



SAFETY AT WORK BULLETIN

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CONTENTS

WA	WA Police Armouries Unsafe
NSW	Human error to blame for latest ferry crash, report finds
WA	Campaign improves awareness of workers' compensation
NSW	Up to 12 treated for fume inhalation in Sydney
NSW	Major Waterfall recommendations still under review
VIC	Chemical leak causes scare at aged home
ACT	Compliance Checks on 550 ACT Businesses
NSW	RailCorp addressing bullying: chief executive
NSW	Fire extinguished at oil refinery
VIC	Collingwood safety campaign aims to prevent pain and suffering
WA	Code to manage violence, aggression and bullying released
LEGAL COMMENT: Proposed Amendments to NSW OHS Legislation - Lessening the Burden of Compliance (Part 2)	

WA Police Armouries Unsafe

August 10 2006

Unsafe pistol load/unload facilities at a number of metropolitan police stations pose a risk of injury and death to officers and public from accidental bullet discharges.

Mr Dave Lampard, safety officer with the WA Police Union, says that a number of older police stations do not comply with general firearm safety requirements for loading and unloading live pistol ammunition.

"Leederville, Subiaco, Inglewood, Stirling, (Mt Hawthorn) police stations are all unsafe for officers to load/unload their weapons at the start and end of daily work shifts," Mr Lampard said.

"An accidental discharge could injure or kill an officer in the unsafe armouries at these stations and passersby could be struck because the building structures in these facilities do not have the capacity to stop stray bullets."

Mr Lampard said that the requirements for safe firearm load/unload bays were covered in the Police Building code for armouries.

This required:

- Bullet-resistant walls, ceilings, floors, doors and roofs
- Approved load/unload facility which would trap any bullets from accidental discharges.

Mr Lampard (pictured below) said that the stations in question did not have these safety features and, consequently, were unsafe work places.

"Section 19 of the OSH Act requires employers to provide employees with a working environment where they are not exposed to hazards and these station armouries are definitely do not meet the necessary standards," Mr Lampard said.

"Officers need to be fully aware of these areas and ensure that they take all precautions to ensure their own and the safety of other employees as required by Section 20 of the OSH Act.

"Most importantly, WA Police must act immediately to eliminate the hazard potential of these armouries and make them safe for officers to work there and not pose any threat to nearby members of the public.



"Until that occurs, the Union is declaring the armouries at those stations unsafe and is directing its members to go to stations which do have safe facilities to load and unload their weapons.

"Our fundamental advice to officers is that if a workplace is not safe, they must report it and not continue to use it." Source: WA Police Union

Continued on page 2



SAFETY AT WORK BULLETIN

Continued from page 2

Human error to blame for latest ferry crash, report finds

Sydney, 7 August 2006

A report into the latest Sydney ferry crash has found human error is to blame.

The RiverCat Betty Cuthbert crashed into a moored yacht and motor launch in January this year on its way to the Balmain Shipping yard.

The master had earlier discovered a problem with the starboard propulsion unit which was locked into a centred position for the trip to the shipyard.

The NSW Office of Transport Safety Investigations has found the RiverCat was moving too quickly when the accident occurred. The Betty Cuthbert unexpectedly turned sharply to port and the master was unable to regain control before the vessel crashed. The report also found the operations controller failed to recognise the risks involved in taking the ferry back to the shipyard.

It's calling for an in-house quality assurance regime at the Sydney Ferries' Balmain Shipyard.

There have been at least eight Sydney Ferry crashes since 2004 including three involving the Betty Cuthbert.

Former navy rear admiral Geoffrey Smith will take over as Sydney Ferries chief executive later this month, following the resignation of Sue Sinclair in February.

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

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

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

AAP

Campaign improves awareness of workers' compensation

August 7 2006

WorkCover WA has inspected more than 1,300 Perth businesses as part of a heightened compliance campaign and will expand its focus to Bunbury.

Employment Protection Minister John Bowler said the WorkCover inspectors had visited Perth businesses as part of the campaign, following on from the recent reform of workers' compensation legislation in Western Australia.

"The campaign aims to work collaboratively with commerce and industry to improve awareness of the changes and help businesses to comply with the requirements of workers' compensation," Mr Bowler said.

"The WorkCover inspectors have been visiting employers in a range of industries and checking for current workers' compensation policies, injury management systems and return to work programs.

"Workers' compensation laws now ensure injured workers are cared for by accessing appropriate medical treatment and by giving them the opportunity to be gainfully employed following their workplace injury."

The Minister said the State Government was serious about its role of ensuring that employers complied with the Act and had workers' compensation policies and injury management programs in place for their workers.

"We must be sure employers provide a work environment which protects and supports workers if they are injured at work and WorkCover WA has its compliance and field officers on the road to enable us to reach more WA businesses," he said.

