
Workplace Safety Australia

OHS Newsletter

November - December 2003

In this issue.....

Editorial	1
New Industrial Manslaughter legislation in A.C.T.	1
Changes to incident notification methods in NSW	2
Victorian Prevention of Falls Regulations – Operative March 2004	3
Queensland WHSO assessment requirements	5

Employers and senior managers in all states are urged to read this particular article – as other states legislation will likely be in the same form. Now, more than ever, OHS is one of the most pressing workplace issues for all managers, employers and business owners.

Kim Schekeloff

New Industrial Manslaughter law in the A.C.T.

In November 2003 the A.C.T. government passed Australia's first industrial manslaughter Act that incorporates the crime of industrial manslaughter into that Territory's Crimes Act.

The Act creates an offence, firstly where the conduct of an *employer* causes the death of a worker and secondly, where the conduct of a *senior officer* of an employer leads to the death of an employee. Both employers and senior officers can be fined up to \$5million and terms of imprisonment of up to 25 years can be imposed.

The terms "employer" and "worker" are defined broadly in the Act. There may be cases where more than one person is capable of being the employer of a dead worker for the purposes of this section. For instance, where contracting arrangements are used in a workplace, it is intended that in addition to the direct employer of the worker, principal contractors and other sub-contractors further up the chain of responsibility could

EDITORIAL

This edition of WSA's OHS Newsletter follows the introduction in the Australian Capital Territory of Australia's first industrial manslaughter Act (see article this page). This Act is the first in Australia to make employers and their senior officers criminally liable for deaths in the workplace in certain circumstances. After aborted attempts to introduce similar legislation in Victoria, subscribers can be assured that other states will soon follow the ACT's lead.

The Act imposes fines of up to 5 million dollars on employers and senior officers, where it can be shown a death occurred as a result of the employer or officer's negligence. Perhaps more ominous for employers and senior officers is the ability of the imposition of a jail term of up to 25 years for an offence.

be found responsible for the death of the worker.

For the purpose of the Act an employee can include:

- an employee
- an independent contractor
- an outworker
- an apprentice
- a volunteer

The offence will only apply if the worker was killed (or suffered injuries that later led to the worker's death) in the course of his or her employment. In the case of workers who are not employees, such as independent contractors or outworkers, the death or injuries that led to death must occur in the course of the person's engagement as an independent contractor or outworker.

An employer will only commit the offence if the employer's conduct caused (substantially contributed to) the worker's death and the employer's conduct was either *reckless* or *negligent*.

In cases where the employer's conduct is reckless, the new offence will apply if the employer was reckless as to causing serious harm to the worker. If the employer was reckless in such a manner as to cause death to the worker, other offences such as murder under the Crimes Act will apply. In cases where the employer's conduct is negligent as to causing the death of the worker, the new offence will apply.

The Act provides that liable conduct includes an omission to act by the employer or a senior officer of the employer if it is an omission to perform the duty to avoid or prevent danger to the life, safety or health of a worker. The Act provides that the danger must arise from an act of the employer or senior officer, from anything in the employer's or senior officer's possession or control, or from any undertaking of the employer or senior officer.

The Act specifically prevents an employer from opting out of their OHS obligations and an employer can still be charged even if they have contracted with another party

to take responsibility for OHS in a workplace under their control.

The Act also allows a Court to make other orders once it has found a company guilty of an offence under the Act. These other orders can include:

- Ordering the company to publicise the offence, any deaths or other consequences relating to the conduct from which the offence arose, and the sentence imposed;
- Ordering the company to notify a specified person or persons, such as shareholders;
- Ordering the company to perform specified acts or establish and/or carry out a specified project for the public benefit. In the case of the latter, the project can be unrelated to the offence.

Incident notification in NSW

From 1 September 2003 new simplified reporting requirements came into effect in NSW. (Non-serious) incidents can now be notified by completing an online form on WorkCover's website or by phoning the WorkCover Assistance Service on 13-10-50.

Incidents that need to be reported fall into the following categories:

- A serious incident involving a worker fatality or a serious injury or illness to a worker - Notify WorkCover immediately AND notify your workers compensation insurer within 48 hours:
- An incident (not serious) Involving an injury or illness to workers, where workers compensation is or may be payable – notify your workers compensation insurer within 48 hours:
- A serious incident involving a fatality or a serious injury or illness that occurs to a non-worker, such as a customer or visitor to a worksite – notify WorkCover immediately AND notify

WorkCover within 7 days to make a full report:

- An incident involving a non-worker where the injury or illness results in the person being off work or unable to perform their normal activities for 7 or more days - Notify WorkCover within 7 days:
- In the case of a serious incident with no injury or illness but IS immediately life threatening – notify WorkCover immediately by phone on **13 10 50** plus contact WorkCover within 7 days to make a full report (either by phone or using the online form):
- An incident with no injury or illness, and is not immediately life threatening – notify WorkCover within 7 days either by phone or online.

Victorian Prevention of Falls Regulations – Operative March 2004

The Falls Regulations come into operation on 31 March 2004. These regulations apply to any workplace where it is possible that a fall from a height of 2 metres and over might occur. A full text of the Regulation can be found at:

http://www.dms.dpc.vic.gov.au/sb/2003_S R/S02393.pdf

Victorian Worksafe has provided the following as a summary of the requirements:

Find the fall hazard

Identify any job your workers do, or may do, where there is any chance at all of a fall of more than 2 metres. The Falls Regulations call this identifying a fall hazard.

Assess the risks

Once you've identified a fall hazard you have to decide how likely it is that someone will fall. You will need to look at all the factors that may contribute to a fall, including the type of job to be done, how long the job will take and the physical surroundings and conditions associated with the job. This is really just a process

that helps you work out how big a safety problem you have and what you may have to do to fix it.

