

July 3,  
2009

## Report queries ADF's OHS performance

A parliamentary committee wants an urgent increase in the number of occupational medicine specialists within the Australian Defence Force while also questioning its OHS performance.

The Joint Standing Committee on Foreign Affairs, Defence and Trade said that, "amazingly", the ADF had only one full-time person in this role and it must expand its internal capability in occupational medicine "as a matter of some urgency".

The committee also queried the handling of OHS issues within the ADF and urged a review of current practices in a report on the plight of personnel who worked on a RAAF program to replace fuel tank sealant on Australia's ageing F-111 strike aircraft.

An inquiry report has made 18 recommendations on an ex-gratia compensation scheme established in 2005 for the personnel, as well as on other health matters and processes.

"The committee has been advised there are only two full-time ADF officers who are occupational medicine specialists. However, they are not being employed in the capacity of occupational medicine. The ADF relies upon one civilian and a small number of reservists to provide that capability.

"It is inconceivable that the ADF would contemplate such a small in-house capability for basic support of any of its major platforms. Yet when

it comes to personnel there seems to be an assumption that specialist occupational medical specialists are unnecessary.

"The ADF needs at least adequate skills in occupational medicine to conduct strategic reviews of workforce activities in the wide range of environments personnel undertake duties."

The report said that this shortfall reflected structural and cultural concerns raised by a 2001 F-111 Board of Inquiry into the Deseal/Reseal program and by its expert panel member Professor Andrew Hopkins (pictured). The report quoted Professor Hopkins, a world-recognised expert on OHS matters, on a long-time concern that Defence valued platforms over its people.

Professor Hopkins said: "Until the Air Force puts the same effort into securing expert safety advice as it does into securing expert advice on materials, until it applies the same level of quality control to ensuring the safety of maintenance workers as it applies to ensuring the adequacy of maintenance processes, it will remain vulnerable to the criticism that it puts platforms ahead of people...."

The new report said this may be a harsh conclusion but "it is no doubt a view held by some who have been adversely affected by their work on F-111s and publicly acknowledged by a member of the BOI".

"The systemic problems identified by Professor Hopkins ... have

contributed to the problems faced by the F-111 workers. These problems will recur unless greater effort is given to occupational medicine."

Labor inquiry chair Arch Bevis said adoption of the recommendations would rectify the shortcomings of the scheme which sparked much condemnation from personnel denied compensation.

He said the scheme was "born of fuzzy logic, shrouded in misleading spin and then administered in confusion" and "without explanation ... provided assistance to workers who did pick and patch in the formal Deseal/Reseal programs but not to about 2000 other Defence personnel in three other squadrons who undertook the same duties".

The inquiry found the scheme was too limited and recommended the 2000 "forgotten" personnel receive

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# Record damages over sexual harassment, sacking

A major Adelaide building company was ordered to pay a South Australian record \$466,000 in damages over sexual harassment and unfair dismissal charges.

The Federal Court awarded the sum to Malgorzata Poniatowska for sexual harassment in 2005 and unfair dismissal in 2006 during her 12 months as a building consultant for Hickinbotham Homes Pty.

Ms Poniatowska was employed by Employment Services Australia Pty Ltd, a member company of the Hickinbotham Group, before being dismissed "for not adequately filling her duties".

ESA was ordered to pay the damages plus legal costs expected to be many thousands of dollars.

Justice John Mansfield found sales consultants Remo Lotito and Mark Flynn repeatedly harassed Ms Poniatowska by pestering her for sex through a series of calls, emails and text messages.

He found she was wrongly sacked after making complaints and ESA had been dishonest in claiming poor work performance after three warning letters.

"Put bluntly, I find that none of those warning letters, or the suspension or termination of her employment were for her poor work performance . . . I find that there was a different, but consistent, motivation for those communications."

The judge said ESA had campaigned to "white-ant" the 42-year-old.

"Ms Poniatowska was not treated as the victim of sexual harassment but as a problem to be dealt with.

"There is an underlying sense, and a strong one, that Ms Poniatowska as a complainant female was a potential ongoing impediment to the smooth functioning of the business ... and the better solution ... was that her employment should not continue.

"I do not consider ... ESA would have taken the

## OHS performance queried

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the appropriate ex-gratia payments and other assistance such as increased counselling support for families.

An earlier inquiry between 2002 and 2004 found many personnel who used various chemicals and had to work in confined spaces suffered from a range of health problems.

