ultimately responsible for ensuring their facilities provided a safe environment for children. "They (operators of childcare centres) now know that they're on the hook when things go wrong and it will be hard for them to shift blame so they need to do whatever they can to prevent accidents occurring."

Dr Howe said it was the first time the provisions of the legislation had been tested.

AAP

## Lucas Heights reactor safe despite staff changes- ANSTO

May 5 2006

A decision to stop 24-hour monitoring of radiation levels at Sydney's nuclear reactor won't not compromise safety at the plant according to the reactor's operators.

The Fire Brigade Union today threatened to ban firefighters from entering the Lucas Heights nuclear reactor when specialist safety technicians charged with monitoring radiation were absent. This followed reports the technicians would no longer monitor the reactor .. in Sydney's south .. between 11pm and 7am. The union says the decision will put firefighters .. plant workers .. and Lucas Heights residents at risk.

But the Australian Nuclear Science and Technology Organisation .. which runs the reactor .. says radioactive material won't be moved around in the reactor building between those hours .. so technicians aren't needed. Head of safety at the reactor .. Cait Maloney .. says the change in arrangements does not affect the safety status of the plant at all.

AAP RTV

## Company fined over young worker's death

May 5 2006

A Sydney company has been fined \$110,000 over a work-related accident .. where a 22-year-old forklift driver was crushed to death.

Manufacturer Precision Valve has pleaded guilty in the New South Wales Industrial Court to a breach of the occupational health and safety act .. which happened on June 6 .. 2002. WorkCover says the young driver died from head injuries .. after being crushed between two forklifts at the company's warehouse in Ingleburn .. in Sydney's south-west.

Justice Anna Backman has ruled the worker didn't have the relevant training or instruction on forklift operation .. that may have

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prevented his death. Precision Valve has also been ordered to pay court costs of almost 17-thousand dollars. AAP RTV

## Electrical regulation change takes the heat off the office kettle

28 April 2006

Simplified safety regulations for electrical equipment in the workplace were announced today by NSW Minister for Commerce, John Della Bosca.

"The amended safety regulations are the result of WorkCover consultations with employers and union representatives," said Mr Della Bosca.

"We have removed the ambiguities in the previous regulations to make compliance easier for employers, particularly small businesses," said the Minister.

"The OHS Amendment (Electrical Equipment) Regulation 2006 now specifically identifies areas where testing and tagging is required, such as construction sites and other hostile operating environments," he said.

Hostile operating environments are those work situations where electrical equipment is likely to be damaged during normal operations.

"WorkCover recognises that in many work environments, certain electrical equipment does not warrant a rigorous inspection and testing procedure due to its inherent low level of risk," said the Minister. "The electric kettle, toaster, computers, photocopiers and similar electrical appliances commonly used in small business offices come into this category," he said. "These items will still be subject to the normal risk assessment process, but the new regulation clarifies they are not required to undergo testing and tagging. The new regulation targets the types of equipment and work situations which WorkCover requires to be tested and tagged to secure the health and safety of workers."

Electrical equipment used in construction work must be regularly inspected and tested in accordance with the WorkCover Code of Practice – Electrical practices for construction work. Equipment that is on hire, or has been repaired, must also be inspected and tested regularly in accordance with the Australian Standard AS/NZS 3760:2001.

Source: NSW Minister for Commerce

## Workers told to take harassment path over unfair dismissal

SYDNEY, May 8 2006 - Employees are being urged by state government bodies to sue their bosses for harassment and bullying instead of lodging unfair dismissal claims.

The Victorian Equal Opportunity Commission says workers should side-step the restrictions in the federal government's new workplace laws and instead file harassment claims.

The Australian newspaper reports that the Commission has begun a postcard campaign which states: "The federal government has reduced workers' rights under recent industrial relations changes...However, Victoria's equal opportunity laws still protect employees from discrimination in the workplace."

Business groups are cautious of a wave of anti-discrimination claims, fearing that successful claims could prove more costly than under the old unfair dismissal legislation. This is because anti-discrimination commissions have the power to award much larger payouts, The Australian reports. The Work Choices changes have also triggered strong responses from other state anti-discrimination commissions, with both Queensland and NSW saying they are expecting an increase in business.

AAP

## Adobe Acrobat V7.07 Information

Some readers have expressed difficulty in upgrading to the latest version of Acrobat Reader with one of the problems being that the download can be over 20 megabytes - a substantial burden to dial-up internet connections.

Safety At Work publishers are now allowed to distribute the latest edition of Acrobat Reader on a CD. If you want a copy of Acrobat Reader 7.07 please email me at [jonesk@sia.org.au](mailto:jonesk@sia.org.au) and include your full postal address. A CD will be mailed to you shortly after.

The CD won't be pretty as it is a burnt copy of the software that Adobe permits us to distribute. It is not allowed to be given to anyone other than the person requesting the CD and all CDs will be checked for viruses before distribution.

For those readers who are unconcerned about download limits, the latest version of Acrobat Reader is available for free from <http://www.adobe.com/products/acrobat/readstep2.html>

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