"Workers must feel confident that if they are injured at work, they will be supported both financially and medically, and assisted in their return to work."

The campaign is continuing throughout Perth and will visit Bunbury this month.

Source: Minister for Employment Protection

Up to 12 treated for fume inhalation in Sydney

August 9 2006

Up to 12 people have been treated for fume inhalation at a Sydney primary school.

The NSW Fire Brigades hazardous materials unit was called to North Auburn Primary School about 1.10pm (AEST) today after students and teachers complained they were feeling ill.

A brigade spokesman said the unit could not determine the type of odour or its source.

He said 12 students and teachers were treated at the scene for eye and respiratory irritations.

Continued on page 3



SAFETY AT WORK BULLETIN

Continued from page 2

The NSW Ambulance Service said its own officers reported only three children being treated.

Further hazardous materials testing found the atmosphere to be safe, with no further traces of the odour, the fire brigade spokesman said.

AAP

Major Waterfall recommendations still under review

August 8 2006

Three quarters of the recommendations from the inquiry into the train crash that claimed seven lives at Waterfall south of Sydney in 2003 have now been implemented.

The independent Transport Safety and Reliability Regulator's quarterly report shows 75 per cent of recommendations arising from the crash, in which the driver and six passengers died and another 42 people were injured, are now verified and closed.

A further 14 per cent are due to be closed by the end of the year, NSW Transport Minister John Watkins said.

"The government and RailCorp are continuing to work hard to honour the safety commitments made in the wake of the Waterfall accident," Mr Watkins said in a statement.

NSW branch secretary of the Rail Tram and Bus Union (RTBU), Nick Lewocki, said he was pleased with the progress of the safety implementations.

"It is taking a while, but I suppose we're getting there, which is the bottom line," Mr Lewocki told AAP.

He said RailCorp's containment policy, determining the ease with which train passengers can escape from carriages in an accident, was the main issue yet to be verified.

"There's some big ticket items like automatic train protection systems ...and we want to finalise this containment policy that we're discussing now."

AAP

Chemical leak causes scare at aged home

August 13 2006

A chemical leak caused a scare at an aged care home in Melbourne's south-east this morning.

A spokesman for the Metropolitan Fire Brigade said about 50 elderly people were at the Brimlea Private Nursing Home in Murrumbidgee when a hydrogen peroxide leak was noticed. He said about 20 litres of the liquid leaked and fire officers wearing splash suits and breathing apparatus diluted the substance with water.

The fire brigade was alerted to the spill at 7.40am (AEST), he said.

A spokeswoman for the nursing home said cleaner used in a washing machine leaked, and the fire brigade was called as a precaution. She said no residents were evacuated.

AAP

Compliance Checks on 550 ACT Businesses

August 10 2006

Over 550 ACT businesses will receive a request from ACT WorkCover in coming weeks to provide evidence of a valid workers compensation policy covering their employees and a declaration on the total wages covered by the policy, as part of an ACT WorkCover compliance initiative. ACT WorkCover maintains an active program of monitoring compliance by duty holders with the requirements of the Workers Compensation Act 1951 (the Act).

"ACT WorkCover records can identify if an employer has allowed a workers compensation insurance policy to lapse or has failed to declare to their workers compensation insurer the total actual wages paid to workers employed by them," ACT WorkCover Commissioner Erich Janssen said.

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Employers are required to maintain a valid workers compensation policy and "actual wage" declarations must be provided to their insurer upon the renewal, lapse or cancellation of a workers compensation policy.

A breach of this requirement attracts a penalty. A failure to declare "actual wages" to their workers compensation insurer is also a breach of the legislation and also attracts a penalty.

Source: ACT Workcover

RailCorp addressing bullying: chief executive

August 8 2006

Bullying and harassment within RailCorp is not being swept under the carpet, its chief executive says.

An internal RailCorp survey has revealed that up to one in four employees have experienced bullying in the past five

Continued on page 4



SAFETY AT WORK BULLETIN

Continued from page 3

years, prompting the NSW opposition to call for an immediate independent inquiry into RailCorp.

The survey - mailed to employees at home, with results published in the staff magazine - was evidence RailCorp was committed to addressing harassment among employees, RailCorp CEO Vince Graham said today.

"RailCorp conducted the survey so that this issue could be brought to the fore and addressed directly," Mr Graham said in a statement. "There is a review of all policies and procedures underway to improve the way in which the organisation deals with these issues, and the new code of conduct sends a clear message to all staff that bullying and harassment will not be tolerated."

Just 13.5 per cent of RailCorp staff responded to the survey, with 20 to 25 per cent reporting being harassed through humiliation and demoralising behaviour, favouritism and unfair treatment, unrealistic pressure on work performance, or offensive behaviour and communications.

No one group of staff was identified as being more likely to bully or harass their colleagues, Mr Graham said.

