NORTON ROSE FULBRIGHT

WHS Law Briefing

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Key issues and trends

Welcome to our WHS Law Briefing. This briefing identifies key issues and emerging trends in WHS Law, and details significant legislative and case law developments from February 2026 to date in August 2026. Please contact our national WHS team 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.

Digital work systems and AI	There have been a number of significant developments in relation to the regulation of digital work systems and AI. The New South Wales Parliament has passed the Work Health and Safety Amendment (Digital Work Systems) Bill 2025 which introduces new duties for persons conducting a business or undertaking (**PCBUs**) involving digital work systems. Safe Work Australia has released guidance on managing risks from using AI and Digital Technologies at work. The Federal Government has announced that it will introduce a national AI plan, and the Victorian Government has announced that it will develop laws against intrusive workplace surveillance.
Codes of Practice now mandatory in New South Wales	From 1 July 2026, it is now a positive legal duty for all PCBUs to comply with approved Codes of Practices in New South Wales under section 26A of the *Work Health and Safety Act 2011* (NSW). Alternatively, a PCBU may adopt a different approach to managing hazards and risks arising from the work, provided that approach delivers a standard of health and safety that is equivalent to, or higher than, the standard required by the relevant Code of Practice. SafeWork NSW has also approved a range of new and updated Codes of Practice in the lead up to the change.
Significant cases	There have been two significant cases in the first half of 2026 where companies were found guilty of breaching their safety duties, following safety incidents that occurred where work processes were changed without conducting a risk assessment or seeking expert advice. A summary of these cases is set out in Annexures A and C. A number of jurisdictions have also imposed record penalties on defendants for health and safety offences, with the highest penalty ever imposed in Australia now reaching $7 million.

Legislative updates

Commonwealth / National

New Codes and Guidance material released

Safe Work Australia has released the following new material to date in 2026:

- Guidance to help duty holders understand the implications of using AI and other digital technologies in the workplace, including guidance on physical and psychosocial hazards associated with digital technology and AI (such as low job demands arising when complex tasks become automated and less stimulating)
- The following material to support duty holders with the upcoming transition to the Workplace exposure limits for airborne contaminants (**WEL**) on 1 December 2026:
  - A new Hazardous Chemical Information System (HCIS) tool
  - Guide for PCBUs: Air monitoring and the workplace exposure limits for airborne contaminants
  - Technical guide: Air monitoring and the workplace exposure limits for airborne contaminants
  - Guide to managing the risks of exposure to diesel engine emissions in the workplace (noting that a new workplace exposure limit of 0.01 mg/m^3 for diesel particulate matter will apply from 1 December 2026 under the WEL)
- A new Model WHS Code of Practice Managing the risks of biological hazards at work
- A new Model WHS Code of Practice Elevating Work Platforms (**EWPs**) (replacing two previous guides on EWPs)
- A new interactive guide to help duty holders assess ground conditions to ensure the safe set up and operation of mobile cranes, EWPs and other plant
- The Model WHS Code of Practice Managing the work environment and facilities was updated to include new guidance regarding providing access to sanitary or period products at workplaces where access to such products may be limited (e.g. remote workplaces)
- New resources to manage the risk of gender-based violence in construction
- Guidance to assist HSRs to exercise their powers and functions in relation to asbestos in buildings
- Guidance on silica including a dedicated “Be Silica Smart” webpage

Safe Work Australia seeks feedback on various changes

Safe Work Australia sought feedback on a number of areas of potential regulatory change, including the following:

- Options to improve safety when earth moving machinery is used for lifting operations (closed 2 March 2026)
- Improving dispute resolution under the model WHS Laws (closed 20 April 2026)
- How asbestos risks are managed and asbestos-containing materials are safely removed (closed 26 April 2026)
- Options to improve the safety of crane operations in the maritime sector, including consideration of options for high-risk work licensing and training (closed 27 April 2026)
- High-risk licensing requirements for crane operators (closed 7 May 2026)
- The regulation of crowd platform arrangements under the model WHS Act, with the aim of ensuring crowd platform workers receive the same WHS protections as other workers (closed on 1 June 2026)
- The regulation of welding processes (closed 12 July 2026)
- Improving the safety of workers exposed to lead (closes 24 August 2026)

- Options to clarify and improve air and health monitoring requirements (closes 21 September 2026)

People at Work tool decommissioned

The free online People at Work psychosocial risk assessment survey tool is being decommissioned. Australian WHS regulators have determined that due to changes in legislation, newly developed tools and updated research on psychosocial hazards, the tool may no longer meet the needs of organisations seeking to explore psychosocial hazards in their workplace. The People at Work website provides further information on the timing of the decommissioning process.

Lowering of some workplace exposure limits paused

On 1 December 2026, Australia will transition from the Workplace exposure standards for airborne contaminants (**WES**) to the Workplace exposure limits for airborne contaminants (**WEL**).

While the exposure limit for nine chemicals (including silica) was to be lowered upon the commencement of the WEL, this has now been paused by the WHS Ministers, who have requested further work on the issue.

Further information on airborne contaminants can be found on Safe Work Australia's website.

Australian Standards referenced in WHS laws to be free

The Federal Government's 2026-27 budget has allocated $42.7 million over the next four financial years to provide free access to all mandatory Standards pertaining to WHS matters referenced in Commonwealth and state and territory legislation.

Material released for HVNL changes

The National Heavy Vehicle Regulator (**NHVR**) and National Transport Commission have released the following new statutory instruments:

- Safety Management System Standard 2026
- National Audit Standard for Heavy Vehicle Accreditation
- Ministerial Guidelines for Heavy Vehicle Accreditation 2026
- Ministerial Standard for alternative compliance hours

These instruments support changes to the Heavy Vehicle National Law (HVNL) that commenced on 1 August 2026.

Further detail on the changes to the HVNL can be found on the NHVR's website here.

Best Practice Review Consultation Summary released

Safe Work Australia has released a consultation summary which identifies key themes and issues raised during the consultation process for the Best Practice Review of the model WHS laws currently being undertaken by Safe Work Australia.

The paper addresses topics such as the ongoing need for harmonisation in WHS Laws, including a harmonised approach by regulators in relation to compliance and enforcement.

The consultation feedback will inform the development of Final Report for the Best Practice Review which will be presented to Safe Work Australia members in mid-2026 and the WHS Minsters in August 2026.

Federal government responds to Inquiry into the Digital Transformation of Workplaces

The Federal Government has published its response to the Inquiry into the Digital Transformation of Workplaces, which published its report in January 2025. The response notes that employers remain accountable under WHS Laws for managing work health and safety risks, and cannot shift liability to AI systems, and also notes that Safe Work Australia's Best Practice Review of the model WHS Laws (see above) is considering the impacts of AI, including whether duties such as the duty of designers adequately capture AI risks.

Federal government announces national AI plan

The Federal Government has announced that it will introduce a national AI plan, featuring a series of safety priorities including legislating a digital duty of care that puts the onus on AI companies to build in safety by design and proactively address potential harms. The Federal Government also announced it will pursue "AI safety in the workplace" through the Artificial Intelligence Workplace and Employment Forum.

New OHS Regulations made for maritime duty holders

The Federal Government has made the *Occupational Health and Safety (Maritime Industry) Regulations 2026*, to replace the *Occupational Health and Safety Maritime Industry) Regulations 1995* and *Occupational Health and Safety (Maritime Industry) (National Standards) Regulations 2003*, which sunset on 1 April 2026.

The old and new Regulations aim to protect the safety of seafarers on prescribed ships who fall outside Australia's WHS laws. They focus on asbestos management, manual handling, and confined spaces.

The new Regulations will apply while the Department of Employment and Workplace Relations considers harmonising offshore safety legislation with the national model WHS law.

New South Wales

PCBUs must comply with Codes of Practice from 1 July 2026

The new section 26A of the *Work Health and Safety Act 2011* (NSW) (**NSW WHS Act**) commenced on 1 July 2026, requiring all PCBUs to comply with approved Codes of Practice. Alternatively, a PCBU may adopt a different approach to managing hazards and risks to that outlined in a Code, provided that the approach delivers a standard of health and safety that is equivalent to, or higher than, the standard required by the relevant Code.

SafeWork NSW's approved Codes of Practice can be found on their website here.

In the lead-up to the change, SafeWork NSW approved various new Codes of Practice (to replace similarly named Codes that were developed prior to the introduction of the WHS Act and retained when the WHS Act commenced). The new Codes of Practice include:

- Collection and transport of waste
- How to manage blood-borne virus exposure risks in the workplace – hepatitis B, hepatitis C and HIV
- Safe handling of timber preservatives and recently treated timber
- Safe use and design of bulk storage silos and bins
- Safe use and storage of agricultural and veterinary chemicals
- Sawmilling industry
- Transport and delivery of cash and valuable goods
- Tree works
- Work near overhead and underground electric lines
- Work on roofs – commercial and industrial buildings
- Worker accommodation (which now applies to persons who own, manage or control worker accommodation facilities in any industry, as opposed to just the rural agriculture sector)
- Working safely when cutting, drilling and grinding concrete and masonry products

SafeWork NSW has also approved the following Codes of Practice which are mirror versions of national model Codes issued by Safe Work Australia:

- Elevating work platforms
- Managing the risks of biological hazards at work
- Managing the risk of fatigue at work
- Healthcare and social assistance industry
- Managing risks of respirable crystalline silica in the workplace (SafeWork NSW revoked its previous Code on managing risks of silica from engineered stone, given the new silica Code, which applies to more types of work, and addresses the same risks and processes)

Work Health and Safety Amendment (Digital Work Systems) Bill 2026

On 12 February 2026, the *Work Health and Safety Amendment (Digital Work Systems) Bill 2026* (**Bill**) was narrowly passed, introducing the most significant update to the State's WHS framework in more than a decade in response to the rapid expansion of digital work system tools.

