

## Reckless WH&S breaches could lead to prison

### Engineer faces imprisonment over alleged reckless workplace health and safety breaches

Charges have been filed in the Industrial Magistrates Court in South Australia by Safework SA against Safe is Safe Pty Ltd (**Safe is Safe**) and its Director for serious workplace health and safety breaches that led to the death of an eight year old girl.

In September 2014, at the Royal Adelaide Show, a young girl was flung from the AirMaxx 360 ride and died as a result of her injuries. Safework SA alleges that Safe is Safe and its Director, Mr Hamish Munro, breached workplace, health and safety laws when Mr Munro (an engineer) inspected the ride and verified that the ride was safe. A couple of days later the incident occurred.

Safe is Safe and its Director are being prosecuted by Safework SA, for a category one offence. This is the most serious category of offence under the *Work, Health and Safety Act 2012* (SA).

By way of background, South Australia (as did Queensland) adopted the model workplace, health and safety laws as part of Safe Work Australia's harmonisation process of Australia's workplace, health and safety laws (the **WHS laws**).

SafeworkSA alleges that both the business and the Director engaged in "*reckless conduct without reasonable excuse*" when Mr Munro inspected the ride and approved it for use. The maximum penalty for a category one offence is five years imprisonment and/or \$300,000 for an individual and up to \$3,000,000 for a corporation.

The parties are due to appear in the Industrial Magistrates Court in June. We will keep you apprised as the case progresses.

### Outcome of first category one offence case under WHS laws

However, in the first category one offence case brought in Australia under the harmonised WHS laws, the Director of Public Prosecutions (**DPP**) in the Australian Capital Territory has withdrawn its case against Schwing Australia Pty Ltd (**Schwing**) and its maintenance engineer Mr Phillip O'Rourke. However, the DPP has stated that the "*the decision to discontinue the prosecutions was considered carefully and not taken lightly*".

In July 2012, a 21 year old worker died after being struck by a concrete boom on a construction site in Canberra. Schwing and the maintenance engineer had been responsible for inspecting and maintaining the concrete boom. Worksafe ACT had alleged that the concrete boom had not been serviced properly and the bolts on the boom tightened incorrectly, following the receipt of an expert report.

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However, a further expert report commissioned by Schwing found that the failure of the bolts was due to a “*metallurgical phenomenon*” called hydrogen embrittlement. Following the receipt of that report, Worksafe ACT commissioned another expert report which held that the bolts failed due to stress corrosion cracking. In light of this additional evidence, the DPP held that it could not prove that Schwing and Mr O’Rourke failed to comply with their workplace, health and safety duties “*beyond a reasonable doubt*”.

Whilst the DPP has withdrawn its case against Schwing and Mr O’Rourke, this decision is a reminder for all employers and employees to ensure that they comply with their workplace, health and safety obligations, as they can still be subject to a lengthy investigation and litigation process in the event an incident occurs in the workplace.

### **What does this mean for your business?**

It is very important that employers are aware of their workplace, health and safety obligations and comply with these obligations, not only in relation to their employees, but also other workers such as contractors and persons visiting the workplace.

It’s also vital that all workers are aware of their own responsibilities in relation to workplace, health and safety, since they will also be held responsible if they do not comply with the WHS laws.

### **Tips to assist you**

To ensure your employees are complying with their obligations:

- regularly check that they are aware of their workplace, health and safety obligations;
- have them undergo training (including refresher training on a regular basis); and
- have processes and policies in place in the workplace to comply with any WHS laws and Codes of Practice applicable to your workplace.

If you have any questions on the information set out in this alert, please do not hesitate to contact our Workplace Law team. We will be running a WH&S series of seminars later in the year in both Toowoomba and Brisbane. Please contact [events@cglaw.com.au](mailto:events@cglaw.com.au) to register your interest.

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