



# SAFETY AT WORK BULLETIN

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## CONTENTS

<b>FED</b>	<b><i>Almost 1 in 5 Aussie Workers are Drug Users</i></b>
<b>VIC</b>	<b><i>No cancer cluster in business school building: report</i></b>
<b>TAS</b>	<b><i>Savage River mine to resume full operations</i></b>
<b>VIC</b>	<b><i>Family of man killed by bouncer's blow demands charge</i></b>
<b>QLD</b>	<b><i>Government to rein in security rogues</i></b>
<b>VIC</b>	<b><i>Civil construction warning after western Victorian prosecution</i></b>
<b>WA</b>	<b><i>Labour hire company fined over unsafe workplace</i></b>
<b>NSW</b>	<b><i>Injured Electricity Worker At Koorawatha</i></b>
	<b><i>New Occupational Hygiene Report Guide</i></b>
<b><i>US Conference Report</i></b>	
<b><i>LEGAL COMMENT: Proposed Amendments to NSW OHS Legislation - Lessening the Burden of Compliance (Part 1)</i></b>	

## Almost 1 in 5 Aussie Workers are Drug Users

August 5 2006

Almost one in five Australian workers are using illegal drugs, with more than 250,000 people engaging in substance abuse at their place of employment, research shows.

A study of 30,000 Australians has found that 17 per cent use illegal substances, mainly cannabis, followed by amphetamines, ecstasy, pain killers and cocaine.

News Limited newspapers report today that a breakdown of the research by industry shows that 31 per cent of people in hospitality have admitted to using drugs outside of work hours.

Construction workers were the second heaviest users at 24.1 per cent, followed by those in retail with 20.7.

The research, completed in 2004 by the National Centre for Education and Training on Addiction at Melbourne's Flinders University, also found more than 250,000 people used illegal drugs while at work.

Hospitality workers again were the biggest offenders, with 7.7 per cent of those in the industry admitting to being under the influence at work.

This was followed by the construction industry, with 4.2 per cent and then transport workers at 3.2 per cent.

The study's co-author, Dr Ken Pidd, said the use of drugs was a common contributor to accidents in the workplace.

"We estimate between three and 11 per cent of accidents are related to workplace drug and alcohol use," he told News Ltd. AAP

### Human error to blame for latest ferry crash, report finds

7 August 2006

The report also found the radio communications between the Betty Cuthbert's master and the Sydney Ferries operations controller were "below the standard required".

The NSW opposition said each time the OTSI released a report into an incident involving a ferry the government promised to improve safety standards, but accidents were still occurring.

"Two years after the independent safety regulator was established, we're no closer to knowing that ferry users are safer," opposition transport spokesman Barry O'Farrell told reporters. AAP

### No cancer cluster in business school building: report August 3 2006

Melbourne's RMIT University will re-open the top two floors of its business school building after a study found 16 tumours among staff working on those floors did not constitute a cluster of cancer cases.

A medical report found there was no evidence that 16 tumours diagnosed in staff working on the 16th and 17th floors of RMIT University's Building 108 in Bourke Street were linked.

Of the 16 tumours, six were benign, six were malignant and the other four were deemed to have been definitely caused by external factors.

The top two floors of the building were closed in May after tumours

Continued on page 2



# SAFETY AT WORK BULLETIN

Continued from page 2

were found in two staff members, working on the 11th and 14th floors.

Environmental tests carried out on the building following the closure found radiation levels were within safe and normal limits, ruling out the possibility that mobile phone towers on the roof had caused the tumours.

The latest report was prepared for RMIT University by Dr John Gall of Southern Medical Services and Associate Professor Tony LaMontagne of the University of Melbourne, a VicHealth principal research fellow.

The report found the number of malignant tumours among staff was consistent with the number expected in the wider population.

In a statement, RMIT University Vice-Chancellor Professor Margaret Gardner said staff would be asked to return to work on the 16th and 17th floors.

"RMIT has now carried out some of the most comprehensive health and environmental testing in the country. We will continue with regular environmental tests. But we will also now encourage staff to return to their normal offices and work stations on levels 16 and 17," she said. "RMIT counsellors will help staff work through any concerns they have about moving back to their workplace. RMIT will be patient with staff who would like time to support this decision."