On 18 February 2026, the Bill received royal assent. The sections regarding the Digital Work Systems will commence on a day or days to be appointed by proclamation.

The Bill introduces a new "Digital Work System Duty" which expressly brings AI, automated decision-making and online platforms within the scope of WHS duties. Persons Conducting a Business or Undertaking (PCBUs) will be required to ensure, so far as is reasonably practicable, that the health and safety of workers is not put at risk by the allocation of work through a digital work system used by the business or undertaking.

In accordance with the Bill, PCBUs must consider whether the allocation of work by or using AI or a digital work system creates or results in any of the following risks:

- Excessive or unreasonable workloads;
- The use of excessive or unreasonable metrics to assess and track the performance of workers;
- Excessive or unreasonable monitoring or surveillance of workers; and/or
- Unlawful discriminatory practices or decision-making.

For more information regarding the Bill, please see our blog article here.

WHS Regulation amended

The *Work Health and Safety Regulation 2025* (NSW) has been amended to:

- clarify the duties of PCBUs to manage psychosocial risks, by stating that the duty to manage psychosocial risks under clause 55C involves undertaking that obligation in accordance the section 19 primary duty of care;
- expand the circumstances in which NSW's WHS regulators can share confidential information, including by adding further legislation under which information can be shared (e.g. border force, migration, modern slavery and taxation legislation); and
- administrative changes such as increases to fees.

WPOs to be introduced

The New South Wales Government has announced that it will introduce legislation for workplace protection orders (**WPOs**) in 2026 as a tool to protect retail staff from workplace violence. The Government confirmed that it will begin consultation with retailers, police, unions and other stakeholders regarding the proposed legislation.

SafeWork NSW updates Prosecution Guidelines and releases officer due diligence tool

SafeWork NSW has updated section 3.2 of its Prosecution Guidelines to provide greater clarity about the time limits that apply to prosecutions. The Guidelines note that under the WHS Act, prosecutions must generally be commenced within two years after the offence first comes to the notice of SafeWork NSW, subject to very limited exceptions, including when SafeWork NSW seeks leave of the Court to commence a prosecution outside the time limit. The Guidelines note that SafeWork NSW will consider seeking leave to commence a prosecution outside the time limit in "special or exceptional circumstances."

SafeWork NSW has also released a new self-assessment tool to help company officers check their understanding of, and compliance with, the officer due diligence obligation.

SafeWork Advisory Council appointed

The New South Wales Government has appointed the first SafeWork Advisory Council, a key component of the reforms to establish SafeWork NSW as a standalone regulator. The Council is chaired by Emeritus Professor Michael Quinlan, a WHS Expert with over 40 years' experience and includes representatives of workers, employers, workplace safety experts and families with lived experience of losing a loved one to a workplace fatality. The Advisory Council will provide strategic advice to SafeWork NSW and the NSW Government.

SafeWork NSW releases biannual report and regulatory statement

SafeWork NSW has released its first biannual report since becoming a standalone regulator. The report confirms that SafeWork NSW has completed assessments of duty holders identified as potential participants of the "high risk workplaces and repeat offenders" program, and that all assessments finalised to date have not resulted in the inclusion of any duty holders in the program.

SafeWork NSW has also released a new 2026-27 Regulatory Statement which confirms the following four priority areas:

- Falls from heights
- Psychosocial risks
- Hazardous substances
- Mobile plant, vehicles and fixed machinery

SafeWork NSW also confirmed that it has delivered on its key priorities over the past 12 months, such as the expansion of its psychosocial inspectorate and advisory services.

New WHS reporting regime for NSW mines and discussion paper and design order released

In the event of a workplace vehicle collision, NSW mines are now required to provide the NSW Resources Regulator with a report outlining their transport management standards, vehicle segregation rules and systems for ensuring workers are fit to operate vehicles or mobile plant, among other matters. The report must be provided to the Resources Regulator no later than 30 days after the incident was required to be notified.

The NSW Resources Regulator has also released a Discussion paper on proposed changes to plant registration and licensing requirements for the resources industry. Feedback on the proposed changes can be submitted until 6 October 2026.

The NSW Resources Regulator has also made the *Standards for Conveyor Belting Design Registration Order 2026* (available from page five of this gazette), which outlines the design, alteration and testing requirements for conveyor belting used in underground coal mines.

Five mining WHS Codes of Practice amended

The following WHS Codes of Practices covering NSW mines have been amended:

- Strata control in underground coal mines;
- Inundation and inrush hazard management;
- Roadway dust analysis in underground coal mines;
- Safety management systems in mines; and
- Mine shafts and winding systems.

The changes are editorial in nature and include updates to references to legislation and templates, and do not alter obligations under the legislation.

Queensland

HSR powers repealed

New powers for health and safety representatives (**HSRs**) and WHS entry permit holders set to commence on 29 March 2026 were repealed by the *Electrical Safety and Other Legislation Amendment Act 2026*, passed on 27 March 2026.

The new powers would have allowed HSRs and WHS entry permit holders to access information from Workplace Health and Safety Queensland about improvement, prohibition and non-disturbance notices issued to employers.

Insufficient safeguards and an administrative burden for the regulator are identified in the legislation's Explanatory note as reasons for not proceeding with the changes.

Changes passed to resources safety legislation

The Resources Safety and Health Queensland and Other Legislation Amendment Act 2026 has passed the Queensland Parliament. The Act will deliver a range of initiatives which aim to strengthen Resources Safety and Health Queensland's governance following a review of its regulatory model in 2025.

WHS Regulation amended to address high risk plant

Queensland's *Work Health and Safety Regulation 2011* has been amended by the *Work Health and Safety (High Risk Plant) Amendment Regulation 2026* to include a list of "high risk plant" in regulation 702A. The list was previously contained in the *Work Health and Safety Act 2011* but has been moved to the regulation to make it easier for future changes to be made. The list now excludes air-conditioning units, but other items of plant (amusement devices, cooling towers, escalators, lifts and LP gas cylinders) have been retained. High risk plant that affects public safety is subject to the *Work Health and Safety Act 2011* even where it is not situated or used at a workplace.

South Australia

WPO legislation commences

On 4 May 2026, the *Workplace Protection (Personal Violence) Act 2025* (SA) commenced. The legislation enables employers, business owners, unions and industry groups to apply to courts to impose a workplace protection order against individuals who have engaged in personal violence in relation to a workplace.

Two WHS Codes of Practice commence

The WHS Codes of Practice, 'Managing psychosocial hazards at work' and 'Sexual and gender-based harassment' commenced in South Australia on 19 February 2026.

SafeWork SA has stated that the two Codes are largely based on the national model Codes of the same name developed by Safe Work Australia, but with additional provisions resulting from consultation with unions and employer representatives.

New fact sheets for high-risk construction work

Following recent changes to the South Australia's *Work Health and Safety Regulations 2012,* SafeWork SA has released two new fact sheets on the amendments, 'High-risk construction work changes – for PCBUs and principal contractors' and 'High-risk construction work changes – for workers'.

The amendments, which commenced on 1 July 2026, include a new definition of "high-risk construction work" (for which a SWMS is required) as construction work that involves the risk of a person falling more than **two** metres (instead of more than three metres).

All industries now covered by labour hire licensing laws

SafeWork SA has reminded employers that all labour hire providers must now become licensed under changes to South Australia's labour hire licensing laws which commenced on 29 January 2026. Previously, the laws only applied to providers in the horticulture, meat and seafood processing, cleaning, and trolley collection industries. New licensees had a 6-month grace period until 29 July 2026 to become licensed. Businesses that use labour hire providers must ensure the provider is licensed in South Australia.

Victoria

NDA restrictions commence

On 1 July 2026, the Restricting Non-disclosure Agreements (Sexual Harassment at Work) Act 2025 commenced which prohibits the use of a non-disclosure agreement (**NDA**) in a work-related harassment matter unless it is requested by the victim or alleged victim of the conduct.

The new legislation also:

- mandates requirements for NDA information statements;
- mandates a review period before a worker can sign an NDA;
- prohibits employers from pressuring workers to enter an NDA;
- allows workers with NDAs to discuss the content with certain people, such as police and medical and legal professionals; and
- permits a worker to end an NDA 12 months after giving notice to the other party.

New laws to prevent intrusive surveillance

Victoria has announced that it will be introducing "the toughest workplace surveillance protection laws in the country" aimed at protecting workers from inappropriate and unfair uses of AI in the workplace, including intrusive workplace surveillance.

