NORTON ROSE FULBRIGHT

WHS Law Briefing

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Welcome to our WHS Law Briefing. This briefing identifies key issues and emerging trends in WHS law, and details the significant legislative and case law developments to date in June 2021. Please contact our national WHS team contacts if you would like to discuss any of the matters in this briefing or would like any source materials which have not been included. We welcome your feedback.

Key issues and trends

Continued attention on psychological risks	Since our last update, there has continued to be significant regulatory and government attention on psychological risks throughout Australia, in particular there has been numerous inquiries, government responses to inquiries (including the federal government's response to the Respect @Work report), safety regulators have been targeting psychological risks in workplace audits and prosecutions, the first code of practice on psychological risks has been approved (in NSW) and further guidance material has been released and is in development addressing psychological risks. The WHS Ministers have also agreed to implement the recommendation in the Marie Boland review of WHS laws to amend the model WHS regulations to deal with psychological risk. We have addressed the wide range of developments in this area throughout this briefing, and expect this area to be a continued area of focus for regulators and government alike over the next 12 months.
COVID-19 vaccination rollout	As the COVID-19 vaccination program rolls out across Australia, Safe Work Australia and the Fair Work Ombudsman have issued guidance which reinforces the Federal Government's broader vaccine policy that vaccination should be voluntary. Safe Work Australia also reminded employers of their obligations under WHS laws in continuing to apply all reasonably practicable control measures to minimise the risk of exposure to COVID-19 in the workplace, stating that: "*A safe and effective vaccine is only one part of keeping the Australian community safe and healthy.*
Developments in Western Australia	Western Australia has finally implemented its version of the model WHS Laws, which includes industrial manslaughter provisions. Victoria is now the only jurisdiction which has not introduced the harmonised WHS laws (however, it has introduced industrial manslaughter offences). The new WHS Act is expected to come into full effect in sometime 2021 once the supporting regulations are finalised. A company director has also been sentenced to the longest term of imprisonment ever imposed for a health and safety offence in Australia (2 years and 2 months, with a requirement to serve the first 8 months immediately, and the rest suspended). It is also the first jail sentence imposed in Western Australia.
Minister imposes exclusion sanction on MCP	Federal Attorney-General and Industrial Relations Minister Michaelia Cash has imposed a one-month exclusion sanction on MCP (Aus) Pty Ltd (**MCP**) from tendering for Commonwealth funded work, under the 2016 Building Code, after MCP plead guilty to a breach of the WHS Act that occurred on the Toowoomba Second Range Crossing Project. This is the first time such a sanction has been imposed under the 2016 Building Code. This development raises questions as to whether ABCC intends to refer to every entity that has a guilty finding for a breach of the WHS Laws to the Minister, or will such a referral only be made in specific circumstances – in particular, the specific circumstances of the MCP breach was that there was a history of significant safety non-compliance issues on the Toowoomba Second Range Crossing Project which drew the attention of the regulator, WHSQ, as well as the state government.

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Legislative updates

Across Australia / Commonwealth

Can workplaces require COVID-19 vaccinations? Attorney-General, Safe Work Australia and Fair Work Ombudsman issue statements
The Attorney-General of Australia, Safe Work Australia and the Fair Work Ombudsman have released statements and guidance regarding organisations' approach to the COVID-19 vaccine around Australia.

Both Safe Work Australia and the Fair Work Ombudsman have stressed that presently, the majority of employers should assume they will **not** be able to require their employees to be vaccinated against COVID-19. It is also unlikely in the majority of circumstances that employees may refuse to attend work, for example, because a colleague is not vaccinated.

The Attorney-General reiterated the voluntary nature of the vaccine stating that: "*The latest guidance provided by the FWO and SWA reinforces the Federal Government's broader vaccine policy that vaccination should be voluntary.*" The Attorney General reminded employees to be aware of any current public health orders in force in each applicable state/territory that could require certain types of workers to be vaccinated in some high risk industries.

Safe Work Australia reminded employers of their obligations under work, health and safety legislation, stating that: "*A safe and effective vaccine is only one part of keeping the Australian community safe and healthy.*" Safe Work Australia reminds employers that they must continue to apply all reasonably practicable control measures to minimise the risk of exposure to COVID-19 in the workplace including, physical distancing, regular cleaning and good hygiene.

In June 2021, the Therapeutic Goods Administration (**TGA**) issued guidance on how a party can lawfully communicate about COVID-19 vaccines, including guidance regarding promoting COVID-19 vaccines and providing rewards for people who are vaccinated.

Many businesses will be considering incentivising the vaccine. There are many issues to consider regarding legal risks arising from encouraging the vaccines, beyond the TGA requirements.

- Attorney-General statement 19 February 2021;
- Safe Work Australia guidance 19 February 2021; and
- Fair Work Ombudsman guidance updated 3 March 2021.

In what circumstances would workplaces be required to mandate vaccinations?
A mandatory vaccination requirement could only be imposed where:

- legislation or an applicable public health order makes vaccination mandatory for workers in certain industries – at present no such legislation has been made; and/or
- a health and safety risk assessment indicates that implementation of a mandatory vaccine program is a reasonably practicable measure to minimise the risks of exposure to COVID-19 in the workplace.

In undertaking such a risk assessment, it is necessary to consider:

- the risks associated with exposure to COVID-19 in the workplace, both to the workforce and to others who are affected by the conduct of the business (ie contractors, customers, suppliers and others);
- the efficacy of the standard control measures (distancing, masks, increased hygiene requirements) in eliminating the risk of COVID-19 or reducing it as far as reasonably practicable; and
- the efficacy of COVID-19 vaccination, as a new control measure.

As noted above, Safe Work Australia's guidance is that at the present time, it is unlikely that a requirement to be vaccinated will be reasonably practicable in most workplaces. Reasons for this include:

- at present, public health experts, such as the AHPPC, have not recommended a vaccine be made mandatory in any industry;
- the availability of the vaccine;
- the risk of exposure to COVID-19 may be low and is already being minimised as far as reasonably practicable through existing control measures; and
- some workers will have medical reasons why they cannot be vaccinated.

However as noted by Safe Work Australia, whether an organisation can require workers to be vaccinated will depend on the particular circumstances existing at the time of the risk assessment. Any such risk assessment should be conducted by competent safety professionals. Therefore depending on the risks in your workplace, or as the vaccine roll out progresses, the outcome of a risk assessment may change, to one that supports mandating the vaccine.