Fix the problem

With the information you've gathered you then have to put in place risk control measures. You need to first aim to eliminate any risk of a fall. If eliminating the risk of a fall isn't practicable, then a risk control measure has to be used that produces the lowest practicable risk of a fall. The Regulations say what these risk control measures are and the order in which they must be considered.

Generally, the preferred risk control measures are the ones that aren't dependent on a worker's skill or action for them to be effective. For example, in most situations, it's better to use a fixed barrier compared to a safety harness and anchoring system to prevent a fall.

The Regulations recognise the fact that any one of the risk control measures might not be practicable for a whole job, or one measure alone may not do enough to bring the risk of a fall under control. If this occurs you have to look at using a combination of risk control measures set out in the Regulations. As a general rule you should look to put in place the obvious risk control measures first. Don't let processes delay putting in place obvious risk control measures. Only start work on those tasks where the risks have been controlled.

Design and use of equipment to control risk of a fall

Ensure equipment used to control the risk of a fall is designed and constructed for the task and that it's used correctly. It's also important to ensure that all risks are controlled when the equipment is being installed, erected or dismantled.

Emergency procedures

Ensure emergency procedures are in place and can be carried out as soon as possible after an emergency involving a fall. Emergency procedures must cover the rescue of an employee in the event of a fall and provision of first aid.

Training and consultation

Ensure information, instruction and training is provided to all employees about the risks of working at height and about any safety measures you put in place.

If you have designated work groups at your workplace, the Falls Regulations require you to consult with the health and safety representative for each designated work group who may be affected by any fall hazard identification, risk assessment or risk control process. That consultation must happen as long as it's practicable; there should be few, if any, occasions where it would not be practicable to consult with the health and safety representative.

Examples

Some of the examples given by WorkSafe Victoria of unsafe practices found in workplaces include:

- Work being done on or near fragile surfaces such as skylights, badly rusted corrugated iron or fibreglass roofs, with no guarding, safety mesh, catch platforms, or alternative fall protection measures in place.
- Mezzanine levels used for extra storage space and there are no guards or hand rails installed.
- Boom type elevating work platforms such as cherry pickers, travel towers, boom lifts etc. being used with no secure line and safety harness in place connecting the worker to the basket to reduce the risk of a fall from the basket.
- Maintenance work being done from a roof such as gutter clearing, painting or roof restoration and there's no guarding or fall protection measures used.
- Work being done from the bucket on a front end loader or tractor or from a pallet lifted by a forklift.
- No guarding, railing or signage around holes, pits or shafts.
- Unsecured, loose or incomplete scaffolds or railing in a place near to where workers are working or likely to work in the near future.
- A person being lifted up by a piece of equipment or plant not designed for the job.
- Trucks tarps being fitted by climbing across a load with no fall prevention measures being used.
- Working from the top of livestock carriers without any fall prevention measures like guard rails.
- Where ropes, harnesses and lanyards are being used for fall protection, the equipment is not checked regularly and before use. The equipment shows evidence of either rust, decay, cracks, knots, frays or a combination of these. The equipment used in the system is not designed for the job. Anchorage points used are inadequate in terms of location, strength and with no regard for effect of a fall (eg. no regard for the pendulum effect if someone falls).
- Workers are not provided with adequate training, instruction and supervision in how to set up, undertake and complete a task safely that involves work at height or to use fall prevention equipment safely.
- Ladders are being set up on slippery or uneven surfaces and not secured to prevent them slipping forwards, backwards or sideways.
- Ladders are being used in unintended ways eg. using an ordinary straight ladder as a horizontal working platform or subjecting a ladder to loads over the ladder's load rating.
- Using an ordinary, straight ladder to put away or get stock from stock racks or shelving.

Queensland WHSO assessment requirements

Workplace Health and Safety Officers (WHSO's) in Queensland need to be aware of the requirements of the Queensland Act that they are required to conduct an assessment of the workplace using criteria approved by the Chief Executive of Workplace Health and Safety Queensland or criteria agreed to by the Workplace Health and Safety Committee at the workplace.

The Queensland Department of Industrial relations notes:

"Criteria approved by the Workplace Health and Safety Committee at the workplace must identify any hazards and unsafe or unsatisfactory workplace health and safety conditions practices relevant to that workplace.

The WHSO is required to record the results of the assessment and submit them to the employer or principal contractor (and safety committee if one is established) along with any recommendations to rectify any unsafe workplace health and safety conditions and practices within 30 days of completion of the assessment. A workplace health and safety inspector may request to see the results of the workplace assessments. Assessments must be conducted at least once every twelve months, or at intervals agreed between the Workplace Health and Safety Officer and the Health and Safety Committee.

Employers and principal contractors must:

- allow the Workplace Health and Safety Officer to conduct the assessment during normal working hours
- provide resources to allow the Officer to properly exercise his or her functions
- take appropriate action to rectify any unsafe workplace health and safety conditions and practices
- take all reasonable steps to ensure the Workplace Health and Safety Officer performs the functions specified in the *Act*

- keep assessments and recommendations and other matters recorded and given to the employer or principal contractor by the Workplace Health and Safety Officer for five years.

Fuller details on the reporting requirements and the workplace health and safety criteria approved by the Chief Executive of Workplace Health and Safety Queensland are found in this year's WSA handbook due out shortly.

The next edition of WSA's OHS newsletter is due out early in 2004. In the meantime, watch out for the latest updated version of WSA's handbook due out in the next couple of weeks!

© Workplace Safety Australia