Bill introduced to enshrine WFH rights

Victoria has introduced the *Equal Opportunity Amendment (Work from Home) Bill 2026* to enshrine the right of workers to work from home for at least two days per week, where it is reasonable to do so. The Bill lists a range of factors that are relevant to determining whether it is reasonable for an employee to work from home, such as whether the employee working from home would be likely to cause a significant decrease in productivity or efficiency for the employer or would have significant adverse impact on customer service outcomes. In August 2026, the Victorian Premier Ben Carroll announced in a press conference that the proposed start date for the Bill will be pushed back from 1 September 2026 to 1 July 2027, and that debate of the bill will be paused to enable further business consultation to occur, however the Bill is still anticipated to be passed before the next state election in November 2026.

Victoria has also introduced the *Workplace Legislation Amendment (Accident Compensation and Other Matters) Bill 2026* which proposes a number of changes to Victoria's OHS Act, including clarifying the rights of HSRs to access information and make copies of documents relevant to suspected health and safety concerns.

Major changes to safety and dangerous goods laws pass Parliament

The *Occupational Health and Safety Amendment (Dangerous Goods) Bill 2026* has passed Parliament, making major changes to Victoria's occupational health and safety and dangerous goods legislation, including:

- Introducing a positive officer due diligence obligation, similar to the model WHS Laws,
- Incorporating the regulation of dangerous goods into existing occupational health and safety legislation
- Aligning the regulation of dangerous goods with existing occupational health and safety duties, e.g. the introduction of a broad general duty requiring a person involved in the handling of dangerous goods to ensure dangerous goods are handled in a manner that is safe and without risks to health, safety and property

Victoria has also passed the *Dangerous Goods Transport Bill 2026*, which repeals the State's *Dangerous Goods Act 1985* and establishes a new standalone law governing the transport of dangerous goods across road, rail, and waterways. It aims to improve national consistency, enhance information sharing, and increase penalties and enforcement powers.

The new legislation above commences upon proclamation, or on 26 April 2028 at the latest.

Victoria has also made the *Dangerous Goods (HCDG) Regulations 2026* to replace the sunsetting 2016 Regulations of the same name (without any major changes) and the *Dangerous Goods (Explosives) Amendment Regulations 2026*, which makes minor technical changes to the *Dangerous Goods (Explosives) Regulations 2022*. Both regulations commenced in July 2026.

Enforceable Undertaking policy updated

WorkSafe Victoria has updated its Enforceable Undertaking Policy. The most significant change is the introduction of a formal eligibility assessment prior to evaluating the EU itself, similar to other jurisdictions. If

the eligibility assessment is accepted, applicants will be able to proceed with submission of an EU proposal.

New Regulations for amusement devices

The Victorian Government has made the *Occupational Health and Safety Amendment (Amusement Structure) Regulations 2026*, creating a range of new duties for amusement devices, including that all amusement devices must be design and item of plant registered. The changes follow recommendations made by a coronial inquest into the death of a six-year-old child who was killed on a ride at a carnival in Rye in 2017. The new duties commenced on 29 July 2026. Further information on the changes is available on WorkSafe Victoria's here and here.

Western Australia

Work Health and Safety Regulations amended

The Western Australia Government has made the *Work Health and Safety Regulations Amendment Regulations (No. 2) 2026* to create an "exception period" for the requirement to register items of plant.

The exception period applies where a person has applied for plant registration, the application is the first application, and a record of the inspection and assessment of the plant is available for scrutiny. The exception period begins immediately after the registration application is made and ends on the earliest of 30 days passing; WorkSafe WA approving the registration; the application being withdrawn; or the application being rejected.

Codes of Practices and other guidance material released

Western Australia has approved an updated 2026 Code of Practice, Managing the risk of falls in housing construction, (replacing the 2022 version) following a 2024 consultation aimed at improving safety controls and work planning. The revised Code strengthens guidance on key risk areas, including better planning and sequencing of framing work, safer methods for installing roofing and working at heights (particularly above four metres), and more effective use of edge protection across roofing tasks, with the goal of reducing fall-related incidents on construction sites.

Western Australia has also published an information sheet on Managing the risks of falls from roofs in the housing construction industry.

The Work Health and Safety Commission also sought feedback on a draft Code of Practice for Workers' accommodation.

Another new Code of Practice, Road and traffic management at Western Australian mines was also finalised and has now commenced.

Tasmania

WPO laws to be introduced

Tasmania has also committed to introducing a workplace protection order scheme to manage workplace violence risks, similar to other jurisdictions, and consulted on the proposed laws until 17 July 2026.

New Code of Practice approved

Tasmania has approved Managing the risk of fatigue at work, which mirrors the Safe Work Australia model Code. It took effect in Tasmania in January 2026.

Northern Territory

Regulations amended in Northern Territory

The Northern Territory has made the *Work Health and Safety (National Uniform Legislation) Amendment Regulations 2026* which changes the trigger point at which construction work is deemed a "construction project" (for which principal contractors will be subject to additional safety duties) from $500,000 to $1 million. The change commenced on 28 May 2026 (however the previous trigger will apply to any construction projects that were already commenced on this date).

The Northern Territory has also made the *Electrical Safety Amendment Regulations 2026* which simplifies and defers new regulatory requirements for safety switches. From 1 December 2028, a person must not perform electrical work on an electrical installation in a domestic residence or residential premises that does not have a safety switch, except in limited circumstances. The range of electrical safety offences subject to on-the-spot fines has also been expanded.

WorkSafe NT approves new WHS Codes

WorkSafe NT has approved three new WHS Codes of Practice, which are based on the national Model WHS Codes:

- Healthcare and social assistance industry
- Managing risks of respirable crystalline silica in the workplace
- Managing the risk of fatigue at work

WorkSafe NT has also amended the following WHS Codes of Practice to incorporate changes made to the national Model WHS Codes:

- Confined spaces
- Construction work
- How to manage work health and safety risks
- Managing noise and preventing hearing loss at work
- Managing the risks of plant in the workplace
- Managing the work environment and facilities
- Safe design of structures

Approved Codes of Practice are available on NT WorkSafe's website here.

Significant cases

National

Facial recognition technology permitted for safety purposes

The Administrative Review Tribunal has found that Bunnings' use of facial recognition technology (**FRT**) served a legitimate work health and safety function by addressing frequent risks of theft, aggression, and violence in its stores, including incidents involving weapons, and accordingly did not breach the requirements of privacy legislation. It accepted that FRT operates as a proactive safety control by identifying known high-risk individuals upon entry, allowing staff to respond early and avoid more dangerous, reactive confrontations. While it was also determined that Bunnings had committed other privacy breaches regarding the implementation of the FRT, such as a lack of reasonable policies and lack of adequate notification to customers, the tribunal concluded that use of the technology itself was permissible, finding that:

- Use of the technology was reasonably necessary to reduce serious threats to the health and safety of workers and customers.
- The benefits of the technology – such as improved staff sense of safety and the prevention of potentially serious incidents – were proportionate to its limited and targeted use.

Record fine imposed after fatal truck crash

Cleanaway Operations Pty Ltd has been fined a record $1.1 million under the *Work Health and Safety Act 2011* (Cth) following a fatal 2014 freeway crash in South Australia. The company was convicted of two category-2 breaches after an inadequately trained and unsupervised driver lost control of a vacuum truck, resulting in two deaths and multiple serious injuries. The Court found that Cleanaway failed to implement safe systems of work, including appropriate training and supervision for inexperienced drivers, exposing both the worker and the public to significant risk. The fine is the highest fine ever imposed under the Commonwealth work health and safety legislation.

The sentencing decision followed the High Court's decision in March 2026 to refuse Cleanaway's application for special leave to appeal its two convictions (which were upheld by the Court of Appeal), with the High Court stating that there was reason to doubt the correctness of the decision of the Court of Appeal.

New Zealand

New Zealand High Court upholds landmark officer conviction

On 31 March 2026, the High Court of New Zealand dismissed the appeal of Anthony Gibson, the former CEO of Ports of Auckland Limited, and upheld his conviction and sentence by the District Court of Auckland for failing to exercise due diligence as an officer under the *Health and Safety at Work Act 2015* (NZ).

Please see our blog post here for a summary of the case and its implications for officers.

New South Wales

PCBU found guilty in ruling on WHS control

The NSW IRC has found Boral Cement Limited (**Boral**) failed to meet its WHS duties following an incident that resulted from defective maintenance work performed on a conveyor elevator by specialist subcontractors engaged by Boral. Boral did not have any expertise in relation to the work. The defective maintenance work occurred when the work process for undertaking the maintenance significantly changed (and Boral was aware that it had changed), and the safety risks arising from the new work method were not adequately identified or assessed by the subcontractor. Boral was found to have breached its safety duties by failing to ensure that its own safety procedures (which the subcontractor was contractually required to follow) were adhered to by the subcontractor, being that once the work process changed, work had to stop, a risk assessment performed, and a new SWMS created if that was necessary.

Please see Annexure A for a detailed summary of this case.

NSW Industrial Commission upholds SafeWork NSW's decision to issue Notices

A Government Department (**Department**) sought an external review by the Industrial Relations Commission (**the Commission**) under section 229 of the *Work Health and Safety Act 2011* (NSW) (**the WHS Act**) of two section 155 Notices (**the Notices**) issued in relation to psychosocial hazards, being the Department's system of work for managing conduct and performance being inadequate. The Notices were upheld by the IRC.