National Tertiary Education Union officials are expected to meet with staff today. AAP

## **Savage River mine to resume full operations** August 2 2006

A Tasmanian iron ore mine damaged by fire in June will resume full operations within a month, without any job losses.

The main processing mill at the Savage River mine on the state's west coast was gutted by fire, causing \$10 million worth of damage and placing 240 jobs in doubt.

But mine manager Ross Carpenter said today all workers had pitched in to refurbish the mine and ensure their jobs.

"It's been very good," he told ABC radio. "All the mill operators have been turned over into the refurbishment and clean-up, so there have been no job losses at all!"

Mr Carpenter said half production would resume as early as next week.

The mine's shipping operation at Port Latta would resume soon after. AAP

## **Family of man killed by bouncer's blow demands charge** August 3 2006

The family of a Melbourne man killed in a drunken bucks night brawl is calling for the bouncer responsible for his death to be charged.

Michael Robertson, 29, died three years ago outside Bridie O'Reilly's pub in suburban Brunswick after he was struck by a bouncer and hit his head on the road.

Coroner Phillip Byrne today found the bouncer, Eillias Zakkour, was responsible for Mr Robertson's death after he used an unnecessary amount of force, causing critical brain injuries.

Mr Robertson was celebrating his brother's bucks night when he was fatally injured. He died in the Royal Melbourne Hospital on August 31, 2003.

Mr Robertson's brother Adrian today called for the Department of Public Prosecutions to charge Mr Zakkour.

"We're definitely going to do what we need to do to find justice for this. My brother's death wasn't in vain," he told reporters outside the Victorian Coroners' court. "It's just devastated the family, for all we know he's (the bouncer) out in the workforce still working."

Mr Byrne said while witnesses gave many different versions of Continued on page 3

## Conference Report

I recently attended the annual meeting of the US Campus Safety, Health and Environmental Management Association (CSHEMA) held at the Disneyland Resort from 15-19 July.

There were over 350 registrants, mainly from American universities, but an international flavour was contributed by registrants from Australia, Hong Kong, Singapore, Canada and Taiwan. The Californian sunshine was fantastic and the many social activities in and around the Disneyland resort were memorable.

Activities kicked off over the weekend with two days of workshops to explore in depth topics such as 'emergency management, biosafety and campus sustainability. There were four concurrent sessions over the next three days covering key topic areas of biosafety, emergency management, environmental management and management systems.

I co-presented a paper based on my 4-months of safety auditing at Hong Kong universities in 2005. This paper solicited much discussion over the course of the conference as the US audience had difficulty in understanding how, in commonwealth-type countries, we successfully implement and sustain safety programs in the absence of a strongly highly-detailed regulatory environment.

The most popular session focused on "Lessons from Hurricane Katrina" where some universities were devastatingly flooded and inoperable while other universities, notably Louisiana State University, served as emergency response centres for rescue teams, military personnel, displaced persons, lost animals, media, health services. etc.

If anyone is planning travel to USA in mid-2007 I highly recommend attendance at the next CSHEMA conference themed 'Revolutionize Safety' to be held at the Seaport Hotel on the Boston waterfront from 21-25 July.

For more information check out the CSHEMA website at [www.cshema.org](http://www.cshema.org).

**Nan Austin, MSIA**



# SAFETY AT WORK BULLETIN

Continued from page 2

the event and most were affected by alcohol, he was satisfied Mr Zakkour caused Mr Robertson's death.

"I find Ellias Zakkour caused the death of Michael Robertson by striking him a blow which knocked him to the ground at which time he sustained irreparable brain injury," he said.

AAP

## Government to rein in security rogues

July 31 2006

The Beattie Government will dramatically tighten regulation of the security industry to rein in rogues and set new standards for conduct, training and accountability.

Fair Trading Minister Margaret Keech today unveiled a new regulatory regime she said would give Queensland nation-leading security industry laws.

"Quite simply, we don't want thugs and criminals in the industry," Mrs Keech said.

"Amendments to the Security Providers Act approved by Cabinet today will ensure new standards of conduct, higher levels of training and on-going assessment of the industry. We'll mandate Codes of Conduct to ensure that everyone in the industry meets new standards of behaviour.