Further information on the management of COVID-19 risks, including vaccine considerations, is available at our website at the following here.

COVID-19 vaccines for aged care workers and other high risk industries
In a statement issued in January 2021, the Australian Health Protection Principal Committee (**AHPPC**) stated that while they strongly encourage COVID-19 vaccinations, they **do not** recommend mandating vaccines for aged care workers at this time, due to a lack of evidence about the efficacy of the vaccine in preventing transmission. A further statement was issued in June 2021 where AHPPC again stated that it **does not** recommend compulsory COVID-19 vaccines for aged care workers. AHPPC further recommended work to be undertaken to understand barriers to, and enablers of, vaccination, informed by monitoring of vaccine uptake, as there is need to take into account any "unintended consequences" such as impacts on workforce availability and delivery of care.

The Department of Health also issued Guidelines in June 2021 stating that it is voluntary for aged care workers to be vaccinated and that aged care workers do not need to disclose whether or not they have been vaccinated.

However, there has been some movement towards mandating the COVID-19 vaccine in certain situations. In particular:

- In March 2021, Queensland issued a health directive requiring health care workers who are likely to work with diagnosed cases of COVID-19 to be vaccinated.
- In May 2021, WA made the vaccine mandatory for quarantine workers.
- In June 2021, WA Premier Mark McGowan indicated that WA will mandate the vaccination of aged care workers.
- In June 2021, a national cabinet meeting was held where the possibility of introducing mandatory vaccinations was discussed. The Prime Minister Scott Morrison stated in the lead up to this meeting that he was hoping to obtain agreement to introduce mandatory vaccinations for aged care workers. This was not agreed to, however the Prime Minister said following the meeting that the group is "leaning heavily" towards it and had asked health experts to give more advice about what would need to happen to put it in place.

Interestingly there has also been two recent unfair dismissal cases before the Fair Work Commission (**FWC**) which have found in favour of organisations with mandatory requirements for the flu vaccine:

- In May 2021, the FWC found that it was permissible for a residential and community care facility to introduce a mandatory policy for the flu vaccine, and dismissed a worker's unfair dismissal claim who was unable to take the vaccine for medical reasons.
- In April 2021, the FWC found that it was permissible for a child care provider to mandate a flu vaccination, and dismissed a worker's unfair dismissal claim who claimed they were unable to take the vaccine due to medical reasons (and had been unable to provide any evidence to

support this claim).

Safe Work Australia releases family support principles

Safe Work Australia has released nine National principles to support families following an industrial death. The principles provide a high-level framework to guide WHS authorities, and other relevant agencies within jurisdictions, to implement family-centred policies and practices at the operational level to support bereaved families impacted by an industrial death. The principles include that families receive a timely, supported, in-person notification of their loved one's death and that families are provided with initial important and relevant information in a timely and accessible manner.The principles have been developed in response to findings in the 2018 Senate inquiry report, They never came home – the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia.

WHS Ministers vote on Marie Boland recommendations

Australian Ministers responsible for work health and safety matters met in May 2021 to consider recommendations arising from the review of the model WHS laws undertaken by Marie Boland. The outcomes of the meeting (as detailed in the Communique) included the following:

- There was no majority agreement regarding the introduction of industrial manslaughter offences. While WA, Qld, ACT, NT and Victoria support the introduction, the vote did not reach the required majority of six votes.
- There was unanimous agreement to introduce gross negligence as a fault element in the Category 1 offence in the model WHS Act, and that conduct involving gross negligence should attract more severe penalties. We note that New South Wales has already added gross negligence as a fault element to the Category 1 offence in response to the Marie Boland review. There was agreement to further consider significant increases to penalties under the model WHS laws.
- A majority of Ministers agreed to amend the model WHS regulations to deal with psychological risk. It was noted that a number of jurisdictions are already taking action in developing a Code of Practice or Regulations relating to psychological health. For example, Victoria announced in the lead up to the meeting that it is developing OHS regulations that provide clearer guidance to employers on their obligations to prevent psychological hazards and injuries.
- The Ministers agreed to re-convene again before the end of the year.

Safe Work Australia and Comcare release guidance material

Safe Work Australia has released the following guides:

- *Preventing workplace sexual harassment*
- *Preventing workplace violence and aggression*
- *Family and domestic violence*
- *Online abuse in the workplace: Information for employers*

Comcare has also released the following guides:

- Workplace sexual harassment: Regulatory guidance for employers on their work health and safety responsibilities;
- Workplace sexual harassment: Practical guidance for employers;
- Workplace sexual harassment: Practical guidance for managers and supervisors; and
- Workplace sexual harassment: Practical guidance for workers.

Independent inquiry into Commonwealth parliamentary workplaces

An independent inquiry has been established into Commonwealth parliamentary workplaces, to be conducted by the Australian Human Rights Commission and led by Sex Discrimination Commissioner Kate Jenkins. The move follows allegations of sexual assault within Federal Parliament, claims of inappropriate workplace behaviour by Federal cabinet ministers, including former Attorney-General Christian Porter, and a historical rape allegation against Christian Porter. The Review will build an understanding of the culture of the Parliamentary workplaces, with the aim of building a safe and respectful workplace in which all staff have access to clear and effective mechanisms to prevent and address bullying, sexual harassment and sexual assault. The Commission will report on its findings and recommendations in a report to be tabled in Parliament in November 2021.

Review of Commonwealth parliamentary workforce released
In February 2021, the Prime Minister Scott Morrison commissioned a review of procedures and processes for dealing with incidents of assault, sexual assault and serious and systemic bullying following the Brittany Higgins rape allegations. In June 2021, the review report was released. The report contains 10 recommendations, including a new framework for reporting and responding to serious incidents including an independent and confidential complaints mechanism and tailored education programs.

Government releases response to Respect @Work Inquiry
The federal government has released a response report to the recent Respect @Work Inquiry. The response report states that preventing and addressing workplace sexual harassment is an absolute priority for the Government. Most of the 55 recommendations from the Inquiry have been agreed to, wholly or partly, and 9 recommendations have been noted, which are said to be those whose intent can be achieved in different ways than those set out by the Inquiry, or are directed at governments or organisations other than the Federal Government. The recommendations agreed to include the following:

- Amending the WHS regulations to deal with psychological health, as has now also been agreed by the WHS Ministers in response to the Marie Boland report (see above).
- Amending the Fair Work Act to clarify that sexual harassment is grounds for dismissal without notice.
- Expanding the Fair Work Commission's anti-bullying jurisdiction to include sexual harassment.