PCBU found guilty of traffic management breaches

Following a defended hearing, the NSW District Court found ANJ Container Services & Bond Stores Pty Ltd (**ANJ**) guilty of breaches of the WHS Act as a result of failing to implement a safe traffic management system, leading to a fatal collision between a pedestrian and mobile plant. ANJ's key argument raised in its defence was that the Court could not exclude the reasonable possibility that it was the impairment of the worker and/or the misconduct of the driver of the mobile plant, that were the actual causes of the worker being exposed to the risk, such, that the chain of causation was broken, and the proposed control measures would not have prevented the incident.

The Court rejected those arguments and found that ANJ failed to clearly communicate or enforce right-of-way rules, provide adequate inductions, ensure effective separation of pedestrians and vehicles or implement appropriate traffic management (e.g. due to poor line markings and poor lighting) exposing site users to serious danger. The court emphasised that these omissions (rather than individual actions) substantially contributed to the risk, highlighting the critical importance of clear, well-designed traffic controls and communication in managing mobile plant hazards.

PCBU and Director found guilty following fatal skydiving incident

The NSW District Court found Goulburn Flight Training Centre Pty Ltd (**GFTC**) and its director guilty of breaching their duties under the WHS Act following two fatal skydiving incidents.

The Court found that the aircraft had been fitted with a step that had not been approved by an engineer, and GFTC failed to prevent the aircraft from being used until that approval was obtained. Further, GFTC failed to adequately implement and communicate mandatory buddy-check requirements and other safety updates, which existed on paper but were not effectively enforced in practice. The engineering order was contended to be relevant to causation. The Court held that these failures were a substantial and significant cause of the skydivers being exposed to risk of death or serious injury.

The parties were later sentenced .They were both convicted and fined. The company was fined a total of $800,000 and the director a total of $200,000.

Mining company guilty of multiple breaches, including gross negligence

Young Mining Company Pty Ltd (**YMC**) has been found guilty following a defended hearing of a Category 1 offence under the *Work Health and Safety Act 2011* after a worker was seriously injured when he fell into an unguarded chute at its Thuddungra Mine in 2021.

The NSW District Court held that YMC engaged in gross negligence by allowing critical equipment to fall into disrepair, failing to implement key safety systems, and ignoring known risks. The court found the company prioritised production spending over essential safety measures, despite repeated requests for funding to address hazards.

Managing director Aditya Jhunjhunwala was also found guilty of failing to exercise due diligence, as he did not ensure proper safety systems, resources, or oversight were in place.

In a separate but related finding, the Court ruled that YMC also did not take reasonable steps to comply with formal notices requiring the production of information, instead delaying responses and failing to make adequate enquiries. While the regulator was noted to have taken a strict approach, the Court found YMC chose to prioritise its own interests over compliance obligations.

In a third set of proceedings, YMC was also found guilty of another category 2 breach of the *Work Health and Safety Act 2011* (NSW). The charges involved an August 2021 incident on an unsafe machine at YMC's Thuddungra Mine. The Court found the company failed to implement and enforce safe systems for cleaning mobile plant, exposing workers to significant risk.

The NSW Industrial Court held that YMC failed to implement and enforce adequate risk assessments and safe work procedures, particularly the requirement to isolate machinery before cleaning, exposing workers to significant risk of harm.

YMC's sole director Aditya Jhunjhunwala was also charged over the incident for breaching his duties as an officer under section 27 in failing to take steps to ensure YMC complied with its section 19 duty. The District Court acquitted the director, striking out several measures the Regulator alleged he should have taken because those pleaded measures did not meet *Kirk* requirements, failing to clearly specify the actions he should have taken to meet his due diligence obligations.

Industrial Court rejects joint WHS prosecution trial

The NSW Industrial Court has rejected SafeWork NSW's application for the Court to combine a WHS prosecution trial. Whilst the Court accepted SafeWork NSW's submission that running two trials would require more resources, and inconvenience witnesses, this was outweighed by other factors disadvantaging the two companies. Ultimately, Justice Paingakulam found "the real difficulty" with this scenario was that 10 days had been set for the November hearing and this was an "unrealistic" amount of time in which to finalise both matters. This created "the very real possibility that on the first day of the hearing all parties would advise the Court that the matter cannot be completed within that timeframe", she said.

Supreme Court upholds $1.2 million fine in appeal

Pincott Holdings Pty Ltd (**Pincott**) has failed in its Supreme Court appeal against a $1.2 million fine imposed following a fatal 2021 truck crash. Pincott argued that the course of justice in the Local Court matter was perverted because a senior police constable threatened and intimidated its director outside the court room while his wife was giving evidence on the chain-of-responsibility document's authenticity. Justice Paul McGuire found there was no interference with the administration of justice, no procedural unfairness, and no realistic prospect that any additional evidence from the director would have changed the verdict. The Court held that the prosecution's case was supported by substantial documentary evidence and undisputed facts, confirming the original finding of guilt and reinforcing the importance of ensuring workers are medically fit to undertake safety-critical driving duties.

NSW Court of Criminal Appeal rejects limitation defence in silica exposure prosecution

The NSW Court of Criminal Appeal has dismissed Deemah Stone Pty Ltd's attempt to quash WHS charges, ruling that its alleged failures to protect workers from respirable crystalline silica during a 2022 inspection were distinct from earlier issues identified in 2019 and therefore not time-barred. The Court determined that accepting Deemah's "continuing offence" argument would undermine the protective purpose of the Work Health and Safety Act 2011 by potentially shielding employers who mislead regulators or persist in unsafe practices from prosecution. It held that separate and repeat failures to meet WHS duties can constitute new offences, even where risks overlap, and confirmed that SafeWork NSW had commenced proceedings within the applicable limitation period.

NSW Industrial Court imposes heavy fine and calls for stronger medical evidence

The NSW Industrial Court has fined Steel-Line Garage Doors Pty Ltd $450,000 after a young worker was seriously injured when struck by a forklift in its Newcastle facility, in circumstances the Court described as presenting an obvious and highly foreseeable risk of injury.

The company pleaded guilty to a Category 2 breach of the *Work Health and Safety Act 2011*, following an incident that caused severe physical injuries and long-term impacts for the 18-year-old worker. While

Acting Justice Geoffrey Bellew accepted the incident was life-changing, he criticised the prosecution for failing to provide detailed medical evidence to properly substantiate the extent of physical and psychological harm, noting such evidence is critical in assessing penalty and seriousness. Despite this, the Court found the company's culpability significant and imposed a substantial fine, while giving some weight to its prior good record, early guilty plea and post-incident safety improvements.

Medical gas contractor jailed and fined for taking WHS shortcut

The NSW District Court has sentenced medical gas contractor Christopher Laurie Turner to nearly three years' imprisonment after finding his failure to perform mandatory equipment testing led to the death of a patient and and catastrophic brain damage to another.

The Court held that Turner falsely certified gas tests he did not conduct after a nitrous oxide line was mistakenly connected to an oxygen outlet at Bankstown-Lidcombe Hospital, a failure that could have been prevented by minutes of basic testing. The Court emphasised the importance of general deterrence and denunciation, describing Turner's conduct as a grave departure from reasonable care involving an obvious risk of death or serious harm. Turner pleaded guilty to manslaughter by criminal negligence and grievous bodily harm, received a custodial sentence with a non-parole period, and was placed on the Child Protection Register, underscoring the severe consequences of taking WHS shortcuts.

PCBU convicted for failing to spot major risk

A PCBU, Painting and Blasting Industries Pty Ltd, has been convicted and fined after the NSW Industrial Court found it was "unfathomable" that both the PCBU and its safety consultant failed to identify and control the well-known hazard of unguarded moving plant, which resulted in a worker suffering severe injuries after falling into a conveyor.

The court emphasised that relying on existing safety systems or external advice did not excuse the failure to manage a fundamental risk, highlighting the importance of systematically identifying hazards and implementing engineering controls to prevent access to dangerous machinery.

Justice Paingakulam found an appropriate penalty was $320,000, before reducing this by 25 per cent to reflect the PCBU's guilty plea, and further reducing it to $120,000 to reflect its capacity to pay.

PCBU guilty after failing to enforce safety rules

EJ&D Hammond Pty Ltd has been found guilty of a Category 2 breach of the *Work Health and Safety Act 2011* (following a not guilty plea) in relation to an incident where a worker was injured when an unshored trench collapsed during sewer works in Port Macquarie.

The NSW Industrial Court held that the PCBU knew workers were repeatedly entering the trench without shoring and failed to specifically prohibit them from doing so, despite being aware of the risk and the availability of effective control measures such as shoring boxes. The Court found that this failure was a significant and substantial cause of the workers' exposure to the risk of serious injury, noting that PCBUs must anticipate and guard against foreseeable worker inadvertence.

The company was later sentenced where it was convicted and fined $25,000, after the Court acknowledged that the window in which the workers were exposed to the risk was very brief.

Builder convicted of Category-1 offence over fall from height risk

Acon Projects Pty Ltd has been convicted and fined $480,000 (following a guilty plea) for a category-1 (gross negligence) WHS prosecution after exposing workers to an obvious fall-from-height risk at a residential construction site. The Court found the company failed to implement basic safety measures, despite the risk being well known and easily controlled, and that the company's safety practices were verbal, informal and ad hoc. The company's director was also convicted of a category 2 breach of the officer due diligence obligation and fined $20,000 (following a guilty plea).