Meanwhile, RailCorp has defended its handling of the case of a transit officer who last year abused his position to question a 15-year-old girl about her sex life before attempting to chase her home. "Allegations made against the transit officer late last year were investigated immediately, however, at that time there was insufficient evidence to take any disciplinary action," a RailCorp spokeswoman said.

New evidence became available in June this year, which led to the officer being stood down on June 16, RailCorp said.

A prior allegation of misconduct against the officer was investigated and found to be unsubstantiated.

AAP

Fire extinguished at oil refinery

August 8 2006

Firefighters have put out a blaze at an oil refinery in Sydney.

About 10 fire trucks were called to the Caltex oil refinery at Kurnell about 2.15pm (AEST) after reports of a fire in the furnace area, a NSW Fire Brigades spokesman said. Firefighters had now managed to extinguish the fire but the extent of any damage was not yet known, he said.

AAP

Collingwood safety campaign aims to prevent pain and suffering

August 9 2006

WorkSafe's latest 'Safer Work Zones' campaign comes to Collingwood within weeks.

A team of inspectors will visit small and medium sized Collingwood businesses from 4-8 September.

WorkSafe Victoria's Executive Director, John Merritt, said past experience showed that by giving plenty of notice and an idea of what the inspectors would be looking at, significant safety improvements were made.

Mr Merritt said 'Safer Work Zones' concentrated on the risks that were known to cause serious injuries and death and achieves improvements in a short time across a broad range of businesses and worksites.

"WorkSafe's role is to help people understand what's expected of them and how they can protect their employees, co-workers and their business," Mr Merritt said.

Source: WorkSafe

Code to manage violence, aggression and bullying released

August 10 2006

The State Government has released a new code of practice for the management of violence, aggression and bullying in the workplace.

Employment Protection Minister John Bowler said all workplaces should be aware of the importance of preventing and managing violence, aggression and bullying. "There are about 600 workers' compensation claims in Western Australia each year, for time off work arising from workplace aggression and bullying," Mr Bowler said.

The code, which has been produced by the Commission for Occupational Safety and Health, provides practical guidance on ways to reduce risks at workplaces, including identifying circumstances in which violence, aggression or bullying may occur, and responding to incidents.

It replaces the previous code of practice on workplace violence and guidance notes on dealing with workplace bullying, and is the result of an extensive consultation process that included a period of public comment late last year.

"Violence, aggression and bullying are serious occupational safety and health issues, and I urge employers to ensure they have a copy of the new code in the workplace," the Minister said.

Copies of the code can be obtained by download at at: <http://www.worksafe.wa.gov.au>

Source: DOCEP





SAFETY AT WORK BULLETIN

Proposed Amendments to NSW OHS Legislation - Lessening the Burden of Compliance (Part 2)

Background

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

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

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

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

Summary of key proposed amendments

Rights and obligations of employees

The Draft Bill proposes to amend the OHS Act to provide expressly that employees' obligations in regard to safety include taking reasonable care for their own health and safety.

An associated amendment to that clarification is the insertion of an additional object to the OHS Act which states that the OHS Act is aimed at encourage duty holders, including employees, to take an active role to protect themselves and others against risks to health and safety at the workplace.

The Draft Bill also provides the Industrial Court of New South Wales with jurisdiction to reinstate an employee who has been unlawfully dismissed because the employee:

- made a complaint about a workplace matter that the employee considered was not safe or was a risk to health
- was a member of an OHS committee or an OHS representative, or
- exercised a function conferred on the employee under the consultation provisions of the OHS Act (including the right, for example, to issue a safety recommendation notice (see 'Role and authority of OHS committees / OHS representatives' below)).

If reinstatement is impracticable, the Industrial Court can order that the employer compensate the employee. The maximum amount of compensation which the Industrial Court can order is the equivalent of six months remuneration which the employee would have earned had the employee not been dismissed.

Role and authority of OHS Committees / OHS Representatives

Safety recommendation notices

Under the Draft Bill 'employee safety representatives' are authorised to issue safety recommendation notices where the representative believes, on reasonable grounds, that the employer is contravening a provision of the OHS legislation, or has contravened such a provision in circumstances which make it likely that the contravention will continue or be repeated.

The following people are authorised safety representatives:

- the OHS Committee Chairperson for the purpose of protecting employees represented by the committee, and
- an OHS representative for the purpose of protecting employees represented by the OHS representative,

but only if

- that person has undertaken a course of WorkCover approved training for the purposes of being able to issue such notices, and
- their authority has not been withdrawn by WorkCover for misuse of the power to issue such notices. A representative's authority can be withdrawn where the use of the powers was not a genuine use for the protection of the health and safety of the relevant employees, or where the use of the representative's power to issue notices was excessive or unreasonable in the circumstances.