The Howard government had already paid more than \$21 million in compensation but rejected many lump sum claims because of what it said was a lack of scientific evidence linking chemical exposure to health problems.

The new report, which was tabled in federal parliament, also concluded there was lack of clear evidence to prove certain chemicals caused the widespread problems.

But it still recommended compensation based on actual work undertaken in the tanks, not the unit or the year in which the work was undertaken. The program operated between 1973 and 2000.

same approach to a male employee complaining of such conduct."

A trial last year heard several allegations, but Justice Mansfield made no findings of harassment against company founder Alan Hickinbotham and son and managing director Michael. The latter said in a statement the group had fought the case because it was "the right thing to do" and planned to appeal.

- Ms Poniatowska has since been charged with defrauding Centrelink on 17 occasions and will return to court for allegedly continuing to claim single-parent benefits while working at Hickinbotham.

## Employer support is critical

Employers must ensure the negative impact on victims of sexual harassment is minimised, according to Harriet Stacey, a principal of WISE Workplace Investigations.

She pointed to figures showing many victims reported a negative personal impact from the complaints process, which justified fears that making a formal complaint about sexual harassment could prove a "career killer".

"As well as effectively dealing with complaints, there is a strong business imperative for employers, in cooperation with relevant support agencies, to minimise the negative impact on those who experience it.

"Consistent messages from the employer highlighting the seriousness of such behaviour could help to increase the number of formal reports made.

"Employers should clearly communicate how the complaints process works. They should try to dispel any negative perceptions of the complaints processes that may exist in the workplace."

## Second rockfall sparks study

BHP Billiton has been ordered to commission an independent engineering study into its Perseverance nickel mine, near Leinster, after a second rockfall there in the past three weeks.

State mining engineer Martin Knee said the study was needed to ensure the mine's safe operation by identifying the potential for similar events.

Earlier, a Department of Mines and Petroleum inspector was sent to the mine after a miner was trapped and another received minor injuries during a rock collapse.

BHP said an earth tremor measuring 2.3 on the Richter scale caused the collapse.

Mining at the at-risk area of the mine was halted after a prohibition notice was issued by the inspector and all production blasting was stopped until a review of the mining method, sequence and rate of mining is done.

The Australian Manufacturing Workers Union called on BHP Billiton not to force anyone to work at the mine until it is declared safe after many refused to turn up for their shift.

# Another shocking outcome from forklift misuse

The head of WorkSafe Victoria says a forklift accident resulted in one of the worst outcomes for a worker and his family the agency has seen.

The Victorian County Court convicted and fined Asixa Pty Ltd \$250,000 after it pleaded guilty to two safety charges resulting from the July 2006 incident in which a 700kg crate of glass fell on a worker as it was moved after being unloaded from a truck.

Executive director John Merritt said it was especially disturbing that the affected worker was still in a permanently vegetative state nearly three years later.

The injured man was an employee of a labour hire company but a deemed employee of Asixa.

He was using a forklift at its then Dandenong warehouse to move the crate which was 1.5m high, by 2m wide and around 20cm deep.

Mr Merritt said the shocking and disastrous outcome was a warning to everyone that safety went much deeper than the potential for workplace deaths.

“Apart from the deaths, every year there are amputations of hands, fingers, arms and legs, people end up in wheelchairs, brain-damaged or living with the assistance of machines.

“In terms of the outcome for the individual and their family, this is one of the worst cases that WorkSafe has had to deal with.”

The court heard Asixa employed some management and administrative staff while several people were also present under an arrangement with a labour hire firm, Black & White Recruitment Solutions Pty Ltd.

The personnel for Black & White, which also provided OHS support including audits, were “deemed employees” of Asixa.

The injured man did not have a certificate of competency to operate forklifts and had not received information, instruction or training on the one introduced to the workplace the day he was hurt.

Two other workers helped unload the glass from a truck but the new forklift’s tines would not fit properly under the crate.

The workers managed to lean the crate against the backrest of the tines, and the machine was reversed into the warehouse because the load obscured the operator’s forward vision.

At some point the driver alighted from the machine to adjust the load when it fell on him. He was found some time later.

WorkSafe inspectors later prohibited the movement of glass packs without an appropriate lifting device and the operation of a forklift without the appropriate certification.

Asixa made safety improvements after the event - including assessment and training of forklift operators, new risk assessments and induction policies, training for unsecured or problem freight, and first aid training for several employees - but Judge Chettle said the improvements should have made sooner.

