



SAFETY AT WORK BULLETIN

Proudly Sponsored by the Safety Institute of Australia (Victoria Division)
 National Office: PO Box 2078, GLADSTONE PARK Victoria 3043
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Issue 81 December 11 2006
 ISSN 1832-6714
 Supplied by SAFETY AT WORK magazine

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Gretley mine tragedy appeal dismissed

7 December 2006

The Full Bench of the NSW Industrial Court has dismissed appeals by two mining companies against convictions over an incident at the Gretley mine in 1996 in which four workers died and others were placed at serious risk of injury.

In yesterday's majority decision, the Full Bench dismissed the appeals by Newcastle Wallsend Coal Company Pty Ltd (NWCC), and its parent company Oakbridge Pty Ltd against fines totalling \$1,460,000 imposed by Justice J Staunton on 11 March 2005.

The Court also dismissed the appeal in relation to one individual and effectively upheld the appeals brought by two other personal defendants.

The incident occurred in November 1996 when an inrush of water and dangerous gases from an adjacent old mining works entered a new section of the mine where the men were working.

In the majority decision Vice President M Walton and Justice R Boland stated:

"The prosecutor was entitled to lay charges that reflected the total criminality of the appellants, from the time in the latter part of 1994 when it was alleged there was a failure to undertake adequate planning and research as to the location of the old workings, to the time when it was alleged the appellants failed to ensure the safety of workers by allowing the continuous miner to hole into the old workings."

WorkCover Chief Executive Officer, Jon Blackwell, commented: "This decision should assist in finally bringing a measure of closure to the families of the deceased workers.

"The decision illustrates the effective operation and enforcement of NSW workplace safety laws, which have helped to reduce workplace injuries to their lowest level 18 years. WorkCover applauds the majority decision of the court, with the convictions providing an appropriate warning to employers who fail to implement adequate risk assessments and safeguards for their workers," he said.

"However, the more than 150,000 injuries and 125 deaths in NSW workplaces in 2004/05 emphasizes the need for continued efforts to improve workplace safety, as well as appropriate enforcement action where necessary," said Mr Blackwell. Source: WorkCover NSW

Planned compo law changes bad for workers: Labor

7 December 2006

Labor says the government's planned occupational health and safety changes will further strip away workers' conditions.

Opposition industrial relations spokesman Stephen Smith says the government's trying to reduce the number of injuries covered by Comcare the federal workers' compensation scheme and narrow the circumstances under which an employee can claim compensation.

His comments come after legislation which tightens workers' compensation laws to prevent employees being paid out for some types of injury and diseases passed the lower house today.

Workplace Relations Minister Kevin Andrews says the changes will keep Comcare financially viable and save it 20 million dollars a year.

AAP

ADVERTISING

A limited amount of advertising has been approved by the Safety Institute of Australia.

If you want to advertise to over 3,000 safety professionals in Australia, please contact Joanne at the SIA Secretariat through natadmin@sia.org.au

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CRS loses rehabilitation monopoly

7 December 2006

The government has moved to strip its own agency of its monopoly on government-funded occupational rehabilitation.

Employment Participation Minister Sharman Stone says removing CRS Australia's monopoly .. would provide choice for people looking to return to work. She says the move will ensure long-term unemployed people .. and parents of school age children .. can continue to be supported.

AAP

Worker has leg crushed in central Melbourne

5 December 2006

A 21-year-old man's had his leg crushed by an excavator in a workplace accident in central Melbourne.

WorkSafe Victoria says the man was sweeping the road beside a dump-truck when the excavator which was digging a trench ran into him just after 1pm (AEDT).

The man was rushed to the Royal Melbourne Hospital for surgery suffering serious crushing injuries to his leg.

AAP

Ambulance security audits were not done, says dept

7 December 2006

The New South Wales opposition says security audits weren't carried out at a Sydney ambulance station where four ambulances were broken into and vandalised.

Officers arrived for work at the Auburn ambulance station today to find the windows of their vehicles smashed and communications equipment stolen.

Opposition Health spokeswoman Jillian Skinner says she's made a freedom of information request for security audits which the department later admitted haven't been done. Ms Skinner says the incident shows vandalism poses grave risks to patients. She says somebody's life could have been put on the line because these vehicles could not have responded.

An ambulance spokesman says repairing the ambulances and replacing the stolen equipment will cost an estimated 10 thousand dollars.

He says two of the vehicles should be back on the road by tonight while the other two should be ready by tomorrow morning.