Queensland

Record penalty imposed for industrial manslaughter

A subsidiary of Mastermyne Group Ltd, Mastermyne Crinum Operations Pty Ltd (**Mastermyne**), was convicted of industrial manslaughter and sentenced to a fine of $7 million, together with a recorded conviction and an order to pay approximately $300,000 in costs.

The maximum penalty available to the Court was approximately $13.79 million. Notably, this fine is $4 million higher than the previous record high work-related manslaughter fines. It is also the first charge of industrial manslaughter brought under Queensland's safety and health laws for mines.

Please see Annexure C for a detailed summary of this case.

Mining company acquitted of safety charges on appeal

A mining company has been formally acquitted on appeal of workplace safety charges arising from a 2019 mine incident that killed one worker and injured others. The case centred on a grader with a defective parking brake that rolled and struck a personnel vehicle. While an initial ruling found the mining company responsible for causing bodily harm due to inadequate maintenance, this conviction was later overturned by the Queensland Industrial Court due to a miscarriage of justice. The court accepted that a design flaw in the brake system, which was known to the manufacturer but not disclosed, may have limited the mining company's ability to detect the defect. After the matter was retried and prosecutors chose not to present evidence, a not guilty verdict was entered, leading to the final acquittal.

Construction company's appeal dismissed

A construction company has failed in its appeal against a conviction arising from a 2020 incident in which a worker was struck by a grader and seriously injured. The District Court found that while the company had appropriate safety procedures in place, it failed to properly enforce and supervise them. The company argued that certain control measures outlined in its own safety systems were not reasonably practicable, but the District Court rejected this as "illogical," noting that measures identified in its own policies are presumed to be practicable. The court upheld that the company's failure to implement key controls, particularly supervision and the use of spotters, exposed workers to risk, and confirmed the original penalty.

WHS conviction upheld in unsafe set-up saga

Kat Concrete Pumping Pty Ltd (**Kat**) has unsuccessfully appealed its WHS conviction, with the Court finding it should have expressly prohibited its workers from setting up and operating high-risk equipment on "suspect ground". While Queensland District Court Judge Sarah Farnden found that the Magistrate had made several factual and legal errors in the original decision, she determined that the evidence nonetheless supported a finding of guilt. The Judge found that workers were exposed to foreseeable risks because the equipment was set up on ground that may not have been capable of safely supporting its weight. The Judge concluded that Kat had breached its WHS duties by failing to adequately manage known ground stability risks and upheld the conviction, $80,000 fine and associated costs.

South Australia

Fatality conviction overturned despite identifiable crush risk

Dial A Tow Australia Pty Ltd (**DAT**) successfully quashed its WHS conviction over a 2018 fatality involving a crush zone on a modified tow truck, with the South Australian Employment Tribunal (**SAET**) finding the prosecution had not proved the specific charge beyond reasonable doubt. While the Full Bench accepted that DAT, given its industry expertise, knew or should have known about the risk of serious injury or death and ought to have sought expert advice to address it, there was insufficient evidence that the control measure alleged by the regulator (a pressure sensor) would have been identified, effective, or implemented as a result of obtaining that advice. As a result, the Tribunal set aside the conviction. However, the Tribunal emphasised that DAT had an obligation to more proactively assess and manage the evident hazard.

Non-for-profit convicted after breaching incident notification obligations

Minda Incorporated (**Minda**), a not-for-profit disability support company, has plead guilty to breaching the incident notification obligations under the WHS Act after failing to notify the death of resident at a Minda facility until six days after the incident occurred. Minda unsuccessfully argued that a conviction should not be recorded for the breach, on the basis that the offending was of a minor regulatory nature, and there were no other alleged failings in relation to the Incident. The SAET however determined that a conviction would be recorded due to the public interest in doing so and to deter others from breaching the incident notification obligations. The case demonstrates the willingness of the regulator and Court to strictly enforce compliance with the incident notification duties. A building company in South Australia was also recently prosecuted, convicted and fined (after pleading guilty) for failing to comply with and display a prohibition notice that was issued in relation to scaffolding.

Four entities charged with WHS manslaughter

Two company directors have been charged, along with their companies, with industrial manslaughter following an incident resulting in the death of a 28-year-old worker. This is South Australia's first industrial manslaughter case. The charges allege that the worker was operating a milling machine when he was struck in the head by a metal object ejected from the machine, after an interlock guarding switch designed to prevent this from occurring had been disabled and/or bypassed. The charges further allege that two days before the fatality, an external technician raised safety concerns about the guarding switch. The industrial manslaughter offence in South Australia carries a maximum penalty of $18 million for bodies corporate, and 20 years in prison for individuals. A project manager has also been charged with a Category 1 offence in relation to the incident.

Victoria

Record fine imposed on bakery for manslaughter

A bakery has been convicted and fined $3.4 million after pleading guilty to a breach of Victoria's workplace manslaughter laws.

The bakery was prosecuted following a fatal incident where a worker fell from a height of about four metres to the ground while removing large insulation panels in a roof as part of ceiling upgrade work at the company's warehouse.

Through its guilty plea, the company acknowledged that it was reasonably practicable to have reduced the risk of serious injury or death by using an independent scaffold system such as a birdcage scaffold.

In sentencing, the Court noted that while the offending did not involve a blatant disregard for safety, the offender failed in any real way to control the risk and did not give adequate regard to the safety of workers

This is the second prosecution brought under Victoria's workplace manslaughter laws since they were introduced in 2020 and the highest penalty imposed for a single offence under Victoria's workplace health and safety laws.

Privilege upheld but waived for safety risk reports in construction dispute

In *Wadren v Probuild (Privilege)* [2026] VSC 94, the Victorian Supreme Court confirmed (as part of consideration of a building dispute) that expert reports commissioned by a plaintiff regarding health and safety risks can attract legal professional privilege where commissioned by lawyers for the dominant purpose of providing legal advice, including provision of legal advice in relation to potential action from a safety regulator. However, the Court found that privilege over the expert reports in the dispute was waived, because other reports from the same experts (prepared in the same time period and regarding the same substantive topics) had been produced and relied upon by the plaintiff (including in their statement of claim). The Court held that it was inconsistent with maintenance of privilege for the plaintiffs to selectively rely on some reports produced by the experts but maintain privilege over other reports from the same experts in relation to the same issues.

Enforceable undertaking accepted following roof collapse

WorkSafe Victoria has accepted an enforceable undertaking from ADCO Group Pty Ltd (**ADCO**) in lieu of prosecution following an incident where a partially constructed steel roof collapsed on a building site. ADCO (the builder and principal contractor for the project) was charged with allegedly failing to ensure quality assurance documents for the steel trusses (which were fabricated in China) were properly reviewed by a competent person before erection, exposing workers and others to the risk of serious injury or death. Under the $850,000 undertaking, ADCO will fund new industry guidance and training aimed at closing the gap between standards and practice in structural steel procurement, reinforcing the importance of robust quality assurance systems when using imported building products.

WorkSafe Victoria completes 137 prosecutions and EUs in 2025

In 2025, WorkSafe Victoria secured $17.39 million in fines, costs and enforceable undertakings for breaches of workplace health and safety and dangerous goods laws, including a record $3 million workplace manslaughter fine on appeal. Construction accounted for the largest share of prosecutions, followed by manufacturing and transport, with falls from height the most common offence type. Of the 137 successful prosecutions, 17 involved worker deaths and many others resulted in life-changing injuries. WorkSafe stated that it also pursued stronger penalties through appeals and took action on psychological harm, signalling continued tough enforcement targeting high-risk industries and preventable hazards.

PCBU charged following patient suicide at hospital

Melbourne Health has been charged with two breaches of the *Occupational Health and Safety Act 2004* (Vic) following the suicide of a patient at the Royal Melbourne Hospital in June 2024. The charges relate to alleged failures to ensure the safety of non-employees and to maintain a safe workplace under its control. The prosecution follows a previous conviction involving similar circumstances, and the matter is listed for hearing in the Melbourne Magistrates' Court.

Western Australia

Record fine imposed for fatality

A construction company has been fined a record $1.75 million (and ordered to pay $2661 in costs) over the death of a worker who was struck by a falling structural steel column from a crane, after a lifting device failed. This is the highest fine ever imposed under Western Australia's WHS laws. The failed lifting device was non-proprietary, was not compliant with the Lifting Standard and was not rated or marked with its working load limit. In addition, there were no records on how long it was used for, where it was sourced from, who manufactured it, if it was ever inspected or tested or its rated capacity. The court heard that the company's directors were aware that the device was not rated or compliant but did not remove it from use.

Australian Capital Territory

PCBU acquitted of notification breach for suspected sexual assault

The ACT Magistrates Court has found a company not guilty of breaching its notification duties after it did not report an allegation of sexual assault.

Since June 2023, employers in the Australian Capital Territory have been required to immediately report actual or suspected incidents of workplace sexual assault to WorkSafe ACT. Other jurisdictions in Australia are expected to introduce similar obligations in 2026, after Safe Work Australia introduced new incident reporting obligations to the model WHS laws in 2025.

This case concerned an allegation made by a worker that a co-worker had touched her breasts. The worker told her manager that her co-worker had brushed passed her breasts, and that she told him to step back as he was in her personal space. The allegation was made after the worker had been told her employment was being terminated for poor performance, due to allegedly missing shifts and sleeping during shifts.