"We'll mandate on-going training to force security personnel to learn up-to-date techniques for maintaining order and avoiding escalation of disputes. We'll provide the industry regulator, the Office of Fair Trading, the tools needed to identify trouble-makers and put them out of business. And we'll strengthen entry provisions so we can keep undesirables out of the industry.

"The new laws will be effective, contemporary and quality legislation and consistent with the Government's priority to enhance community safety and protect property."

Mrs Keech said Queensland would have the best security industry regulatory regime in Australia.

"Our model will include strict industry probity checks, so we can weed out the thugs - before they start work," she said.

"There will be tougher penalties for those operating without a licence, and those who employ them. We will have no hesitation cancelling or suspending the licence of persons who are no longer appropriate to remain in the industry and we will beef up our compliance resources and operations across the State."

Mrs Keech said staff employed by corporate licence-holders would have to operate under a Code of Conduct based on industry standards. Training requirements would be strengthened and corporate licence approval would be conditional on provision of on-going training to staff by approved industry-based training providers.

"The Beattie Government wants to ensure that anyone doing security work will be regulated under the Act," Mrs Keech said. "The current licensing categories will be expanded and better defined to ensure that all appropriate security personnel will need to be licensed.

"The expanded categories will include those in-house personnel who are working predominantly as security officers, dog handlers, electronic surveillance installers and operators and security advisors.

"The definitions in the Act will also be tightened to ensure coverage of those who protect, watch or guard any property - irrespective of the industry or circumstances in which they work."

Source: Minister for Tourism, Fair Trading and Wine Industry Development

## Civil construction warning after western Victorian prosecution

August 2, 2006

Dangerous trenching practices have earned a contractor carrying out sewerage reticulation works at Hopetoun a conviction and more than \$20,000 in fines and court costs.

Padbury Amber Civil Contractors Pty Ltd pleaded guilty to two charges under the Occupational Health and Safety Act.

The charges were laid after a WorkSafe inspector visited the site of works being carried out for the Grampians Water Authority and identified a number of safety matters in May and June 2004.

For failing to provide and maintain safe systems of trenching work, Horsham Magistrate Tim McDonald convicted and fined the company \$6,500.

For failing to adequately safeguard the public from its works, including passing children from a nearby school, Magistrate McDonald convicted the company, placed it on a

12-month good behaviour bond and ordered it to pay \$6,000 to the Hopetoun Secondary College

Continued on page 4

## ADVERTISING

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# SAFETY AT WORK BULLETIN

Continued from page 3

Council. The company was also ordered to pay another \$8,120 in costs.

The court was told at the July 21 hearing that:

Workers were working in deep trenches without shoring or adequate trench shields to protect them from sudden collapse.

There were no barriers to prevent people falling into the trenches.

Traffic management near the work zone was sub-standard. Pedestrians and cyclists were not adequately protected from the works.

WorkSafe's Construction & Utilities Director, Geoff Thomas, said the case should send a clear message to the civil construction sector that contractors had critical legal responsibilities concerning trench safety, public protection and traffic management.

Source: WorkSafe

## Labour hire company fined over unsafe workplace

2 August 2006

A labour hire company has been fined \$7500 for failing to ensure that a workplace was safe after a worker it had supplied seriously injured his fingers.

Integrated Group Limited pleaded guilty in the Fremantle Magistrates Court last week to a charge of failing to provide a safe workplace under the Occupational Safety and Health Act.

Integrated Group had supplied a worker to Western Salt Refinery in Hamilton Hill in February 2005, and that worker had the tips of two fingers amputated between the pulley and v-belt of a waste auger later that month.

The labour hire company had failed to ensure that Western Salt Refinery had given the worker instructions in the safe operation of machinery, and had also failed to identify operation of the auger as a task to be performed by the worker.

WorkSafe WA Commissioner Nina Lyhne said today that the court case was a good illustration of the responsibilities labour hire companies had for the safety and health of their employees.

"The injured man was an employee of the labour hire company, which was hence responsible for ensuring it was sending him to a safe workplace," Ms Lyhne said. "The man was given a general induction when he started at the workplace, but was not given any site-specific induction or instruction and training in relation to the safe operation of any of the machinery at the salt refinery.