One of the recommendations that was noted was the recommendation to amend the Sex Discrimination Act to include a positive duty for employers to take reasonable steps to eliminate sexual harassment – the government has stated that they will assess this recommendation further in light of the duties that currently exist under work health and safety laws.

New documents issued by Safe Work Australia
Safe Work Australia has released a cross-comparison table allowing readers to understand the similarities and differences between the model WHS laws that have been adopted in the Australian Capital Territory, Northern Territory, New South Wales, Queensland, South Australia and Tasmania. The table addresses variations of the model WHS laws between jurisdictions, including the maximum penalties for WHS breaches, right of entry provisions, and existence of industrial manslaughter offences.

Safe Work Australia has also updated the model WHS Regulations. Recent amendments include the addition of references to the seventh revised edition of the Globally Harmonised System of Classification and Labelling of Chemicals (GHS 7), and the omission of outdated safety standards relating to pressure equipment and lasers used in the building and construction industry. The model regulations do not automatically apply in a jurisdiction, but only do so once made in that jurisdiction. Since the model WHS regulations, both SA and NSW have made amendments to their regulations.

Safe Work Australia has also updated its guide on the interpretation and application of a "person conducting a business or undertaking". The guide confirms that the concept of the PCBU is a broad one, extending beyond the traditional employer/employee relationship to include all types of modern working arrangements.

Federal Government introduces national regulatory framework to manage risks from disposing chemicals
The Federal Government has passed the *Industrial Chemicals Environmental Management (Register) Bill 2020* which aims to establish a regulatory framework for managing health and environmental risks posed by the using and disposing of industrial chemicals. The Bill affords the relevant minister or representatives the power to make decisions regarding industrial chemical risks and appropriate controls, which will be recorded in a national register and referred to in the relevant state/territory laws.

Guide issued regarding elevating work platforms
Safe Work Australia has released a new guide to inspecting and maintaining elevating work platforms (**EWPs**). The guide extends to scissor lifts, self-propelled boom lifts, vehicle-mounted lifts and telehandlers with elevating-platform attachments.

Comcare investigation illustrates the importance of developing and maintaining a safety culture
In a webinar delivered on 28 October 2020, Comcare NSW director of regulatory operations Beverley Smith delivered the findings of a review of investigations into workplace complaints concerning COVID-19 management.

Whilst Comcare received 87 reports from NSW workers regarding their employer's COVID-19 management strategies, the subsequent investigations revealed that these organisations, for the most part, were compliant with government advice. Importantly, the review illustrated that where there was disconnect or a lack of safety culture prevalent in the workplace, workers lack confidence in their employer's COVID-19 control measures.

The review shed light on a number of ways in which organisations can improve their safety culture to manage 'invisible risks" such as COVID-19, including:

- commit to safety. Going beyond implementing COVID-19 policies, organisations should make sure the policies are being supervised and enforced.
- communicate. A common concern amongst employees was that their employer was not keeping them fully unformed.
- shared view of risks. Managers and team leaders must play an active and leading role in development COVID-19 management strategies.

Director Smith stressed that safety systems and safety culture must be interdependent within an organisation, and WHS systems are destined for failure in the absence of safety culture.

ISO releases a new Standard on working safely during the COVID-19 pandemic
In December 2020, the International Organisation for Standardisation (**ISO**) released a new occupational health and safety standard on working safely during the COVID-19 pandemic. The standard contains practical guidance for managing COVID risks as workers begin to return to the workplace. See *ISO/PAS 45005:2020* which is available for free in a read only format here.

Comcare releases updated guidance on transitioning workers back to their usual workplaces as COVID-19 restrictions ease
Each organisation's transition plan will depend on the industry in question, and geographic and specific worker circumstances (e.g. whether a worker is considered a 'vulnerable worker'). Comcare notes all plans should include regular risk assessments which identify risks in an evolving environment, the individual circumstances of employees and employee mental health and wellbeing. The updated guidance is available here.

New South Wales

Psychological risks Code of Practice takes effect
Australia's first WHS Code of Practice on eliminating and minimising psychosocial risks has now taken effect in NSW. The new Code of Practice, Managing Psychosocial Hazards at Work, was gazetted and commenced on Friday 28 May 2021. A draft version of the Code was released in September 2020.

SafeWork NSW publishes a new Customer Service Standard focused on incident response and investigations
In February 2021, SafeWork NSW released a Customer Service Standard which outlines the investigation process and what parties can expect when the regulator undertakes an investigation under the WHS Act in NSW. The aim of the document is to improve transparency and communication with parties affected by safety incidents under investigation including injured workers, family members and duty holders.

The standard sets out the steps in SafeWork NSW's investigation process and how they will communicate with relevant parties during the process. In particular, the standard sets out that SafeWork NSW will communicate with relevant parties to:

- advise on the outcome of initial inspector responses to an incident including what, if any, further regulatory action will be taken. This can include: no further action; or issuing warnings, notices, and/or proceeding for further investigation;
- where further investigation is undertaken, provide an update at least once every three months;
- inform relevant parties when an enforcement decision is made (which can including a prosecution, issuing warning letters or taking no further action).

Recommendations issued following statutory review of the Work Health and Safety (Mines and Petroleum Sites) Act 2013

A total of 40 recommendations have been made following an independent statutory review of the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* (and *Regulation 2014*) (**Review**). The Review's report concluded that NSW's mining WHS laws were "among the best in the world". However, it recommended that the NSW Resources Regulator assess whether recent changes in other jurisdictions (specifically, in Queensland and Western Australia) would also be suitable in New South Wales. The offence of industrial manslaughter was considered beyond the scope of the review and was therefore, not considered.

NSW introduces new exposure standards for airborne contaminants

New workplace exposure standards for coal dust came into effect on 1 February 2021, reducing the exposure threshold to 1.5mg per cubic metre. Following the end of the 12-month transition period, new exposure thresholds for diesel particulate matter in NSW mines and petroleum workplaces (0.1 milligrams per cubic metre of air) also came into effect on 1 February 2021 after first being introduced in February 2020. See Resources Regulator guidance on airborne contaminants and dust

Information sharing to NSW safety regulator amendments passed

The NSW Government passed the *Work Health and Safety Amendment (Information Exchange) Act 2020*, which commenced on 27 October 2020. The Act authorises the Secretary of the Ministry of Health to provide information to SafeWork NSW or the Resources Regulator where the Secretary believes this is necessary to allow the regulators to exercise their functions. This will override restrictions on the provision of information otherwise imposed by existing legislation.