In deciding the case, the Court agreed with the prosecution that a company cannot delay notification of actual or suspected workplace sexual assault while it conducts an investigation, as the notification obligation requires immediate notification in a timely manner.

However, the Court rejected the prosecution's argument that every allegation of sexual assault requires notification, and stated that the relevant question is whether, as a result of an allegation, the PCBU had a "*positive feeling of actual apprehension that a worker or other person had been exposed to sexual assault*", which the prosecution must establish beyond reasonable doubt.

The Court stated the mere fact that an allegation has been made will not necessarily lead to the PCBU forming the relevant suspicion. The Court gave an example that it may be that an allegation is untrue because the two people allegedly involved in the sexual assault incident were known by the PCBU to be in different places at the relevant time.

The Court found that there was a distinct lack of clarity in the case as to what the worker had alleged in her complaint (i.e. it was unclear if the worker was alleging that her breasts were deliberately touched), and therefore how the complaint was understood by her managers. Further, the circumstances in which the complaint was raised made it likely that the managers considered any allegation of deliberate touching was without merit.

Ultimately, the Court determined that it was not satisfied beyond reasonable doubt that the managers suspected that the worker's breasts had been deliberately touched, and the case was dismissed.

PCBU and Director found guilty over excavator exclusion-zone breach

The ACT Magistrates Court has found both a PCBU and its director guilty of WHS breaches following an incident where a worker's toe was struck by an excavator bucket (and later amputated) after the bucket was lowered whilst the worker was standing next to it. After analysing the witness evidence given during the trial, the Court found that the director, who was operating the excavator at the time of the incident, had made a deliberate decision to lower the bucket whilst aware that the worker was standing in the immediate vicinity of the machine. The Court relied primarily on the evidence of another worker, who said he was advised by the director following the incident that the worker had approached him wanting concrete, so he stopped the excavator and lowered the bucket to ensure he could access it. The decision reinforces that exclusion zones around mobile plant must be strictly enforced.

Northern Territory

NT Health charged for patient death

NT WorkSafe has charged NT Health with three category-2 breaches of the *Work Health and Safety (National Uniform Legislation) Act 2011* (NT) following the death of a patient at Royal Darwin Hospital in January 2022. It is alleged that, despite known risks of self-harm and volatile substance abuse, the patient was able to access and inhale a can of deodorant within the facility, resulting in fatal injuries. An alternative category-3 charge has also been laid, with potential penalties of up to $4.5 million if the more serious offences are proven. The matter is currently before the Darwin Local Court.

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Annexure A – Case Summary – SafeWork NSW v Boral Cement Limited

On 8 April 2026, the District Court of New South Wales found Boral Cement Limited guilty of a Category 2 offence under s 32 of the *Work Health and Safety Act 2011* (NSW) (**the WHS Act**) for failing to ensure, so far as is reasonably practicable, the health and safety of workers.

The prosecution arose from an incident that occurred on 13 February 2022, when work was being done on the conveyor belt of a bucket elevator, known as EL13. The conveyor belt went into free run, over sped and a fluid coupling exploded. A worker suffered severe injuries when he was struck by metal from the exploding coupling.

The District Court of NSW found that the incident happened after a work method was altered by a specialist contractor, and held that Boral should have, but failed to, follow its own documented safety processes to address the changes in its operations.

Incident

On 13 February 2022, work was being carried out on the conveyor belt of a bucket elevator known as EL13 at the Boral Cement Facility at New Berrima. Boral had engaged Nepean Engineering and Innovation Pty Ltd (**Nepean**) to perform the belt replacement, Fenner Dunlop Australia Pty Ltd (**Fenner**) to splice the new belt, and Beumer Group Australia Pty Ltd (**Beumer**), the original equipment manufacturer, to provide expert advice through Mr Jagdeep Singh Gill.

As part of the maintenance, the conveyor belt on the bucket elevator EL13 was scheduled to be replaced as well as some of the buckets. The EL13 was a large seven-storey structure forming part of a preheater tower. The conveyor belt comprised a continuous loop running from a top pulley on level 7 to a tail pulley at ground level, with 244 buckets (each weighting 29 kgs) attached to it.

The original plan was for the crane to lift out the old belt with all buckets attached and to lift the new belt with all buckets pre-assembled back into the elevator chute. Beumer endorsed this method as one which had been used successfully in the past. Mr Davis of Boral created a WhatsApp group so that there could be communication with Mr Gill, who was in Victoria and unable to travel to New Berrima because of COVID restrictions. The WhatsApp group included Mr Davis, Mr Jansen and Mr Patterson (from Nepean), Mr Bennett (Fenner), and Mr Gill (Beumer). Technical drawings, instructions and photographs were exchanged in the WhatsApp group, including the method of mounting the buckets to the new belt.

On 9 February 2022, the crane was unable to lift the old belt with all of the buckets on it, because the crane did not have sufficient reach to get the two tail ends of the belt out of the casing. On 12 February 2022, a long fly jib was installed to extend the lifting height, which reduced the lifting capacity. The crane operator informed Mr Patterson that there needed to be a reduction in the weight to be lifted, and Mr Patterson informed the Nepean work crew that they would need to remove buckets from the new belt. No one informed Mr Gill (the expert adviser from the manufacturer) of the decision to undertake the lift with only half the buckets on the belt.

On 13 February 2022, the lift of the new belt took place at around 11am. Mr Davis became aware that the Nepean work crew had removed buckets from the tail ends of the new belt, prior to the new belt being lifted in by the crane. He saw the belt still lying on the ground, and the tails of the belt did not have buckets on them. Approximately one hour before the lift, Mr Gill said that some photographs before the lift would be good for him to see any issues. Mr Davis sent photographs which showed only part of the belt (the part with buckets uniformly attached) and did not extend to show the ends where there were no buckets. The impression must have been given to Mr Gill that the lift was being done in accordance with Beumer's original method, which required every bucket to be attached.

When the new belt was installed, all of the buckets which were attached were clustered around the head pulley, equally spaced on both sides of it, rather than spaced evenly around the belt so that the masses on both sides were equal. When the auxiliary motor was turned on, the mass on the descending side exceeded the mass on the ascending side and the belt started free running out of control through gravity. The energy in the fast-rotating head pulley fed back into the gearbox and rotated the fluid coupling at a speed many times more than its designated safe operating limit. The fluid coupling exploded, sending shrapnel in the direction of the workers who were attempting to escape from Level 7. Mr Bennett, a worker engaged by Fenner, was struck by exploding metal and suffered serious injuries.

Charge

Boral was charged with a Category 2 offence under s 32 of the WHS Act, which requires proof that the defendant had a health and safety duty, failed to comply with that duty, and that the failure exposed an individual to a risk of death or serious injury or illness. SafeWork NSW alleged that Boral, as a person conducting a business or undertaking (**PCBU**), breached its primary duty of care under s 19(1) by failing to take reasonably practicable measures to eliminate or minimise the risk.

The elements of the offence charged were:

1. The defendant was a PCBU;
2. The defendant owed the workers a duty under s19(1) of the Act;
3. The defendant failed to comply with that duty; and
4. The failure exposed the workers to a risk of death or serious injury.

Elements 1 and 2 were admitted by Boral and thus were not considered by the Court.

Key legal issues considered

Reliance upon a Specialist Contractor

A key issue in the proceedings was determining to what extent Boral, as a PCBU, could rely upon the specialist contractors it had engaged (namely, Nepean, Fenner and Beumer) to manage safety on the EL13 maintenance project.

The Court extracted a series of principles from several cases, including (in summary):

1. A PCBU must take reasonable care to ensure safety, including when engaging contractors;
2. A PCBU may rely on a competent contractor's expertise, particularly where the work is outside the PCBU's own expertise;
3. What is reasonably practicable depends on the facts of each case, including the level of control exercised by the PCBU; and
4. Reliance on a contractor must be reasonable and based on appropriate inquiries and assurances, not mere assumption.
5. The Court noted that s 16 of the WHS Act provides that more than one person can have a duty and each duty holder must comply with that duty to the standard required by the Act, even if another duty holder has the same duty.

Agency under s244 of the WHS Act

SafeWork NSW submitted that both Nepean and Fenner were agents of Boral, within the meaning of s 244 of the WHS Act, and thus Boral was liable for the failures of the two contractors. Boral submitted that the contractual relationship was not a labour hire arrangement and was not one in which Fenner and Nepean were acting as agents of Boral. An agency relationship involves the appointment of a person or entity to act on behalf of another, known as the principal, in dealings with third parties. The Court accepted Boral's submissions, finding there was no evidence that Boral assented to either contractor acting on its behalf to affect Boral's legal relations with third parties.

Reasonably practicable

The Court applied the definition in s 18 of the WHS Act, requiring it to weigh up the likelihood of the risk, the degree of harm, what Boral knew or ought to have known, the availability of ways to eliminate or minimise the risk, and cost. The Court accepted Boral's submission that breach must be assessed prospectively and not through "the prism of hindsight".

Findings

Element 3 – Whether Boral failed to comply with the health and safety duty

The Court was satisfied beyond reasonable doubt that Boral failed to comply with its health and safety duty.