"A representative of Integrated Group did attend the refinery and conduct an inspection and complete a job compatibility assessment with a task description of the work the man would be doing. "But operation of the waste auger was not identified as a task to be performed by the worker, so Integrated Group did not instruct Western Salt to ensure the worker was trained in its operation and potential hazards. Any company that hires out labour needs to know exactly what their responsibilities are in regard to ensuring that the workplaces they send their workers to are as safe and healthy as possible. In the case of labour hire workers, both the labour hire company and the company to which the worker is hired have a duty of care to ensure a safe workplace is provided."

Source: DOCEP

## Injured Electricity Worker At Koorawatha

7th August 2006

The Central West NRMA CareFlight helicopter is at a sheep property south of Cowra this morning, attending an 47-year old electricity worker injured who was hit by a piece of falling farm machinery – an auger which was being unloaded.

The location of the accident is on a property near the village of Koorawatha and the man has suffered compound fractures to a leg after being hit by an auger.

Source: NRMA Careflight

## New Occupational Hygiene Report Guide

The Australian Institute of Occupational Hygienists has released a guide into writing occupational hygiene reports. This guide is useful for hygienists but also shows what clients should expect from such a report.

It is available for download at [http://www.aioh.org.au/downloads/documents/AIOH\\_OHReportGuideline.pdf](http://www.aioh.org.au/downloads/documents/AIOH_OHReportGuideline.pdf)



# SAFETY AT WORK BULLETIN

## Proposed Amendments to NSW OHS Legislation - Lessening the Burden of Compliance (Part 1)

### Background

In May 2006 the NSW government issued a draft Occupational Health and Safety Amendment Bill 2006 (Draft Bill).

The Draft Bill introduces amendments to the Occupational Health and Safety Act 2000 (NSW) (OHS Act) proposed following a review of the OHS Act. The review was conducted by the WorkCover Authority of NSW (WorkCover) at the direction of the Hon John Della Bosca MLC, Minister for Commerce.

Members of the public were invited to make comment or submissions on the Draft Bill on or before 7 July 2006.

If passed, it is proposed that some of the amendments in the Draft Bill will take effect immediately on assent, with others to commence on 1 October 2006.

### Summary of key proposed amendments

The more significant proposed changes are:

#### A big change to a 'common sense approach' to managing risks to health and safety

One of the key changes of the Draft Bill is to require duties and obligations under the OHS Act to be met only 'so far as is reasonably practicable'. The effect of these amendments is to require that duty holders do what they reasonably can to fulfil the relevant duty or obligation.

This marks a very significant shift from the current 'absolute nature' of the obligations imposed on duty holders in the OHS Act, and is said by WorkCover to reinforce the idea that health and safety management involves a 'common sense approach'.

Under the current legislation, employers are required to 'ensure' that their employees and others affected by their undertakings are free from risks to their health and safety. The courts have interpreted this as an obligation to 'guarantee' safety. The proposed amendments will require that employers 'ensure, so far as is reasonably practicable' their employees and others affected by their operations are free from risks to their health and safety. The Draft Bill clarifies that an obligation to ensure health and safety so far as is reasonably practicable means:

- to eliminate risks to health and safety so far as is reasonably practicable, and
- if it is not reasonably practicable to eliminate risks, to reduce the risks to the lowest level reasonably practicable.

The Draft Bill also stipulates that in determining what is or was 'reasonably practicable' regard must be had to a range of factors including:

- what the person knows or ought reasonably to know about the hazards giving rise to the relevant risk
- what the person knows or ought reasonably to know about any ways of eliminating or reducing the relevant risk, and
- the costs of eliminating or reducing the risk.

The proposed provisions largely mirror the provisions in the current Victorian OHS legislation.

#### Only officers of a corporation who had a degree of control or influence over a particular matter can be deemed liable for a breach by a corporation

The Draft Bill also proposes to amend the current section 26 of the OHS Act which deems directors and persons concerned in the management of a corporation to be guilty of contraventions of the OHS Act by the corporation. To date, the bounds of section 26 have been somewhat uncertain but have been read broadly by the courts such that supervisory employees have been deemed to be personally liable for contraventions of the relevant corporation.