AAP

New OHS Publications

"2006 Outcome Measure Use across Cultures & Languages - A Guide for Healthcare Professionals" is available through www.worksafe.vic.gov.au

ACTWorkCover has released "A Guide to Risk Management of Public Events". This guide uses a lot of Tasmanian information but is specific to ACT. It is available for download at http://www.workcover.act.gov.au/pdfs/guides_cop/Guide_Public-Events.pdf

Former RAAF workers take legal action BRISBANE, December 11 2006

Former RAAF maintenance workers will today file a class action against the federal government in their battle for compensation over health problems resulting from work on the F111.

An inquiry five years ago heard former RAAF members who used toxic chemicals to repair the fuel tanks of the strike-fighters suffered a range of health complaints from cancer to blackouts and breathing problems.

The government has already paid out more than \$20 million but has rejected many claims for lump sum payments because of what it says is a lack of scientific evidence linking chemical exposure to health problems.

The maintenance program, known as deseal-reseal, was conducted at the RAAF base at Amberley in Queensland between 1975 and 2000.

Compass Legal Solutions representative Debra Daniels will today file class action proceedings in the Queensland Supreme Court.

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Principal contractor obligations

The following article has been kindly supplied by the law firm, Freehills, for the interest and consideration of SIA members.

The Occupational Health and Safety Act 2000 (NSW) (the **NSW OHS Act**) and the Occupational Health and Safety Regulations 2001 (NSW) (the **NSW OHS Regulations**) together form a major part of the occupational health and safety framework in New South Wales. The NSW OHS Act and NSW OHS Regulations provide an extensive regime designed to ensure the safety of employees and other persons at places of work.

Section 10 of the OHS Act provides that controllers of premises used by people as a place of work must ensure that the premises are safe and without risks to health and safety. Although the duties imposed on owners and controllers of premises by section 10 of the OHS Act are generally non-delegable, owners of premises are permitted (and in some circumstances required) to engage a third party to carry out some of their functions.

Delegation of OHS duties and the obligation to appoint a "principal contractor" on construction sites

Under the NSW OHS Regulations, a "principal contractor" must be appointed on a construction site in the following situations:

- where the cost of the construction work exceeds \$250,000;
- where certain demolition or asbestos removal work is being undertaken; or
- where the construction work that is being undertaken comes within the definition of "high risk construction work".

An owner of a construction site is the only person (which can be either a natural person or a corporate entity) permitted to appoint a principal contractor. Moreover, a person cannot be appointed as a principal contractor unless the person is responsible for the construction work at all times until the work is complete. If a principal contractor is not appointed:

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Ms Daniels said while she could not go into detail before filing the claim, she expected up to 600 former workers could join the action.

"There's been ongoing discussion with members of the RAAF and only a small number of those have received ex gratia payments - the majority have been excluded," Ms Daniels said. "Compensation discussions broke down so this was the only avenue that our clients could take."

Ms Daniels said the issue was one that should concern the wider community. "I believe the public will be surprised once they hear the background of the whole debacle," she said.

"They signed up to serve their country and now the Commonwealth has neglected them and cast them aside. We have lost a number of them recently through suicide and death from injury, illness or disease - that's been distressing for the remainder as well. We are hoping the Commonwealth comes to the party and gives these personnel the compensation they rightly deserve."

The action - which has been two years in the planning - is being supported by the Vietnam Veterans Federation, which is setting up a fighting fund for applicants. AAP

Man killed in power station accident

December 9 2006

A 23-year-old Traralgon man has died in an accident at the Loy Yang power station in Victoria's La Trobe Valley.

The contractor and a colleague were carrying out maintenance work at the power station at 5.30am (AEDT) today when the accident occurred, police and work safety authorities said.

The men were working on a coal mill when a three-metre-square metal hatch they had held open with a block and tackle fell, hitting them both. The 23-year-old man suffered fatal head injuries. His colleague, a 37-year-old Newborough man, suffered a serious hand injury and was airlifted to Royal Melbourne Hospital.

Loy Yang Power chief executive Ian Nethercote said an investigation was under way into the circumstances of the man's death. "We are deeply shocked by the incident and our heartfelt condolences go out to the family and friends of the employees involved," he said.

A police spokeswoman said a report on the incident was being prepared for the coroner.

WorkSafe Victoria spokesman Michael Birt urged workers to keep their minds on the job in the lead-up to the holiday season. "We're concerned that maybe in the weeks coming up to Christmas people are starting to take their mind off things, thinking about holidays, time off, and thinking about getting the job done quickly," he said.