Regulatory changes following a string of gig-economy worker deaths

The NSW government has announced that it is in the process of amending its WHS regulations to include specific safety requirements for food delivery services, including to mandate PPE and safety training for delivery riders. The changes follow an inquiry by a joint taskforce formed following the death of four gig riders in NSW in late 2020 – see the final report of the inquiry here which was released on 5 June. The changes also follow a two day SafeWork NSW blitz that was carried out earlier this year which found that 90 per cent of bike riders performing food delivery work did not have adequate PPE and which resulted in numerous improvement notices being issued. NSW has also released a draft Guide to Managing Work, Health and Safety in the Food Delivery Industry which states that regardless of the employment status of the food delivery driver, the WHS risks that must be controlled are the same for the relevant food delivery platform or food outlet.

Changes to dangerous goods laws and mine rules, new offences introduced

Recent national model amendments have been introduced into NSW law following the passing of the *Dangerous Goods (Road and Rail Transport) Amendment (Model Law) Regulation 2020*. The amendments expose prime contractors to a number of new dangerous goods offences and financial penalties.

New guide for worker accommodation released

SafeWork NSW has released a guide for worker accommodation and events in NSW. The guide aims to assist PCBUs to comply with their WHS duties when designing or selecting forms of accommodation for workers required to work away from home (including fly-in-fly-out (**FIFO**) or for a temporary event). The guide makes several recommendations, for example, in a FIFO arrangement, accommodation should be designed to encourage socialisation (in accordance with social distancing measures) and away from work activities, whilst providing for relaxation.

Queensland

Queensland Coal Mining Board of Inquiry Report (Part 1) released
In November 2020, the Queensland Board of Inquiry (**Board**) released its Final Report: Part 1. The Board was established to inquire into a methane gas explosion that seriously injured the Grosvenor Coal Mine, operated by Anglo-Coal in May 2020, as well as a number of high potential incidents involving methane exceedances.

The Report outlines 82 findings and 25 recommendations, which include:

- Amending industrial manslaughter provisions to ensure that all relevant parties can be prosecuted for industrial manslaughter offences (under the current provisions, mine operators do not have liability in respect of labour hire workers and employees of independent contractors for example).
- The industry should give lead safety indicators greater weight than lag indicators when measuring safety performance and, importantly, when determining executive bonuses, the part report recommends.
- Amending the coal mining safety Act to make it clear that the parent company of a mine operating company, and the officers of the parent company, have obligations under the Act.

Part 2 of the Final Report is due to be released in May 2021.

Codes of Practice and asbestos regulations updated in Queensland
Twenty WHS Codes of Practice have been updated in Queensland, and an amended Code for managing workplace electrical risks has been approved under the *Electrical Safety (Codes of Practice) and Other Legislation Amendment Notice 2021*. The amendments reflect technical changes made to the national model WHS Codes of Practice during Safe Work Australia's 2018 review of the documents. The State Office of Industrial Relations notes that the updated Queensland Codes do not include any "content changes" and all the amendments are "minor". The updated Codes took effect on 1 March 2021.

Queensland's asbestos regulations have also been amended to reclassify low density asbestos fibre board (LDB) as a friable-asbestos-containing material, with the changes taking effect on 1 May 2021. The new classification means LDB must only be removed by a class A licensed asbestos removalist.

South Australia

Greens reintroduce industrial manslaughter Bill, propose $13 million maximum fine
The South Australian Greens' have introduced an Amendment Bill which if passed, would create an industrial manslaughter offence with a maximum fine of **$13 million** – a $12 million increase from the fine proposed in their 2019 Bill, in order to align with penalties for industrial manslaughter in Queensland. With the Liberal government in power in South Australia however, the bill is unlikely pass.

Sexual harassment report released by Equal Opportunity Commission
In November 2020, the South Australian House of Assembly passed a motion allowing acting Equal Opportunity Commissioner (**Commissioner**), Emily Strickland to investigate how state parliamentary workplaces respond to sexual harassment cases. The Commissioner was tasked specifically with reviewing existing complaint mechanisms and sanctions, and any 'cultural and structural barriers including, potential victimisation to reporting'.

Following investigation, the state Equal Opportunity Commission released a report in February 2021 which found that sexual harassment is prevalent within state parliamentary workplaces (including Parliament House and various minister' offices and electorates). The report addresses several findings made by the Commissioner, including:

- few incidents of harassment are officially reported;
- drivers of harassment within Parliament include unique power dynamics, a culture of "minimising, normalising and keeping quiet instances of harassment", and a lack of effective accountability for

MPs engaging in harassing behaviours;
- the complaints process was "marred" by poor communication and a lack of procedural fairness or sufficient levels of independence, noting the handling of complaints made against MPs were "particularly poor"; and
- bullying behaviour, although not within the scope of review, is widespread within parliamentary workplaces and is a contributing factor to "the prevalence of sexual and discriminatory harassment".

The report stresses that sexual and discriminatory harassment in or related to the workplace is a WHS issue, and the South Australian parliamentary workplace does not appear to be managing harassment risks "adequately from a WHS perspective".

The report contains a number of recommendations, including that the Houses support a compliance audit by SafeWork SA with a focus on harassment within two years of the date of this report, and that a code of conduct be developed for members of parliament addressing sexual harassment.

A joint parliamentary committee has been appointed to inquire into the review's recommendations and draft a code of conduct for members of Parliament.

SafeWork SA targets psychological risks in workplaces
In March 2021, SafeWork SA announced its inspectors will commence auditing workplaces within the state to ensure they understand, and are appropriately managing risks to workers' psychological health arising from inappropriate workplace behaviour such as, bullying and harassment. The announcement follows the recommendation in a report produced by the state Equal Opportunity Commission (see above), for SafeWork SA to conduct a harassment-related compliance audit of parliamentary workplaces.

SafeWork SA director, Martyn Campbell reminds employers they "have a responsibility to provide a safe and healthy workplace" which "extends to psychological safety, not only physical safety".

South Australia mandates mining degrees to ensure "competent" mining operators
South Australia has passed the *Work Health and Safety (Mine Manager) Variation Regulations 2020* which came into operation on 1 January 2021. It requires South Australian mining operators to appoint "competent" mining managers and exposes body corporates to $18,000 fines for failing to do so.