Mr Merritt expressed his frustration at continuing serious forklift incidents - frequently involving inadequate training - despite the piece of equipment being “among the most common and dangerous” in Victorian workplaces.

“Although 56 people have died as a result of forklift incidents in Victoria since 1985 - one-third involving people hit by falling loads - there are many more where they suffer serious and often permanent, injury.”

## WA Labor unveils bereaved families initiative

The WA Labor Party unveiled a new policy initiative to provide practical support services for families of workers killed at work.

Leader Eric Ripper (right) told the party’s state conference a Labor government would set up the Bereaved Families Support agency.

He said the BFS would aim to ease the financial, emotional and social instability on the families, particularly those without a family network in WA or whose loved ones worked in low-income or low-insured industries.

The agency would be jointly funded by business and government and have administrative support from the public service.



It would have a volunteer board of trustees and its own supporting legislation to ensure transparent and unbiased management of its charter and trust fund.

“Lawyers would join social workers and counsellors to provide advice and support on issues such as insurance, and liaise with third parties such as funeral directors, banking institutions and land lords,”

Mr Ripper said. “BFS will offer timely practical advocacy and counselling assistance through bereavement, provide financial hardship relief, give financial and practical educational support for children until they complete their education and assist the worker’s partner to continue or complete further studies.”

A Labor government would initially grant between \$5 and \$10million to the fund with further financing from OHS-related fines or penalties and corporate and individual donations.

Mr Ripper said he hoped the agency could become self-funded if it was managed strategically and was well supported by the community.

# Remove barriers to OHS reform, Gillard urges WA

Deputy PM Julia Gillard has urged WA to remove barriers to OHS and IR law reform.

She told a breakfast in Perth the federal government was making good progress on its productivity agenda but Australia's only Liberal governed state was resistant on the two vital areas.

"We need the West to cooperate fully in a national cooperative effort to harmonise our industrial relations and occupational health and safety laws and to create a seamless national economy.

"All states should get on board. There is a once-in-a-lifetime opportunity for the states and commonwealth to work together to secure national unitary workplace

relations as the system for the whole nation," she said.

"Or conversely there's a once-in-a-lifetime risk of letting that opportunity go past and continuing to see multiple systems in different states with all of the costs and diseconomy that means for employers."

Ms Gillard said that in terms of OHS harmonisation, WA was threatening the process by "hedging its bets" on implementing its outcomes.

"In doing this it risks denying West Australian businesses and workers the significant benefits which will flow from harmonised OH&S laws."

She said it was time to change the "ridiculous and outdated" situation governing OHS in Australia.

## Queensland firefighters at no higher cancer risk

A new study has found the rates of cancer among Queensland firefighters are no higher than in the state's general population.

Monash University's Centre for Occupational and Environmental Health examined the incidence of cancer among 7504 operational full-time and auxiliary firefighters between 1995 and 2006, and compared it with rates across the wider Queensland community.

The study found the overall rates of cancer were not elevated among active male and female firefighters and the incidence of several specific cancers including malignant and benign brain tumours were not significantly elevated among male firefighters.

But there was an increase in the rate of melanomas among the males, which was borderline statistically significant when compared to the community rate.

Dr Deborah Glass from the MonCOEH within the School of Public Health and Preventative Medicine said the results helped alleviate the profession's concerns about their increased risk of brain cancer.

"Although this is a small study, it should provide reassurance that the overall cancer rate among firefighters is similar to the rate in the general population," Dr Glass said.

The Queensland government requested the survey



following a 2008 study by Queensland Health which found an elevated rate of brain cancer among staff at the Atherton Fire station.

The MonCOEH acknowledged its survey had several limitations such as the size of the group surveyed and the fact cancer rates before 1995 could not be examined.

It recommended a national study of cancer incidence and mortality that would have more power to investigate firefighters' risk of cancer and gain more information about exposures that might increase the risk.

The Australasian Fire and Emergency Service Authorities Council has already engaged Monash to investigate the feasibility of a national study.

Dr Glass said it would be able to investigate more types of cancer over a longer timeframe, and could even examine the broader causes of mortality among firefighters.

Queensland Fire and Rescue Service Acting Commissioner Iain MacKenzie said a national study would provide more definitive direction on the potential for increased risk of cancer among firefighters.

"We will continue to work with world-recognised researchers at Monash and take on board any necessary action to ensure we are providing the safest possible environment for our staff."