The Court found that Boral had a significant degree of control over how Nepean carried out the work. The contract by which Boral engaged Nepean, and the Boral safety documentation, both required Nepean to follow documented Boral safety procedures and any reasonable directions from Boral. The Court rejected the notion advanced by Mr Davis that once Nepean commenced its work, it was entirely responsible for safety issues. Boral did not necessarily have to form its own judgment as to whether the unbalanced belt posed a hazard. Indeed, all it had to do was follow its own documented processes, the Codes of Practice and the WHS Regulation. Simply put, if there was a change in the work process, work had to stop, a risk assessment had to be performed and a new SWMS created.

The Court found that SafeWork had established the following:

1. Boral should have taken steps to confirm that Nepean was providing a safe system of work which involved the buckets being mounted and distributed evenly on the belt so that the belt was in balance;

2. Boral should have made enquiries to confirm Nepean and/or Fenner were following the Beumer installation instructions;

3. Boral should have confirmed that the conveyor belt was in balance before removing, or permitting the removal of, the isolation locks for EL13;

4. Boral should have taken steps to confirm that chain blocks were being used to control the conveyor belt as it was rotated to prevent free running;

5. Boral should have implemented and enforced its own requirement that where a change in work process is identified, work is stopped, an updated risk assessment is conducted, and appropriate control measures are implemented; and

6. Boral should have consulted with Mr Gill or confirmed that Nepean had done so, regarding the changed methodology.

While the three other measures alleged by SafeWork were rejected as hindsight reasoning, the Court was satisfied beyond reasonable doubt that Boral failed to comply with its health and safety duty.

Element 4 – Whether the breach of duty exposed workers to a risk of death or serious injury

The Court was satisfied beyond reasonable doubt that the breach of safety duty by Boral exposed workers to a risk of death or serious injury.

The Court found that Boral's failure to take reasonably practicable steps exposed workers to a significant risk to their health and safety. Given that Boral knew, or ought to have known, of the risk and that simple measures were available to mitigate it, its breach of duty was a substantial contributing factor to that risk.

The Court held that had Boral stopped work, undertaken a proper risk assessment, and implemented a revised SWMS, the risk could have been eliminated. Despite concurrent duties owed by other parties, Boral remained responsible for ensuring safety.

Accordingly, Boral's failure to follow its own safety procedures was a significant cause of the workers' exposure to risk, leading the Court to conclude that Boral breached its primary duty and committed a Category 2 offence.

Boral is yet to be sentenced.

Practical learnings

Effective change management, performing risk assessments arising from a change in methodology, and following existing prescribed systems is the key learning from this incident. However, those learnings seem trite in the context of complex work, specialist service providers, multiple different parties involvement, and fast moving activities. Set out below are some observations which we trust are helpful.

Contractual arrangements with specialist contractors

The Court found that Boral had a significant degree of control over how Nepean carried out the work, due to the terms of their contract.

When engaging specialist contractors, principals need to have a clear understanding of the principal's residual responsibilities and whether these responsibilities are what the parties intend.

If the principal is not intended to have a significant degree of control in relation to the way the specialist contractor is conducting its work, then when drafting contractual arrangements with specialist contractors, principals can consider:

- Qualifying requirements to follow the principal's processes and policies, so as not to inadvertently assume operational control that attracts a duty to actively supervise compliance;
- Liming the scope of "reasonable directions" clauses;
- Clearly defining the principal's role as not supervisory or decision-making regarding the contractor's work methods irrespective of being provided with explanatory documentation;
- Imposing notification obligations on the contractor to identify and notify the principal of defined high-risk matters, rather than relying on the principal to detect them through observation; and
- Developing a governance framework or interface agreement which identifies trigger events (such as change in work process), and prescribes the actions, responsibilities and communication methods to be followed.

Site observation

Mr Davis observed the belt on the ground with buckets removed and watched the belt being lifted into the chute with buckets clustered around the head pulley. The Court found that he "knew, or ought reasonably to have known" of the unbalanced state of the belt.

Again, depending on the role the principal intends to have and has the competency to fulfil, to mitigate the risk of liability of this type arising, principals can carefully define the scope and purpose of site walks and observation of contractor's tasks, such that the completion of it can be clearly recorded, and a broader scope which involves understanding the contractor's work cannot be imputed to the Principal.

WhatsApp groups

The Court relied on the communications on the WhatsApp group created by Mr Davis, including which technical drawings, photographs and instructions were exchanged. Mr Davis's participation was treated as evidence that he was "monitoring the E13 work". The photographs he sent gave Mr Gill the impression the lift was being done in accordance with the approved method, when it was not.

Principals should exercise caution before creating and participating in WhatsApp groups or other informal communication channels, where an enormous amount of technical information may be exchanged. It is important to clearly define the purpose and role of each participant at the outset, and recognise that information posted to such groups may be treated as knowledge imputed to all participants, including warnings that may not have been carefully considered.

SafeWork NSW v Boral Cement Limited (No. 2)

Annexure B – Case Summary – improvement notices upheld by the IRC

Introduction

A Government Department (**Department**) sought an external review by the Industrial Relations Commission (**the Commission**) under section 229 of the *Work Health and Safety Act 2011* (NSW) (**the WHS Act**) of two section 155 Notices (**the Notices**) issued by an Inspector of SafeWork NSW in early 2024. The Department argued that the Notices should be revoked or set aside.

The Notices

It is relevant to firstly outline the Notices issued by the Inspector. In both notices, the Inspector stated her belief that the Department was contravening section 19 of the WHS Act and clause 55C of the *Work Health and Safety Regulation 2017* (NSW) (**the Regulation**).

First Notice (No. 7-468009)

The alleged contravention in the First Notice was that workers may be exposed to psychosocial hazards due to the Department's system of work for managing conduct and performance being inadequate in two respects, namely:

(a) it did not ensure investigations regarding misconduct and performance were completed in a timely and expeditious manner; and

(b) it did not have a process and prescribed timeframes to provide formal, regular and documented updates on the progress of an investigation into misconduct and performance to workers while an investigation is underway.

The First Notice directed the Department to review, implement and maintain a safe system of work minimising psychological risks to the health and safety of workers while an investigation into misconduct and performance is being undertaken. This was to be undertaken by providing estimated timelines at the commencement of investigations, providing regular documented communication during investigations, consulting workers, reviewing and revising the system, and providing information, training and instruction to workers on the system of work once developed and implemented.

Second Notice (No. 7-468011)

The alleged contravention in the Second Notice was that workers were allocated alternate duties during investigations which were not commensurate with their position, duties and functions prior to the investigation, thereby exposing workers to further psychosocial risks. The Second Notice directed the Department to ensure workers placed in alternate duties were assigned duties commensurate with their prior position, to consult workers, to review and revise the system, and to provide information and training.

Factual background

On 4 April 2023, the Department advised a longstanding employee (**Employee A**) in correspondence that she was the subject of a misconduct investigation and was to leave her place of work and not return. It informed her that she was to perform alternative duties at a location different to that where she had been working. The correspondence did not provide any particulars of the allegations beyond a general reference to her interactions with multiple staff members over several years. After receiving the letter and returning home, Employee A attempted suicide the same day. Employee A requested a review of the decision on 10 April 2023. However, a formal letter of allegations was not provided until 5 July 2023, some three months later, and it concerned misconduct allegations including breaches of procurement policy, alleged bullying behaviour, and inappropriate conduct.

The investigation continued, and Employee A was placed on alternative duties. In approximately November 2023, Employee A complained to SafeWork NSW alleging exposure to psychosocial hazards due to the length of the investigation. SafeWork's position was that Employee A's mental health deteriorated because of the delays, the lack of communication to Employee A during the investigation, and being allocated lower administrative duties at a different location whilst waiting for the investigation to be completed. As a result, Employee A suffered psychological injuries and her capacity to work was diminished.

The investigation into Employee A was ultimately concluded on 23 March 2024, with some but not all grounds of misconduct substantiated. Employee A was issued with a caution and reprimand.

Considerations

The Commission considered the Department's system of work in relation to the timeframes for investigations of misconduct allegations and the placing Employee A in alternative duties during misconduct investigations.

In relation to the time frame for investigations, the only documented system of work identified by the Commission was at clause 7.1 of the Department's Guidelines for the Management of Conduct and Performance (**the Guidelines**), that provided the process for addressing misconduct would be undertaken in a "timely and expeditious fashion". The Guidelines suggested that uncomplicated matters should generally be concluded within three months from the date of the initial allegation as received by the Secretary.

In relation to the alternate duties, the Guidelines at clause 7.3 described alternative duties and suspension as a protective measure, and not a disciplinary outcome available to a decision maker. It also stated that Employee A would be provided with reasons and invited to request reconsiderations. Workers placed on alternative duties were to continue working under the same working conditions including salary, hours and vacation periods.

The Commission considered that the Guidelines constituted the extent of any documented system of work in relation to these matters.

The Department's grounds of challenge

The Department argued that the Notices should be set aside because:

1. The Notices were invalid because the Inspector misconstrued the operative provisions of the Regulation with respect to psychosocial hazards and risks;

2. The Notices were invalid because the Inspector could not have formed the requisite reasonable belief; and

3. In the alternative to Grounds 1 or 2, the measures in the Notices were not reasonably practicable to implement.

Ground 1

The Department contended that the Inspector's interpretation of the law on psychosocial hazards and risks was flawed and thus there was not a reasonable basis to conclude that there had been a contravention of section 19 of the WHS Act and clause 55A of the Regulation. The Department further argued that the Inspector wrongly treated Employee A's individual subjective experience as evidence of a "systemic hazard".