A mining manager will be considered "competent" if that person has: *(i)"the relevant training, qualifications, experience, knowledge and skills to manage and supervise the mining operations carried out at the mine; (ii) has knowledge of the requirements of the Act and these regulations (particularly this Chapter); and (iii) is capable of managing hazards at the mine."*

In relation to underground mines with 20 or more workers, a person is considered 'competent' if that person "*holds a degree or diploma in mining engineering"* and has had *"at least 5 years' experience working at a mine"* with at least 3 of those years *"spent working at an underground mine during which the person had 2 years' underground mining operational experience and experience supervising underground mining operations.*

Victoria

Sexual harassment review released
A report has been released following a review of sexual harassment in Victorian Courts which found that sexual harassment is an "open secret" in the legal profession, and there are significant barriers preventing victims, survivors and witnesses from reporting harassment within Victoria's courts and the Victorian Civil and Administrative Tribunal.

The review report recommends that Victoria's OHS laws be amended to ensure that all persons working in Victorian Courts are protected against sexual harassment and prohibited from sexually harassing others.

The Government has said its response to the report will contribute to broader efforts to prevent and better respond to sexual harassment in ***all*** Victorian workplaces.

Prior to the release of the report, the Victorian Government also established a ministerial taskforce on workplace sexual harassment to strengthen the state's OHS framework to deal with sexual harassment, including requiring employers to report sexual harassment incidents. The Victorian government has also announced that it is developing OHS Regulations to deal with psychological health.

OHS style duties to commence on 1 July 2021
1 July 2021 has been set as the commencement date for the bulk of the State *Environment Protection Amendment Act 2018*. The Amendment Act creates an OHS-style general duty to protect human health and the environment from pollution and waste, with due diligence obligations for company officers and high fines and jail terms for breaches.

Western Australia

WA passes WHS Act, including industrial manslaughter provisions
The *Work Health and Safety Act 2020 (WA)* received assent on November 10, 2020 (**WHS Act**). The WHS Act introduces the offence of industrial manslaughter and will harmonise WA's WHS laws with most other Australian states and territories.

The WHS Act is expected to come into full effect at some stage this year once the supporting regulations are finalised. The new WHS Act will repeal and replace the *Occupational Safety and Health Act 1984* and the *Mines Safety and Inspection Act* as well as amending safety legislation around onshore and offshore petroleum, pipeline and geothermal energy operations.

Key changes under the new harmonised legislation include:

- The introduction of industrial manslaughter laws which can attract up to 20 years' jail for individuals and a $10 million fine for a body corporate.
- The broad concept of a "person conducting a business or undertaking" (PCBU) will replace the concept of an "employer".
- The primary duty of care for a PCBU will be to ensure, so far as is reasonably practicable, the health and safety of workers and others who might be affected by their undertakings.
- The broad concept of a "worker" which includes contractors, subcontractors, and the employees of contractors and subcontractors.
- Positive obligations on officers of PCBUs (including members, directors and senior management) to conduct due diligence.
- Generally increased penalties for WHS breaches.
- The prohibition of insurance coverage for fines under the new Act.
- The introduction of enforceable undertakings as an alternative to penalties.
- The introduction of consultation requirements at the workplace and similar safeguards that are in the model WHS laws.
- New frameworks, processes and obligations for reporting incidents, resolution of issues and enforcement including greater regulators powers of investigation and resolution of disputes.

We recommend businesses conduct reviews of their WHS policies, familiarise themselves with the new obligations under the new laws and ensure that they are complying with them the moment they come into force.

Amendments to dangerous goods laws and penalties
The *Dangerous Goods Safety Regulations Amendment Regulations 2020* has been passed in Western Australia which makes changes to a number of dangerous goods regulations. The amendments introduce a number of new offences, including the imposition of a $10,000 fine to duty holders who are found guilty of directing or inducing a dangerous goods driver to unload a vehicle or detach a trailer in a way that

breaches Part 13 of the ADG Code. A $10,000 fine has also be included in relation to providing false or misleading information under the ADG Code.

Exposure threshold for crystalline silica halved, coal dust thresholds to follow
The exposure threshold for respirable crystalline silica (RCS) has been reduced to 0.5 mg per cubic metre (assessed on an eight-hour time-weighted average). WorkSafe WA will be targeting employers until the end of FY21 to ensure that employers are complying with the new exposure standards. The threshold for respirable coal dust will be reduced from 3 mg per cubic metre to 1.5 mg from 27 October 2021.

Diesel threshold takes effect in WA
Western Australian has introduced the *Mines Safety and Inspection Amendment Regulations 2020*, which establishes a workplace exposure threshold for diesel particulate matter (**DPM**). All mine operators in the State must now ensure workplace DPM levels do not exceed a weighted average of 0.1 milligrams per cubic metre of air (measured as sub-micron elemental carbon), over an 8 hour time period. This follows the NSW Government's introduction of the same exposure period for DPM in mines in February 2020.

Tasmania

Amendment Bill passed, significant increase in WHS fines for mine operators
The Tasmanian government has passed the *Mines Work Health and Safety (Supplementary Requirements) Amendment Act 2020* which includes substantial increases to the maximum penalties that can be issued in relation to WHS breaches for mines.

Among the changes includes a $500,000 penalty in relation to the offence of failing to "exercise due diligence in selecting a mine operator who has the capacity and resources to ensure that work at the mine can be carried out safely" (up from $65,000) and a $250,000 penalty for failing to "develop, implement, maintain and review a health and safety management system for the mine that is commensurate with the nature, size and complexity of the mine and mining operations, and the associated risks" (up from $97,500).

In her second reading speech, Attorney-General of Tasmania Elise Archer reiterated that the *Mines Work Health and Safety (Supplementary Requirements) Act 2012* was to be read together with the Tasmanian WHS Act, and stated that the amendments were designed to fill the safety gaps that the WHS Act had not adequately addressed.

Significant cases

Commonwealth

Minister sanctions MCP
Federal Attorney-General and Industrial Relations Minister Michaelia Cash has imposed a one-month exclusion sanction on Queensland construction company MCP (Aus) Pty Ltd from tendering for Commonwealth funded work, under the *Code for the Tendering and Performance of Building Work 2016* (**2016 Code**).

MCP was referred to the Minister by the ABCC after it pleaded guilty in July 2020 to a category 2 breach of the Queensland WHS Act. The breach related to an incident involving a plant rollover incident that occurred in August 2017 on the joint Queensland and Commonwealth government funded $1.6 billion Toowoomba Second Range Crossing Project. No one was injured as a result of the incident. MCP was fined $50,000.