The man's death is the 27th workplace death in Victoria this year. AAP

Building products company fined over unguarded machinery

December 11, 2006

A Bayswater building products company has been fined \$3500 (with costs of \$7360) for failing to properly guard a piece of machinery after a worker's finger was partially amputated between a pulley and a v-belt.

HB Brady Co Pty Ltd - trading as Bradys Building Products - was found guilty in the Perth Magistrates Court last week of failing to ensure the dangerous parts of a machine were guarded, a breach of the Occupational Safety and Health Regulations 1996.

In April 2005, a labour hire worker was working on a bagging machine used to pack plaster into bags when he found that the v-belt of the machine seemed to have jammed.

A leading hand employed by Bradys tried to assist the labour hire worker by turning the machine on and off several times to

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- (a) in relation to the relevant demolition work or asbestos removal, the employer carrying out the work is taken to be the principal contractor for the work; or
- (b) in relation to the to relevant construction work, the owner of the premises is taken to be the principal contractor for the work.

OHS responsibilities of principal contractors

Being appointed a principal contractor of a construction site carries with it a number of OHS responsibilities. These responsibilities include:

- (a) ensuring that OHS induction training has been conducted for each person who is required to conduct work at the construction site. A person must not be permitted to work at a construction site unless the person has completed OHS induction training;
- (b) identifying any change in the construction site, and in the activities performed by each person carrying out work at the site, that might affect the health and safety of any person at the construction site;
- (c) preparing an OHS management plan. Principal contractors must also ensure that each sub-contractor, before commencing work at the site, provides the principal contractor with a written safe work method statement for the work to be carried out by the sub contractor; and
- (d) monitoring sub-contractors to the extent necessary to determine that a sub-contractor is complying with the safe work method statement and the OHS Act and OHS Regulations.

Relinquishing OHS responsibilities upon partial completion of the work

It is uncertain whether the NSW OHS Regulations permit a principal contractor to relinquish responsibilities in relation to part of a construction site (for example, in circumstances where a tenant has occupied part of a construction site to enable the tenant to conduct a "fit out" of the premises), with the principal contractor retaining responsibility for the remainder of the site. On one view, the relinquishing of OHS

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free the v-belt.

The Bradys employee thought the machine was switched off, and pulled on the v-belt. It became free and dragged his finger into the nip-point between the pulley and the v-belt, partially amputating the finger.

The company did employ a maintenance fitter whose job it was to repair problems with the plant and equipment. He was on duty at the time, but was not called in to help.

Source: DOCEP

Update On Ottoway Fatality

7 December 2006

SafeWork SA has imposed two Prohibition Notices on an Ottoway metal recycling business as it investigates the death of a 33 year old male truck driver in today's workplace incident there.

The man was fatally injured when struck by the contents of a pack of steel tubing 8 metres in length, and weighing nearly 1.7 tonnes, at Normetals Pty Ltd on Grand Junction Road.

A forklift, which was unloading the steel from the man's truck, dislodged a pack, which fell from the trailer, striking him.

The man was not an employee of the company.

After preliminary investigations, inspectors from SafeWork SA's Retail and Transport Team imposed Prohibition Notices, preventing the use of the forklift concerned, and halting all loading and unloading procedures in the yard until safe work practices are established.

Measurements and photographs have been taken, and some witnesses have already been interviewed as part of the investigation into the circumstances of the incident, and what safety precautions and procedures the firm had in place at the time.

SafeWork SA's report will also form part of evidence to the Coroner.

"In the leadup to Christmas this is an enormous tragedy," says the agency's Director of Field and Frontline Services, Juanita Lovatt.

Source: SafeworkSA

Vegetable processor prosecuted after workplace injury

7 December 2006

A Geelong company escaped conviction, but has been fined \$15,000 and ordered to pay costs of \$2168 after a worker's hand was caught in a machine with inadequate guarding.

Alan Richard Thierry, trading as Just Onions faced Pleaded guilty to s21(1) & (2)(a) of the Occupational Health and Safety Act 2004 before Geelong Magistrate Jon Klestadt on 27 November.

WorkSafe told the court a casual labourer was hurt when her right hand was caught in an onion grading machine on 7 October 2005. She suffered multiple fractures to her right hand before undergoing a seven-hour operation and further treatment.

WorkSafe's Executive Director, John Merritt, said guarding of dangerous machinery was a hazard dating back to the start of the industrial revolution.

"WorkSafe and the courts take these issues seriously. If guarding is not in place, has been rendered inactive or is ineffective, we will apply the law to ensure workers are not injured. If there is a temptation to remove guarding to improve 'efficiency' think again. It is not worth the risk to your workers or the business. Change the machine or the way work is done.