The Commission did not accept these submissions and agreed with SafeWork's submissions that clauses 55A–55D do not create new duties but rather explain the Department's primary duty of care under section 19 to ensure psychological health so far as reasonably practicable. The Commission further held that the practical effect of the Department's submissions would be that there could never be a basis for finding that a PCBU had contravened the WHS Act and Regulation regarding psychosocial hazards if it was impossible to interpret how the two interact together. This would therefore result in an outcome contrary to the objects of the Act.

Ultimately, the Commission held that while individual workers may respond different to psychosocial hazards, the duty nonetheless remains to minimise the risk to the psychosocial hazard.

The Commission did not uphold Ground 1.

Ground 2

The Department submitted that the Inspector could not, and did not, form a reasonable belief within the meaning of section 191 of the WHS Act at the time of issuing the Notices, as the Inspector had only investigated Employee A's matter.

The Commission held, with one exception, that there was a reasonable basis for the Inspector's belief. The Commission reasoned that the information before the Inspector in relation to the investigation process of Employee A, provided a proper basis for her to form the view that section 19 and clause 55C had been and would continue to be contravened. This information not only included the Guidelines and other materials provided in response to the section 155 notice but also included a detailed analysis of the Department's system of work and a detailed timeline of the relevant events and circumstances.

The exception was that the Commission found that part of the First Notice relating to regular reporting to workers on the progress of investigations must be set aside as having been issued without authority, because the Inspector's own evidence was that she did not believe the Department's existing system of work on this point contravened the WHS Act or Regulation.

On that basis, the Commission partially upheld Ground 2.

Ground 3

The Department contended that the Commission could not be satisfied that it was reasonably practicable for the Department to implement the measures directed in the Notices. The Department relied upon a witness's evidence that it was "impossible" to set out a system of formalised regular communication and that consultation with over one million individual workers was impracticable.

The Commission did not accept this ground, noting that the witness's evidence was limited to the following points:

1. The formalised regular communication was impractical, which related to a measure that was to be set aside; and

2. consultation with all individual employees was not feasible, which overstated the legal requirement.

The Commission found that the consultation obligation under the WHS Act does not require consultation with every individual employee, particularly in large organisations such as the Department. Accordingly, there was no reasonable basis to conclude that compliance with the Notices was not reasonably practicable.

The Commission did not uphold Ground 3.

Conclusion

The Commission upheld the decision to issue the Notices, with the exception of the description of the contravention relating to the regular reporting to workers on the progress of investigations and related direction in the First Notice. The Inspector was found to have had a reasonable basis to form the view that the relevant provisions of the WHS Act and the Regulation had not been complied with in the manner identified.

Accordingly, the First Notice was varied to remove the relevant description and direction, and set aside the stay of the Notices, meaning that both Notices (as varied) were to take effect immediately.

Lessons

Importance of assessing psychosocial hazards in disciplinary investigations

The decision confirms that workplace disciplinary investigations may give rise to psychosocial hazards within the meaning of clauses 55A–55D of the Regulation. In this case, the Commission found that the Department's Guidelines

did not fully address those known hazards. In particular, the Commission identified areas for improvement including communication with the subject of the investigation, the nature of duties allocated during the investigation period, and the duration of investigations.

In this context, and where a worker is placed on alternative duties, the PCBU should assess those duties for psychosocial risks and consider whether they are appropriate and commensurate with the worker's existing role, responsibilities, and functions.

Understanding the interpretation of clauses 55A – 55D of the Regulation

The Commission confirmed that these provisions do not introduce new standalone duties on employers. Instead, the clauses explain and particularise the existing primary duty of care under section 19 of the WHS Act in respect of psychological health.

Subjective experience and reactions to a hazard do not reduce a PCBU's psychosocial risk management obligations

The fact that individual workers may respond differently to psychosocial hazards does not reduce the scope of a PCBU's obligation to manage those risks. Improvement notices that are directed at deficiencies in a system of work need not be confined to the individual case that triggered the investigation.

Adequacy of systems of work

PCBUs should ensure that they have adequate systems of work with appropriate protections against the psychological risks that may arise in investigation processes. Further, investigations should have active safeguards in place to ensure investigations are conducted in a timely manner.

Annexure C – Case Summary – The King v Mastermyne Crinum Operations Pty Ltd

Introduction

A subsidiary of Mastermyne Group Ltd, Mastermyne Crinum Operations Pty Ltd (Mastermyne), was convicted of industrial manslaughter and sentenced to a fine of $7 million, together with a recorded conviction and an order to pay approximately $300,000 in costs.

The maximum penalty available to the Court was approximately $13.79 million. Notably, this fine is $4 million higher than the previous record high work-related manslaughter fines. It is also the first charge of industrial manslaughter brought under Queensland's safety and health laws for mines.

Factual chronology

Incident

The defendant, Mastermyne, was engaged to rehabilitate an underground coal mine that had been inactive since 2015.

Mastermyne engaged geotechnical engineers who provided extensive advice about the unstable, clay-rich conditions in the mine. Their advice led to an original strata support method which included the manufacture and erection of steel sets, with mesh placed between them, and with shotcrete application over that structure, and with the cavity fill pumped with expandable foam. This method was risk-assessed and approved at a Workplace Risk Assessment and Control (WRAC) meeting held on 25 August 2021 and was utilised without incident until 10 September 2021.

Mastermyne ultimately abandoned this original strata support method and reverted to a shotcrete alone approach. They had been told by the experts that shotcrete does not bond or adhere well to clay. This change was made without any meaningful consultation with the geotechnical engineers, without a documented risk assessment, and without a proper change management process. The Court was prepared to find the decision to make the change was rushed, had already happened, lacked any consultation and was an inherently fateful one, fraught with obvious exposure of coalmine workers to unacceptable risk. There was no effort made to document the change.

On 14 September 2021, workers were working under unsupported and unstable ground, drilling standpipe holes into the shotcrete in-bye of the last set of steel sets. They were introducing water into the moisture-sensitive, clay rich overhead strata whilst doing so. The overhead shotcrete and unstable strata fell, entombing two workers. One worker was fatally injured, and the other worker was seriously injured.

The trial

Mastermyne was charged with industrial manslaughter under section 39(1)(c) of the *Coal Mining Safety and Health Act 1999* (Qld). Mastermyne pleaded not guilty and the matter proceeded to a jury trial in Emerald, QLD.

Mastermyne advanced several arguments at trial:

1. They sought to cast blame onto one of the geotechnical engineer's suggesting that he had withheld information and had failed to forewarn the defendant about the possibility of a septum failure further in-bye. The Court rejected this argument.

2. They argued that one of the geotechnical engineer's emails constituted clear advice that the shotcrete-alone method was appropriate for strata support. The Court rejected this submission and found that the advice was

predicated on the assumption that the strata was and had remained stable. This was a caveat that could not be relied upon given the relevant information the defendant had failed to share with the engineer.

3. They submitted that the successful use of shotcrete at another manhole was evidence that the method was appropriate. The Court rejected this, finding that the other manhole had a markedly different fall.

4. They argued that they had done their best in supporting the workforce generally, and had supported both the deceased worker's family and the injured worker. The Court accepted this, but did not find it amounted to genuine remorse, as they had not accepted responsibility.

5. They also asserted that the offence was "merely an aberration". The Court could not accept this assertion and found that the conduct was determined to be a serious breach involving a high degree of negligence.

The verdict

The Court accepted the jury's majority verdict on 30 March 2026, finding Mastermyne guilty. The Court was satisfied the evidence established proof beyond reasonable doubt of the disputed elements, being:

1. The defendant's conduct caused the death of the worker, and

2. The defendant's conduct was criminally negligent.

The Court found that the worker's death was avoidable, and it was the defendant's criminal negligence that contributed substantially to his death.

The Court was satisfied that there was a clear breach of the duty in section 39(1)(c) of the *Coal Mining Safety and Health Act 1999* (Qld) to take any other reasonable and necessary course of action to ensure anyone at a coalmine is not exposed to an unacceptable level of risk.

Sentence

The Court convicted the defendant and imposed a fine of $7 million (against a maximum prescribed penalty of $13,785,000). The Court further ordered that Mastermyne pay Resources Safety and Health Queensland the sum of $299,940.95 in investigation and preparation costs, with 18 months allowed for payment. A conviction was recorded.

The Court applied the sentencing principles in section 9 of the *Penalties and Sentences Act*, focusing on punishment, deterrence (both general and specific), denunciation, and recognition of the harm caused, particularly given the fatality.

Given the fatal consequences, the Court placed particular weight on community protection, the circumstances of the offence, the offender's disregard for public safety, and the presence or absence of remorse.

The Court acknowledged that the defendant was a "good corporate citizen". The Court also accepted that there were safe work practices and systems in place, but that simply highlighted and confounded the decision to change the strata support method.

Key takeaways

This is a landmark sentencing case, being the first prosecution of an employer under the industrial manslaughter provisions of the *Coal Mining Safety and Health Act 1999* (Qld). The decision also highlights that even companies with good corporate governance and safe work practices and systems can face the most serious criminal charges and sentences due to a single, poorly managed decision to depart from those safe practices.

The King v Mastermyne Crinum Operations Pty Ltd