Under the 2016 Code, Code covered entities are required to:

1. Comply with work health and safety (**WHS**) laws, including training and asbestos safety requirements, to the extent that they apply in relation to building work.
2. Notify the ABCC of a breach, or a suspected breach, of the 2016 Code as soon as practicable (and no later than 2 working days after becoming aware of the breach or suspected breach) and advise ABCC of the steps proposed to be taken to rectify the breach within 14 days. A breach of the WHS laws is considered a breach of the 2016 Code.

The ABCC is able to refer breaches of the 2016 Code to the Minister, who must then impose either an exclusion sanction (of up to 1 year), or if satisfied that an exclusion sanction is not appropriate in the circumstances, issue a formal warning.

In the letter issued to MCP advising of the sanction, the Minister advised:

> *"The Australian Government takes any work health and safety contraventions very seriously given the potential for tragic outcomes, including serious injury and death. While the fact that there were no injuries as a result of this particular incident weighs against imposing a lengthy exclusion sanction, I am not satisfied that this, MCP's cooperation with the ABC Commissioner or the steps taken to improve safety following the incident, render it inappropriate to impose any exclusion sanction at all."*

The ABCC has stated that this sanction is the first sanction that has ever been issued for a breach of the 2016 Code involving a breach of the WHS laws. The power to issue sanctions for breaches of the 2016 Code has existed since 2 December 2016 (when the 2016 Code came into force). ABCC also stated in an e-alert issued in December 2018 that it actively monitors Court outcomes for proven contraventions of work health and safety laws and considers on a case by case basis whether or not to refer those contraventions to the Minister.

The 2016 Code addresses a broad range of other matters for which sanctions can be issued following non-compliances (e.g. security of payment requirements, right of entry, industrial relations, among many others). Since 2 December 2016, only two other entities have been sanctioned for breaches of the 2016 Code (as detailed on the ABCC's website here).

Department of Home Affairs and health provider charged for WHS breaches over Villawood immigration detainee suicide
Following an investigation into the suicide of a detainee at the Villawood Detention Centre in Sydney, federal WHS regulator, Comcare, announced the Commonwealth Director of Public Prosecutions (**DPP**) has charged the Department of Home Affairs (**The Department**) and its health service provider, International Health and Medical Services (**IHMS**) with category-2 breaches under the Cth WHS Act.

The Commonwealth DPP alleges that, in failing to comply with their health and safety duty, the Department and IMHS failed to provide:

- "a safe system of work at the facility, as part of their health and safety duties that extend to detainees"; and
- "necessary training, information and supervision to mental health staff in relation to their care for the detainee."

Each charge carries a maximum penalty of $1.5 million, where the parties could be fined a collective total of up to $6 million. The matters have been listed for mention at the Downing Centre Local Court on 27 April 2021.

New South Wales

Record spend on enforceable undertaking
A major PCBU has committed to a record total spend of $4.5m on an enforceable undertaking following an incident where a Council worker was killed by moving plant while undertaking road maintenance work pursuant to a contract between the Council and the PCBU. The PCBU has committed to spending $2.4m through the EU after already spending $2.1m on rectifications following the incident. The measures include roll out of a safety leadership summit for 67 regional councils, provision of plant and traffic awareness training to the Council's supervisors, team leaders, frontline workers and contractors, and performing and audit and assurance program for the 67 councils to identify areas where they need additional support.

Labour-hire company found not guilty for alleged inadequate machine guarding
In December 2020, the NSW District Court found a labour-hire company, Assign Blue Pty Ltd (**Assign Blue**) not guilty of WHS breaches under sections 19 and 32 of the state WHS Act. The charges arose from an incident where a worker of Assign Blue was operating a press machine of his host employer, Bullock MFG Pty Ltd (**Bullock**), and suffered partial amputation of three fingers on his right hand, due to the machine being inadequately guarded.

SafeWork NSW alleged that Assign Blue had failed to: consult with Bullock on the risks associated with operating the machine, ensure that Bullock implemented safe operating procedures, undertake a risk assessment of the press and ensure it was adequately guarded.

In finding the company not guilty, Judge Scotting found it was not reasonably practicable for Assign Blue to "ensure that Bullock had a safe system of work relating to each machine on the floor" because:

- Bullock was contractually required to ensure any plant used by labour-hire workers was safe and to maintain safe work procedures.
- The Bullock operations manager represented that the labour-hire workers would not be using the machines, the machines were adequately guarded, there were safe operating procedures in place and that adequate instruction, training and supervision would be provided.
- Assign Blue did not have the requisite experience in operating the machinery in question and would have incurred significant cost engaging external assistants to assess the large number of machines at Bullock's site.

SafeWork NSW v Assign Blue Pty Ltd [2020] NSWDC 756

Principal contractor equally culpable as subcontractor for employee injury
Principal contractor J & CG Constructions Pty Limited (**J &GC**) was found equally culpable in relation to an incident in March 2017, where a subcontractor worker fell over an unprotected edge at its worksite (due to a gap in scaffolding) and was severely injured. Both J &GC and the subcontractor, Orbit Formwork Pty Ltd (**Orbit**) were found guilty of Category 2 offences and fined $180,000 each. While the Court noted that it is often the case that a sub-contractor who is a direct employer will be found to be more culpable than a principal contractor, this case was different because Orbit had raised concerns

about the lack of scaffolding on the building with J &GC on a number of occasions prior to the incident, and provided photos. Further, it was J &GC which had the responsibility of engaging the scaffolding contractor to remedy the issues.

SafeWork NSW v J & CG Constructions Pty Limited [2020] NSWDC 614

Large fine issued to principal contractor
A scaffolding collapse in Macquarie Park which killed an 18-year old worker and seriously injured another has resulted in GN Residential Construction Pty Ltd (**GN**) being issued a **$900,000** fine (reduced from $1.2 million for its guilty plea) for breaching sections 19(1) and 32 of the NSW WHS Act. GN was the principal contractor in respect of the project.

At the time of the collapse, there were no scaffold ties securing the scaffolding to the building. The hoist platform on the scaffolding had also been overloaded with bricks. The Court found that in the month leading up to the collapse, GN had failed to ensure that Synergy Scaffolding Service Pty Ltd (**Synergy**) – the company contracted to assemble, maintain and disassemble the scaffolding – carried out weekly inspections of the scaffolding. It had been previously agreed that weekly inspections would be carried out due to issues on site with workers tampering with the scaffolding. The complete absence of ties before the collapse would have been obvious if a visual inspection had been conducted. With the lack of ties and scaffolding being overloaded, the likelihood of the risk manifesting was "so high it was almost certain".

