



What's News?

Occupational Health & Safety

11 February 2010

Latest News

- Workplace warning
- Fatigue the major risk factor in construction

Publications/ Conferences

Cases

Latest News

Workplace warning

5 February 2010

The national emergency alert system contains no information about the rights and obligations of employers and employees working in or travelling to bushfire areas when a code-red day is declared. There is no specific legal requirement that employers stand down employees or allow them to take days off during code-red days. However, in general terms under occupational health and safety laws, an employer is required as far as is "reasonably practicable" to avoid exposing an employee to the risk of injury or death. [More...](#)

Ex-police officers sue over bullying claims

4 February 2010

Two former Gold Coast detectives are suing for more than \$2 million in compensation, claiming they were bullied out of the police service partly because they refused to act on illegal search warrants. [More...](#)

WorkCover NSW slammed over farm death prosecution

3 February 2010

The High Court has upheld Graeme Kirk's appeal against WorkCover over its prosecution of a New South Wales farm owner after the death of a farm manager, finding that it was absurd to have prosecuted him over the inexplicable recklessness of the manager, who had skill and experience much greater than his own. [More...](#)

NSW Barmaid awarded \$500,000 over bullying boss

31 January 2010

A barmaid employed by a Sydney Bowling Club was awarded more than \$500,000 in damages for mental trauma after she was subjected to a campaign of workplace harassment and bullying by her boss. [More...](#)

Timber company fined over an employee hand injury

1 February 2010

Pinetec (WA) has been fined \$60,000 over an incident in which a worker was injured after his hand was caught in the cutting head of a moulder after being accused of not providing a safe working environment. [More...](#)

Four SA companies fined for breaching workplace safety laws

28 January 2010

Safework SA says 4 Adelaide companies have been fined a total of more than \$70,000 for breaches of workplace safety laws.

[More...](#)

Fatigue the major risk factor in construction

2 February 2010

Fatigue is the number one accident risk factor for construction workers and requires better recognition by occupational health and safety managers, research at the University of Sydney has found. Dr Chan's research is the first to identify fatigue as the leading risk factor in a construction environment. Other factors identified were mental stress, failure to follow safety procedures, lack of knowledge, failure to use proper equipment, and fire and explosion. [More...](#)

Manufacturer prosecuted for lack of information

27 January 2010

A Victorian County Court judge has convicted and fined what he called "a small business in difficult times" \$80,000 after it failed to provide safety information about its products to its customers. WorkSafe's acting Executive Director, Stan Krpan said the case illustrated the legal requirement of manufacturers, suppliers and retailers to provide adequate information about their products to end-users to ensure they were used safely. [More...](#)

Comcare and safety authorities push for quad bike safety

25 January 2010

The Federal Chamber of Automotive Industries and Distributors is drafting a Code of Practice relating to the Use of All Terrain Vehicles in the Workplace. Heads of Workplace Safety Authorities has also formed a working party comprising of OHS Regulators and industry representatives to look at strategies to improve quad bike safety. [More...](#)



What's News? - Occupational Health & Safety

11 February 2010

Publications/ Conferences

Towards national IR, workplace safety and compensation systems

The Parliamentary Library released a Background note providing a chronology of the move towards national workplace safety and workers compensation systems. http://www.aph.gov.au/library/pubs/bn/eco/Chron_OHS.htm

A handbook for the franchise industry - Managing health and safety in food retail

This harmonised handbook was developed by the Heads of Workplace Safety Authorities (HWSA) Small Business Network. It was developed with the assistance of the Franchise Council of Australia (FCA). [More...](#)

VIC: Home Care OHS Compliance kit

The kit describes the 7 most common hazardous tasks that cause workplace injuries in the home care sector. It includes 7 Health and Safety Solutions to outline ways to control the risks associated with these tasks, and a range of other information to help employers comply with their responsibilities under the Occupational Health and Safety Act 2004. [More...](#)

VIC: WorkSafe Positions

How WorkSafe applies the law in relation to the requirement to answer questions. [More...](#)

How WorkSafe applies the law in relation to discrimination on health and safety grounds. [More](#)

Reducing Red Tape for Business Operators in NSW

3 February 2010

Minister for Finance Michael Daley today announced reforms to reduce red tape for business operators that undertake formwork or use explosive-powered tools. Mr. Daley said an amendment to the Occupational Health and Safety Regulation 2001 effective from February 1st will mean that people undertaking this type of work in New South Wales will no longer require a WorkCover licence.

