



Unhandled Risks Cost More Under the WHS Act

Our recent article, "Did Einstein Have a WHS Equation", focused on the basic principle that a safe and healthy workplace is dependent on all WHS duty holders satisfying their WHS duty of care.

That principle was violated in the 2 WorkCover NSW prosecutions detailed below and the result was serious injuries, fatalities and fines. These 2 cases also show that fines under the WHS Act are considerably higher than they were under the OHS Act.

Case 1

In 2011 an export company in NSW was prosecuted under the OHS Act for failing to properly guard a conveyor belt and for not making sure that a trapped employee could reach an emergency stop switch.

The maximum penalty possible under the OHS Act for an offence of this type was \$825,000 but the Court decided it was appropriate to fine the company \$75,000.

In 2012 the new NSW WHS Act came into force and the maximum fine possible under the WHS Act for such an offence had increased to \$1.5 million (almost double the maximum fine under the OHS Act).

Regrettably, in 2012, a worker employed by the export company suffered a fractured wrist in similar circumstances to the 2011 incident. WorkCover prosecuted the company. The Court took into account that a similar incident had happened before and that the maximum fine possible was now \$1.5 million, and fined the company \$150,000 (double the fine in the 2011 incident).

Case 2

In 2008 two workers were killed and another seriously injured in an explosion at a winery. WorkCover prosecuted the company operating the winery under the OHS Act, sections 8(1) and 8(2). The maximum fine possible under the OHS Act for this offence was \$550,000 but the court decided it was appropriate to fine the company \$210,000.

Under the WHS Act the maximum fine possible for this offence is now \$1.5 million. So if that same incident had occurred in 2012 instead of in 2008, the actual fine imposed by the Court today would be more like \$580,000. Consider the trouble a company would experience in dealing with a fine of that amount.

But there is more. Under the WHS Act, in a case, involving 2 fatalities, the relevant Officers of the company might also be prosecuted and fined for not exercising due diligence to ensure that the person conducting the business or undertaking complied with their duty. The maximum possible penalties for Officers under the WHS Act range from \$100,000 to \$600,000 and/or 5 years imprisonment.

Avoiding Injuries, Illness, and Prosecution

The basic principle for avoiding injuries, illness, and prosecution is;

Every WHS Duty holder in your workplace must understand and do the specific actions they need to do to comply with their duty of care in their area of the workplace.

Having a sound WHS Management System in your workplace is needed and important but the basic principle above is senior.

COURTENELL Pty Ltd

as Trustee for the Vowles Family Trust

ABN 42164393628 ACN 050109281

PO Box 622, Broadway NSW 2007

Suite D Level 1, 176 Parramatta Road, Camperdown NSW 2050

train@courtenell.com.au ~ www.courtenell.com.au

Fax 02 9516 3644 ~ Phone 02 9516 1499