SafeWork NSW v GN Residential Construction Pty Ltd [2020] NSWDC 764.

SafeWork NSW unable to appeal decision in fatal Bankstown-Lidcombe Hospital gassing incident
The NSW Court of Criminal Appeal has found that it lacks jurisdiction to hear an appeal from SafeWork NSW after BOC Ltd (**BOC**) was acquitted in relation to the Bankstwon-Lidcombe hospital gassing incident. Justices Basten, Leeming and McFarlan found that the supervisory jurisdiction of the Court of Criminal Appeal did not extend to reviewing the acquittal of BOC, "following a summary trial by a competent tribunal in the absence of fraud".

BOC was engaged to install, test and commission gas delivery lines in the operation theatre of the neonatal resuscitation unit at the Hospital. District Court Judge Strathdee found BOC not guilty after finding that there was no way for BOC to have foreseen that a worker of Pro-Med Services Pty Ltd (**Pro-Med**) and a hospital employee would lie about undertaking gas and purity tests.

The failure to carry out these tests resulted in the administration of nitrous oxide instead of oxygen to two newborn babies: one died and the other suffered serious brain damage.

In dismissing the appeal, the Court rejected the prosecutor's claim that the trial judge erred in dismissing its case that the defendant failed to require the adoption of a safe work procedure to minimise the risk of cross-connection error. Instead, the Court found the claim "runs counter to the general principle of law that a person who is prosecuted for a breach of the law, if acquitted, 'is not to be a second time vexed.'"

SafeWork NSW v BOC Limited [2020] NSWCA 306.

Principal contractor convicted after failing to turn its mind to 'continuing risk'
A principal contractor at a residential building site has been convicted and fined following an incident where a subcontractor's worker suffered serious injuries while lifting copper pipes to the fourth floor of the building and the pipes came into contact with high voltage overhead powerlines. The Court found that:

- The company was aware of the risks associated with construction work being carried out in close proximity to the overhead powerlines.
- Prior to the incident, the company had arranged for scaffolding to be in place on one side of the building, and the overhead powerlines de-energised while the scaffolding was in place. However the scaffolding was removed when that section of the building was complete.

- Once the scaffolding had been removed, the company 'failed to turn its mind to any continuing risk' – the building was still in the course of construction and there was a prospect that a trade might do work which could come into contact with the overhead powerlines.
- The company did have in place a safe system for handling deliveries, however it failed to ensure that the system 'was followed without fail.'
- This was the second occasion that the task had been performed, where the loading and unloading safe work procedure was not enforced.
- The task being performed by the subcontractor at the time of the incident was 'foolhardy to say the least', and there was little time for the principal contractor to become aware of what was being attempted, which is 'all the more reason' for measures to have been taken by the principal contractor to prevent such actions.

The Court also found that the principal contractor was less culpable than the subcontractor, Spectra, in relation to the incident, which was a matter of agreement between the prosecutor and the defendant in final submissions. The company was fined $80,000 discounted to $60,000 for the company's guilty plea.

SafeWork NSW v Kayrouz Constructions Pty Limited (No. 2) [2021] NSWDC 38 (3 March 2021)

Record fine imposed following death of two workers
A paper mill operator has been convicted and fined a record fine in NSW following an incident where two workers died and third was put in mortal peril after being exposed to hydrogen sulphide in a tank. The company was fined $1.35 million, reduced to $1.01 million on account of its guilty plea. The company was also ordered to undertake and fund the development and production of an educative animated video by a suitable external provider that documented and highlighted the incident and safe systems of work that could have prevented it.

The incident occurred when one worker was sent to the top of a tank that temporarily stored excess filtrate during production work to check for a possible leak, where he was exposed to an unknown quantity of hydrogen sulphide gas and rendered unconscious. Two other workers rushed to the top of the tank to render assistance but were also overcome by the gas.

The company plead guilty to a number of failings, including a failure to: designate the top of the tank as a confined space or restricted area; take steps to inhibit the formation of hydrogen sulphide in filtrate tanks, despite knowing stagnant filtrate could generate gas and odours during shutdowns; become aware of and fix splits in the top seam of the tank; or provide personal hazardous gas monitors to workers required to access confined space areas; provide adequate ventilation or exhaust systems; provide a system for monitoring stored filtrate during extended shutdowns; and provide training to all workers on confined spaces and hazardous gas risks.

In imposing the fine the Court noted that neither of the parties could refer the Court to a similar case, where an offence had caused two deaths and third worker was put in mortal peril.

The Court noted that while the company had no knowledge or prior experience of a build-up of hydrogen sulphide in the area of the mill where the incident occurred, the WHS laws requires employers to 'take a proactive approach to assessing risks and guarding against them.'

SafeWork NSW v Norske Skog Paper Mills (Australia) Limited [2020] NSWDC 559 (25 September 2020)

Victoria

Stress, anxiety, insomnia and excessive workloads plagued senior lawyer prior to her death
A Victorian Coroner's report into the death of a Victorian lawyer reveals that a senior manager was aware of the lawyer's excessive workload and deteriorating condition in the weeks leading up to her suicide.

45-year old Jessica Wilby was the acting senior legal counsel (**SLC**) for the Coroners Court of Victoria while also undertaking the duties of principal in-house solicitor. The coroner found that Ms Wilby was "in essence performing three roles".

Upon assuming the role as SLC, Ms Wilby had immediately displayed signs of anxiety, insomnia and physical unwellness, the Coroner heard. After being told that she would be remaining in the acting SLC role indefinitely, Ms Wilby was found by colleagues shaking and unable to communicate. The senior manager subsequently told senior people and culture manager that she had suffered a "sort of breakdown" due to "relationship stressors at home". This was despite the manager having knowledge of Ms Wilby's significant workloads.

The Coroner's assessment of the Court's workplace culture and its response to Ms Wilby's physical and psychological state was scathing. The Corner found:

- "The most prominent description of the workplace culture existing at that time was 'toxic'."
- "Given the extraordinarily large workload Ms Wilby was carrying at the time, and in a most difficult and stressful work environment that was evident to all, it is unclear why her highly distressed state on 15 March 2018 was not viewed as work-related."
- "Despite the clearly alarming events of 15 March 2018, Ms Wilby's multiple roles and workload at the Court continued unchanged for another five weeks."
- "Whilst on sick leave for three months, with the exception of her work friends, the lack of support from the Court and from CSV was stark. The pressure she felt she was under at work and her distress about the workplace environment is compelling."

