



Jail time imposed and million dollar damages awarded in Queensland

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March 2018 saw the Queensland Supreme Court deliver judgments against employers in two major work health and safety proceedings. A jail term in one, and a million dollar damages award in the other underscore the importance of having a robust and effective work health and safety (WHS) management system in place within a business and highlight how the costs of inaction can be severe – both personally and financially.

Remember the gumboots when assessing the risk

In *Souz v CC Pty Ltd* [2018] QSC 36, an underground mine worker sustained a serious neck injury when the loader he was driving collided with a steel roof beam.

The loader's canopy had risen after a lever was inadvertently triggered by the worker's gumboot catching against it. The incident occurred despite specific warnings from the vehicle's manufacturer about the hazard posed by the lever and the significant risk profile associated with operating vehicles in underground mines.

In response to the employer's contention that the worker should have known the canopy had been raised and that he had forgot to lower it prior to the collision, Justice McMeekin noted "*it has long been the law that employers are obliged to bring into account thoughtlessness or inadvertence by the workers in determining what precautions reasonable care demands be taken*".

The Court also identified that the step taken by the employer post-incident, of making and installing a guard out of scrap metal in less than 2 hours would have

prevented the incident occurring and was demonstrative of how a simple and low cost control measure could have been taken.

Taking into account the worker's injuries, associated trauma and loss of past and future earnings, the Court awarded damages in the sum of \$1,125,949.

Sentencing in a 2012 Clermont tragedy

In *R v Day* [2018] a director's failure to take reasonable care and precautions as an electrical contractor resulted in the death of a young man on a construction site in Clermont.

On 27 February 2012, Jason Garrels was fatally electrocuted when he was asked to hold a temporary construction switchboard during its installation. Tragically, no safety switch had been installed and fuses designed to prevent electrocution were incorrectly installed. Had these two simple and relatively inexpensive control measures been implemented, Mr Garrel's death would have been avoided.

The coronial inquest also revealed, amongst other things, that the director of the company responsible for the installation of the construction switchboards:

1. Possessed, prior to the incident, electrical contracting experience limited to "fixing fans and domestic whitegoods", which was a great concern to the coroner given that on this project

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the director was responsible for the electrical wiring of an 81 lot duplex subdivision;

2. Had interfered with Workplace Health and Safety Queensland's investigation by removing every electrical component within the temporary switchboard held by Mr Garrels; and
3. Made false representations to the coroner about the existence of a safety switch on the temporary switchboard.

For the charges of manslaughter and perjury, the Court sentenced the director to seven years jail, with a non-parole period of two years.

Significance for Employers

With the introduction of the new offence of industrial manslaughter in Queensland, which can result in maximum penalties of \$20 million for a company and 20 years jail for "senior officers" there is more incentive than ever before to examine and take reasonably practicable steps to eliminate or reduce the risks arising from hazards in the workplace. Simple, yet essential measures include:

- Ensuring all manufacturer and supplier safety warnings for plant and equipment are reviewed;
- Ensuring the risks identified from those safety warnings are reduced or eliminated via appropriate controls;
- Consulting with workers to identify potential health and safety issues with their work processes, plant and equipment and tools and providing workers with opportunities to contribute to identifying appropriate control measures in response;
- Conducting risk assessments while taking into account the 'thoughtlessness or inadvertence of workers' (i.e. plan for the worst case scenario);
- Ensuring all hazardous work is completed by appropriately qualified and licensed workers; and
- Refreshing workers on safety basics, such as electrical isolation procedures and pre-start risk assessments.

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