The Draft Bill proposes to amend the section by adopting the concept of director liability used in Victoria – that is, persons who are 'officers' of the corporation, and who fail to take reasonable care, are deemed liable for the corporation's contravention of an offence provision. The amendment is aimed at ensuring that an officer will only be held liable for matters which the officer knew about, and which the officer's had an ability to control or influence.

The Draft Bill adopts the definition of officer of a corporation provided in section 9 of the Corporations Act 2001 (Cth), which includes:

- directors and secretaries of a corporation
- persons who make or participate in the making of decisions that affect the whole or a substantial part, of the business of the corporation
- persons who have the capacity to affect significantly the corporation's financial standing, and
- persons in accordance with whose instruction or wishes the directors of a corporation are accustomed to act (excluding external advisers).

#### Additional right of entry for unions and power of IRC to resolve disputes

The Draft Bill provides a new right of entry for authorised representatives of industrial organisations of employees to enter premises to discuss matters relating to OHS with employees during work breaks. Persons seeking to exercise this right of entry must provide the occupier with at least 24 hours notice of the entry.

This right of entry is in addition to the existing right of authorised representatives to enter premises for the purpose of investigating a suspected breach of the OHS legislation.

It should be noted for that where a right of entry afforded by the OHS Act is exercised in respect of premises occupied by employers subject to the federal Work Choices legislation:

- the authorised representative seeking to exercise a right of entry must hold a permit issued under the Workplace Relations Act 1996 (Cth) (WR Act)
- the right be exercised during working hours
- if the authorised representative wishes to inspect employment records he / she must provide 24 hours written notice of intention to exercise that right and the reasons for doing so
- the permit holder seeking to enter or remain on the premises must produce a copy of his / her permit on request of the affected employer or occupier, and
- when entering or remaining on the premises the permit holder must comply with all reasonable requests of the occupier to comply with OHS requirements.

Continued on page 6



# SAFETY AT WORK BULLETIN

Continued from page 7

The amendments proposed in the Draft Bill also empower the Industrial Relations Commission (IRC) to resolve disputes regarding the exercise of the right of entry afforded to authorised representatives for the purpose of investigating a suspected breach. The dispute can only be referred to the IRC if WorkCover is unable to resolve it.

## Articulation of advisory role of WorkCover

The Draft Bill also proposes amendments to clearly articulate WorkCover's OHS prevention, advisory, assistance and education functions. The amendments will empower WorkCover to issue guidelines about OHS legislation and its application to specific groups or circumstances. The guidelines will be formulated with the aid of public consultation on the particular issue.

The amendments also enable WorkCover (or an inspector or other authorised person) to provide compliance advice to duty holders under the OHS Act on how to meet their obligations under the Act. When such advice is written advice to employers, WorkCover will be required to provide a copy to an OHS Committee or OHS representative representing the employees affected by the advice.

All improvement and prohibition notices will now include a section for inspectors to provide advice on how to remedy the breach with is the subject of the notice.

The Draft Bill imposes restrictions on the use which can be made of guidelines and compliance advice in prosecutions under the OHS Act.

## Increased compliance and enforcement options

The Draft Bill introduces an alternative to prosecution for those who have allegedly contravened the OHS Act (other than in respect of an alleged contravention of the 'workplace death' provision). WorkCover has the capacity to accept a written enforceable undertaking from a duty holder which represents a binding commitment:

- by the duty holder to, for example, commit to taking preventative or pro-active action to correct or prevent breaches of the OHS legislation, and
- by WorkCover not to undertake other enforcement action against the duty holder (eg institute a prosecution) while the undertaking is in force, or after the required action has been it has been satisfactorily completed.

The effect of accepting the undertaking is to stay any proceedings which have been commenced against the duty holder. If an enforceable undertaking is withdrawn, the period within a proceeding must be commenced under the OHS Act is extended by the period during which the undertaking remained in force.

Part 2 of this article will be in next week's edition of **SIA SAFETY AT WORK BULLETIN**.

This article was written by Miles Bastick (Partner), Alicia Ash (Senior Associate) and Shivchand Jhinku (Solicitor) of Freehills, and is reproduced with permission.

For more information about any of the matters raised in this article please contact Holly Parry at Freehills on 02 9225 5774 or at [Holly.Parry@freehills.com](mailto:Holly.Parry@freehills.com)

## Adobe Acrobat V7.08 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 7.08 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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