WorkSafe Victoria are now investigating Ms Wilby's death.

Queensland

Record penalties imposed in the wake of Dreamworld fatalities
In October 2016, four people suffered fatal injuries as a result of two rafts colliding on the Thunder River Rapids ride at Dreamworld theme park.

Ardent Leisure Limited, Dreamworld's parent company, pleaded guilty to WHS charges that it failed to ensure, so far as was reasonably practicable, the health and safety of others at the workplace by failing to provide and maintain of safe structures and safe systems of work and the provision of information, training and supervision to protect persons from health and safety risks.

On 28 September 2020, Ardent Leisure Limited was found guilty and convicted. A total of $3.6 million fine was imposed with convictions recorded. In reaching the penalty, the Magistrate emphasised:

- that the company's numerous failings were neither 'momentary' nor 'confined to a discrete safety obligation';
- the company's safety measures were 'grossly below the standard that was expected of it'. This was particularly significant given that there were a number of available measures which would have 'minimised or eliminated the relevant risk; and
- the company knew of the serious risks posed by raft collisions.

The Magistrate remarked that this was a rare case "in which a penalty close to the maximum is appropriate", however did not impose the maximum fine of $4.5 million on the basis of Ardent Leisure Limited's early plea, its remorse and unreserved apology and significant post-incident remediation.

Guilfoyle v Ardent Leisure Ltd [2020] QMC 13

Western Australia

Director jailed for gross negligence
Mark Thomas Withers, the sole director of shed building company MT Sheds, has been sentenced to a total of two years and two months' jail, the longest term of imprisonment ever imposed for a health and safety offence in Australia, after pleading guilty to a gross negligence offence. He is required to serve eight months immediately, with the remaining 18 months suspended. This is the first jail sentence

imposed under health and safety laws in Western Australia. The company, MT Sheds, also pleaded guilty to a gross negligence offence and was fined a total of $605,000, the highest ever penalty imposed in the state.

The prosecutions relate to an incident that occurred in March 2020, when two employees of the company fell when strong winds hit while they were installing roof sheets on a new farm shed. The first worker sustained fatal injuries, and the second worker was severely injured. No safety controls were in place for the work, in particular the workers did not hold the necessary high-risk work licences for the job, and neither wore a safety harness. The Judge found that the safety breach by Mr Withers was 'more than merely momentary attention' and that it was appropriate for him to serve some period of imprisonment immediately.

Repeat offender issued maximum penalty in Western Australia's first gross negligence case
Western Australian recycling company Resource Recovery Solutions Pty Ltd (**RRS**), has been fined **$330,000** and ordered to pay **$234,000** in costs after the Perth Magistrates Court found it guilty of breaching section 19 ("Duties of employers") of the WA OH&S Act in circumstance of gross negligence. This is the state's first "gross negligence" case.

The case relates to an incident which occurred when a production line worker, tasked with clearing jams on various conveyer belts, had his arm torn off at the shoulder after being dragged into a machinery crush point. The court heard that there were no safety guards in place to prevent workers from coming into contact with machinery crush points, nor were any lock-out-tag-out procedures implemented to ensure that moving machinery parts were isolated during the clearing of blockages.

The company had a poor WHS record, and in in 2016 was convicted and fined for a previous safety incident involving a labour-hire worker that was killed at an RRS worksite in 2013 after an overloaded roof panel collapsed on top of him. A similar crush point incident also occurred in February 2015, when another RRS worker's arm was pulled into an unguarded machine. Following the 2015 incident, WorkSafe issued RRS with an improvement notice requiring it to install safety guards to protect workers from exposed crush points. The latest injury came despite RRS' director informing WorkSafe that it had complied with the improvement notice.

The case reflects the continuing trend of recklessness prosecutions being brought around Australia.

Scope of principal contractor's safety duties to employees examined in negligence claim
The District Court of Western Australia has dismissed a worker's negligence claim against a principal contractor for a back injury, finding that the principal contractor was not required prevent the worker from working in cramped spaces, or provide him with ergonomic support like an adjustable chair. The worker was a painter and sandblaster that worked for a subcontractor of the principal contractor, and injured his back after he was require to spend nearly all of his work time cleaning and painting the bottoms of switchrooms where he was not fully able to stand up.

In dismissing the claim, the Court found:

- Site documents showed that the principal contractor's duty of care was to organise activities and trades at the relevant site so that work was coordinated safely. This duty was to ensure that the way in which the painters and sandblasters performed their work did not expose other persons or trades on the site to an unreasonable risk of injury.
- There was nothing in the circumstances of the case that extended the scope of the principal contractor's duty of care at the site to a requirement to specifically direct subcontractors on how painters should perform their duties.
- The responsibility or duty of care to establish a system of work for the painters lay with the subcontractors.
- It was outside of the principal contractor's scope to assess each separate work activity to ensure each worker's work complied with safe practices, which would place the principal contractor "in the position of an employer in respect of each individual worker on site".

- The situation in which the worker suffered injury did not arise because of unsafe work practices from one trade or contractor causing an unreasonable risk of injury to another trade such that there was a failure to properly coordinate or organise the work activities on site.
- There was no evidence an adjustable chair or other steps identified by the worker would have prevented or reduced the risk of injury.

Clark v Schneider Electric (Australia) Pty Ltd [2021] WADC 11 (10 February 2021)

South Australia

National employer found guilty of eight WHS charges

A national employer has been found guilty of eight WHS charges for failing to train and assess the competency of a labour hire truck driver engaged by the company, following an incident where the driver lost control of a waste tanker truck during a steep descent. The truck reached speeds of more than 150km/h during the descent before colliding with three cars at the bottom of the hill. Two people died as a result of the accident, and two others were seriously injured, including the driver of the vehicle.

The company was found to have breached its duties under the Cth WHS Act for failing to properly train and assess the competency of the driver, in particular in relation to the driving of a manual truck down the steep descent he was required to drive down, and the use of arrester beds that were available on that descent. The driver had only recently obtained his heavy vehicle licence, had not driven a manual vehicle since obtaining his licence, and had not been assessed for competency in a manual vehicle or on the particular road where the accident had occurred.

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