[More...](#) [More...](#)

Using earthmoving equipment near overhead electrical assets - A handbook for workplaces

25 January 2010

This handbook provides practical advice on how to create a safe working environment when using earthmoving equipment near overhead electrical lines and assets. Employers who implement these guidelines will be deemed to have met their OHS obligations regarding the risks of operating earthmoving equipment near overhead electrical assets. [More...](#)

Cases

***Kirk v Industrial Relations Commission; Kirk Group Holdings Pty Ltd v WorkCover Authority of New South Wales (Inspector Childs)* [2010] HCA 1**

Occupational health and safety - Statutory duty - Occupational Health and Safety Act 1983 (NSW), ss 15 and 16 provided duties of employer to "ensure the health, safety and welfare at work of all the employer's employees" and that "persons not in the employer's employment are not exposed to risks to their health or safety arising from the conduct of the employer's undertaking" - Section 53(a) provided a defence where it was "not reasonably practicable ... to comply with the provision of this Act" - Breach of duty criminal offence - Statement of offences as particularised did not identify what measures defendant could have taken but did not take to fulfil duty - Whether statement of offence must identify act or omission said to constitute contravention of s 15 or s 16 - Whether failure to charge act or omission an error of law - Whether error on the face of the record - Whether jurisdictional error. Evidence - Competence and compellability of accused persons - Joint trial - Industrial Relations Act 1996 (NSW), s 163(2) required hearing to be conducted in accordance with the rules of evidence - Evidence Act 1995 (NSW), s 17(2) provided that a defendant is not competent to give evidence as witness for prosecution - No power of Industrial Court of New South Wales to dispense with s 17(2) - Defendant called as witness for prosecution - Whether jurisdictional error - Whether error on the face of the record. Administrative law - Jurisdictional error - Error of law on the face of the record - Whether orders in nature of certiorari available. Statutes - Privative clause - Industrial Court of New South Wales - Construction of privative clause - Whether privative provision effective to prevent review for jurisdictional error - Whether effective to prevent review for error of law on the face of the record - Relevance of exclusion of right to appeal to Supreme Court of New South Wales and to High Court of Australia. Constitutional law (Cth) - Chapter III - State Supreme Courts - Power of State Parliament to alter defining characteristic of Supreme Court of a State - Supervisory jurisdiction - Whether a defining characteristic is power to confine inferior courts and tribunals within limit of their authority to decide. Procedure - Costs - Appellate court exercising supervisory not appellate jurisdiction - Appellate court makes orders in nature of certiorari - Whether appellate court has power to make orders in place of orders quashed. Appeal allowed. [More...](#)

Melbourne

350 William Street, Melbourne VIC 3000
T: +61 (0)3 9321 9999 F: +61 (0)3 9321 9900

Sydney

Level 65, MLC Centre, 19 Martin Place, Sydney NSW 2000
T: +61 (0)2 8083 0388 F: +61 (0)2 8083 0399

Brisbane

Level 1, 300 Queen Street, Brisbane QLD 4000
T: +61 (0)7 3135 0500 F: +61 (0)7 3135 0599



What's News? - Occupational Health & Safety

11 February 2010

Contact Details

Melbourne

Charles Power

Partner

T: +61 (0)3 9321 9942

E: charles.power@holdingredlich.com.au

Sydney

Stephen Trew

Partner

T: +61 (0)2 8083 0439

E: stephen.trew@holdingredlich.com.au

Brisbane

Paul Hardman

Partner

T: +61 (0)7 3135 0675

E: paul.hardman@holdingredlich.com.au

Disclaimer

The information in this publication is of a general nature and is not intended to address the circumstances of any particular individual or entity.

Although we endeavour to provide accurate and timely information, we do not guarantee that the information in this publication is accurate at the date it is received or that it will continue to be accurate in the future. We are not responsible for the information of any source to which a link is provided or reference is made and exclude all liability in connection with use of these sources.

Melbourne

350 William Street, Melbourne VIC 3000

T: +61 (0)3 9321 9999 F: +61 (0)3 9321 9900

Sydney

Level 65, MLC Centre, 19 Martin Place, Sydney NSW 2000

T: +61 (0)2 8083 0388 F: +61 (0)2 8083 0399

Brisbane

Level 1, 300 Queen Street, Brisbane QLD 4000

T: +61 (0)7 3135 0500 F: +61 (0)7 3135 0599