

OFFICERS GAOLED FOR WORKPLACE SAFETY BREACHES

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The imposition of recent custodial sentences for breaches of the WHS Act and the OHS Act signals both a regulatory focus on compliance by individual directors and business owners with their personal duties and an intention that Courts will impose appropriately significant punishments on those who not discharge their duties, particularly in cases involving high degrees of recklessness.

The recent decisions, outlined below, are a timely reminder that individual office-holders and business owners must ensure that their businesses have robust safety management systems in place at all times and that those systems enable officers to discharge their personal duties.

PROSECUTION OF MULTI-RUN ROOFING AND ITS DIRECTOR - WHAT HAPPENED?

The director of a roofing company has been convicted of a reckless breach of the Queensland Work Health and Safety Act 2011 and has been sentenced to 12 months imprisonment to be suspended after 4 months in custody. This follows the death of a 62 year old roofer in 2014.

The director's company (Multi-Run Roofing) has also been fined AUD1 million.

The business was undertaking roofing works when the worker fell almost 6 metres from the roof of an industrial shed.

A Workplace Health and Safety Queensland (WHSQ) investigation identified the absence of any fall protection on or near the edge of the shed where the roofer was working and charged the company and its director with reckless conduct exposing the worker to risk of death or serious injury.

The Court heard that Multi-Run Roofing and its director could have installed safety rails, but adopted an alternative and cheaper method involving workers using two scissor lifts and a safety harness to access the roof.

The cheaper system was not in place on the day the worker fell from the roof.

RELEVANT DUTY

The WHS Act requires a person conducting a business or undertaking to ensure (so far as reasonably practicable) their workers' health and safety whilst they are undertaking work for the relevant business.

That duty includes a requirement for the provision and maintenance of safe systems and adequate facilities at workplaces to protect persons from risk of death or serious injuries.

Individual corporate officers are required to exercise due diligence to ensure that their businesses comply with the WHS Act.

PROSECUTION OF DIRECTOR IN FOSTER - WHAT HAPPENED?

The owner and operator of a scrap metal business in Foster, has been found guilty of offences against the *Victorian Occupational Health and Safety Act 2004* (OHS Act) and sentenced to 6 months' imprisonment following the death of a worker in February 2017.

The owner was also convicted of a breach of section 24 of the OHS Act, fined \$AUD10,000 and ordered to pay WorkSafe Victoria's costs.

At the time of the worker's death, the owner and the deceased were transferring scrap metal from a 1.8 metre metal bin into a larger 6 metre metal bin. The worker was standing in the smaller bin which was being lifted by a forklift operated by the owner. The worker was killed when he fell from the bin, following which the bin fell from the forklift on to him.

WorkSafe Victoria determined that the bin was not secured to or engaged with the forklift tynes; the bin was in poor condition; the tynes were not spread as wide as they could have been and the task was carried out on uneven ground.

The owner is the first person to have been sentenced to a non-suspended custodial sentence for an offence under the OHS Act.

RELEVANT DUTY

The OHS Act requires a self-employed person to ensure, so far as is reasonably practicable, that persons are not exposed to risks to their health or safety arising from the conduct of the self-employed person's undertaking.

Section 32 of the OHS Act makes it an offence for a person, without lawful excuse, to recklessly engage in conduct that places or may place another person who is at a workplace in danger of serious injury.

CONTACT

K&L Gates has an extensive full service offering in work health and safety across Australia and you can contact partners Paul Hardman, John Makris, Senior Associate Erica Elliott or Special Counsel Dominic Fleeton if you would like to discuss these cases and implications for you and your business further. You will find their contact details below.

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