Prior to issuing such a notice, the matter must be formally referred to the employer to give them a reasonable opportunity to remedy the alleged contravention.

The effect of a safety recommendation notice is said to be akin to a provisional improvement notice. An employer can either comply with the measures suggested in the notice to remedy the contravention within the specified period, or the employer can (within seven days of issue) request that a WorkCover inspector review the notice.

After reviewing the notice a WorkCover inspector can either:

- confirm the notice by issuing an improvement or prohibition notice, or
- cancel the notice with written reasons for his/her decision provided to the employer and the employee safety representative.

The Inspector's decision is appealable.

Provision of compliance advice and notices

As noted above, where WorkCover provides written compliance advice to an employer the employee representative who represents employees affected by the advice is entitled to be provided with a copy of that advice.

The amendments also provide that Inspectors are required to provide the chairperson of the OHS Committee, or (where there is no committee) the OHS representative representing the affected employees, with a copy of any improvement or prohibition notice issued to the employer.

Other amendments

The Draft Bill also:

- provides a mechanism for the resolution of stalled consultation between an employer and its employees

Continued on page 6



SAFETY AT WORK BULLETIN

Continued from page 7

- regarding consultation arrangements by inspector determination
- proposes changes affecting the conduct of investigations and prosecutions, including removing WorkCover's current right to appeal against an acquittal and providing parties a right to appeal against interlocutory decisions in OHS proceedings
- provides that 'clothing outworkers' will be effectively deemed to be employees – with entities engaging such workers having obligations of employer in respect both to the clothing outworkers they engage and the employees of the clothing outworker. The outworkers themselves have obligations with regard to safety as if they were employees of the entity engaging them, and
- confers a right on inspectors to record oral evidence without obtaining the consent of interviewee if the interviewee is advised in advance of the recording.

Implications for employers

OHS 'so far as reasonably practicable'?

The proposed amendments to the general duties may lead to a reduction in alleged breaches of the OHS Act. This is partly because of the shift in the onus of proof resulting from the repeal of the current defence provision (section 28 of the OHS Act) and the inclusion of the 'so far as reasonably practicable' proviso into the offence provisions.

The defences currently available under section 28 the OHS Act contemplate that a duty holder can defend a charge under the OHS Act by establishing, on the balance of probabilities, that it was not 'reasonably practicable' to comply with the relevant provision of the OHS Act, or that the offence was due to causes over which the person had no control and against which it was not reasonably practicable for the person to make provision. That is, the onus is on the defendant to prove that it had taken all reasonably practicable steps to ensure it discharged its obligations under the Act. It has been very difficult for duty holders to discharge the burden of proof placed on them. This is because courts have historically approached the question of whether it was reasonably practicable to comply with the OHS Act by balancing the risk of injury (its likelihood and severity) against the cost (in terms of money, production and effort) of preventing that risk. Courts have held that it is only in circumstances where there is a gross disproportion between the risk and the cost of preventing the risk that the defence will be successful.

The inclusion of the 'so far as reasonably practicable' proviso into the offence provisions means that it will now be necessary for a prosecutor (rather than the defendant) to prove, beyond reasonable doubt, that a defendant has failed to do all that was reasonably practicable to ensure safety. This change in onus may result in a lesser number of prosecutions as prosecutors will need to be satisfied before instigating a prosecution that it can prove each element of the offence, including the steps which were reasonably practicable for the defendant to have taken.

The introduction of enforceable undertakings as an alternative to prosecution may also assist in creating an overall reduction in prosecutions.

Industrial

The Draft Bill includes a number of amendments which could potentially be used by unions to achieve industrial objectives. The additional right of entry provision may give rise to difficulties should the right of entry be abused or used for purposes other than safety, such as industrial relations or union membership recruitment. The restriction on other union rights of entry introduced by the Work Choices legislation may also encourage unions to increasingly rely on safety-related rights of entry as a means of gaining access to an employer's premises. While there are some safeguards proposed in the Draft Bill, the extent to which these will be effective to avoid abuse of the right will no doubt be tested.

The creation of rights to the provision of copies of compliance advice, improvement notices and prohibition notices, together with the capacity to issue safety recommendations provides workplace OHS Committees and OHS representatives with a potentially significant amount of power. Depending on the make-up or motivation of those committees and representatives that power and authority could be used to focus industrial pressure on employers under the guise of safety issues.

Retention of state based unlawful dismissal jurisdiction

Employers subject to the WR Act (as amended by the Work Choices legislation) should be aware that the proposed amendments relating to the unlawful dismissal jurisdiction for employees unlawfully dismissed on the grounds of their safety related activities would appear to apply to all employers in NSW. This is because the Work Choices amendments do not override the OHS Act.

Part 1 of this article was in last week's edition of SIA SAFETY AT WORK BULLETIN.

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

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