"The pain of a crushing or tearing injury is only the first step for many people. Many lose fingers or toes, others lose arms, legs or are killed. The injuries are often permanent, they steal opportunities, change lives and reduce the capacity of many to have a normal life."

There is no excuse for employers in 2006 to have machines

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responsibilities is permitted, given that the NSW OHS Regulations do not specifically prohibit the principal contractor from doing so. Assuming this view is correct, the principal contractor and owners of premises must ensure the relevant contractual documents envisage that the principal contractor may in specific circumstances relinquish certain OHS responsibilities, and establish a framework that allows the principal contractor to do so.

It is important to remember that although a principal contractor may relinquish responsibilities in relation to part of a construction site, the principal contractor will continue to owe obligations which may include the means of access and egress to areas that have been relinquished.

Key points to remember when appointing a principal contractor

The appointment of a principal contractor is an important step that the NSW OHS Act requires be taken by owners of premises where certain construction, demolition or asbestos removal work is being carried out. The appointment of a principal contractor allows the owner of premises on which construction, demolition or asbestos removal work is being carried out to manage a number of OHS risks through the limited delegation of OHS responsibilities. Having said this, appointing a principal contractor does not permit the owner of premises to abrogate their OHS responsibilities. It will still be incumbent on owners of premises to take reasonable steps to ensure principal contractors are complying with OHS responsibilities and to intervene where the owner becomes aware that the principal contractor is not complying.

In appointing a principal contractor, the owner of premises should ensure that it has sufficient powers enabling it to monitor, and if it is required, enforce the principal contractor's OHS obligations. The careful drafting of the contractual documents establishing the relationship between the owner of the premises and the principal contractor is therefore essential. A principal contractor should also ensure that it has sufficient contractual powers to enforce compliance with OHS responsibilities in regard to any sub-contractors it may engage. © Freehills 2006



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without adequate guarding, yet we still experience regular deaths and serious injuries as a result of this failing.

“Only this week a 54-year-old man lost his lower right arm at Irymple, near Mildura, when he was caught in a machine,” Mr Merritt said.

Source: WorkSafe Victoria

Charges laid after fall

7 December 2006

A Drouin company has been charged after a worker fell from the top of a truck on 25 November last year.

Evison Grain Pty Ltd has been charged with six counts laid under the Occupational Health and Safety Act (2004) and the Prevention of Falls Regulations.

A man was on top of a grain tanker when he fell approximately 3.5 metres from the top of a grain tanker to the ground at the Weerong Road, Drouin, premises of Evison Grain Pty Ltd. The man had a heart attack, but was not wearing a fall protection harness. Evison Grain stores and transports grain and other loose produce.

The case is listed for mention at the Morwell Magistrates Court on 17 January.

Source: WorkSafe Victoria

Company fined \$10,000 after amusement train tips

6 December 2006

A 17-year-old casual worker with only a learner drivers' licence and on his second day on the job was operating a miniature train when it tipped on its side at a community festival at Moonee Valley last year.

Dandenong Magistrate Stephen Raleigh fined Rosebud company Amusements Australia Pty Ltd \$10,000, without conviction, as a result of the incident at “Summerfun at Moonee Valley Racecourse” on 20 November 2005.

The ‘train’ did not run on tracks and consisted of an ‘engine’ and two carriages. It was operating on an uneven, sloping course in the racecourse carpark when it tipped on its side while turning.

Of the six passengers on board, two adults and a child received minor grazes. A woman sustained injuries to her left shoulder, arm and head and was taken by ambulance to hospital where she was treated and discharged. The driver was not hurt.

Amusements Australia Pty Ltd pleaded guilty to one charge laid under the Occupational Health and Safety Act*. WorkSafe told the court a passenger called on the young driver to slow down saying it wasn't supposed to be a thrill ride. The mini train had no speedometer.

Source: WorkSafe Victoria

SIA SECRETARIAT NOTES

Office Closure for Christmas period - The office will be closed from Friday 22/12/2006 to Friday 05/01/2007 (Inclusive) We will re open on Monday the 8th January 2007

Reminder Notice to Unfinancial members - Members who have not renewed their SIA Membership for the current financial year, 2006/2007 will be receiving a reminder notice in the mail shortly

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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>

SIA Safety At Work Bulletin
Issue 81, December 11, 2006
ISSN 1832-6714

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Designer/Publisher:
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This weekly news bulletin is produced on behalf of the Safety Institute of Australia (Victoria Division) by Workplace Safety Services P/L.

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