## Comcare CEO moves to drive transport safety

Martin Dolan has departed as CEO of Comcare to become Chief Commissioner of the Australian Transport Safety Bureau.

Steve Kibble will be Acting CEO while the federal government finalises the process of selecting and appointing Mr Dolan's successor.

Before he left, Mr Dolan announced workers' compensation premiums for federal government agencies had dropped to a seven-year low of 1.25% for 2009-10.

The premium rate, which dropped from last financial year's 1.36%, was the third fall in succession.

Mr Dolan said effective prevention of workplace injuries had reduced claims frequency and three-quarters of Comcare members will now pay less than 1% in rates.

He wrote to all agencies about their premium results for 2009-10 and advised them that current economic and workplace challenges forced employers to enhance their rehabilitation capability and return-to-work strategies.

# Builder-union dispute brings mixed results

A construction giant had mixed results in a Federal Court battle with a major union.

The court found two organisers with the CFMEU (construction and general division) NSW branch did not have the right to enter the Kurnell desalination plant site under state OHS laws. But it also ruled they did not breach federal IR laws or commit trespass.

John Holland - one of two contractors on the site - together with joint venture partner Veolia - sought declarations and civil penalties related to entry to the site without authorisation in late 2007.

The organisers said they were investigating a "safety OHS issue" and argued they had that right under state laws.

Justice Michael Moore found only an "officer" of a union could exercise an entry right under the Occupational Health and Safety Act and related provisions of the NSW IR Act.

For a union official to be an officer they must be concerned in, or take part in, the management of the union. The judge said that on the evidence, the organisers were not officers and were not authorised under the OHS Act to enter the site.

But he found the organisers had not breached provisions of the Workplace Relations Act on entry for OHS purposes.

He found the two key provisions on which John Holland relied were only engaged when an official had actually exercised an entry right under an OHS law.

"In my opinion the [organisers] could not have contravened and did not contravene sections 758 and 767 because neither had a right to enter premises under an OHS law."

The judge said that the key question regarding unlawful trespass was whether John Holland had "exclusive possession" of the site and was legally entitled to exclude the organisers. But after examining the construction contract and joint venture agreement, he found the exclusivity did not apply.

The AIRC earlier overturned a ruling that CFMEU members were entitled to take an unauthorised work stoppage in February on a work site at Melbourne's Monash Freeway.

Abigroup Contractors considered dispute-resolution procedures had not been followed and the stop work constituted a strike and so they docked the workers four hours pay in accordance with the WRA.

But the CFMEU argued the stop work was due to a serious safety concern, and the matter was referred to the Victorian Building Industry Disputes Panel as permitted under a collective agreement covering the project.

The panel decided the workers' actions were not industrially motivated but related to serious safety issues and imminent risk, and it ruled against the pay deductions.

Abigroup referred the decision to the AIRC and Commissioner Blair found the workers' action did relate to industrial matters, the union failed to observe the dispute resolution procedures in the collective agreement, including safety matters, and the pay deduction must stand.

## New campaign on manual handling

The Heads of Workplace Safety Authorities has announced a national focus on manual handling tasks in the manufacturing industry.

Inspectors will conduct follow-up visits to workplaces to assess their risk management of "body stressing" - muscular stress due to hazardous manual handling or repetitive movement - which accounted for 43% of all the industry's workers compensation statistics in 2006-2007.

The latest visits follow a 2007 national safety campaign to counter the rates of injury and disease from manual handling in which 334 manufacturing workplaces were inspected.

The inspectors will assess the impact of that campaign, the use of risk assessments for high-risk tasks and the levels of control implemented.

Nationally, 181 audits were being conducted from June to August on four sectors: automotive components; wooden furniture and upholstered seats; sheet/structural fabricated metals; and non-metallic mineral products.

## Chiefs push national truck safety

The chief executives of Australia's biggest trucking companies and the head of the Transport Workers Union say a national regulator will reduce deaths from heavy vehicle-related accidents

In an unusual move, Toll Holdings managing director Paul Little, Linfox chief executive Michael Byrne and TWU federal secretary Tony Sheldon sent a joint letter to Prime Minister Kevin Rudd appealing for commonwealth and state government agreement on a national transport system.

The transport industry feared state interests could derail the national idea.

The letter, sent ahead of the COAG meeting in Darwin, said a single road regulator would streamline individual state laws on driver fatigue, as well as truck licensing and registration. The leaders reminded Mr Rudd that 281 people died in the year to last September in heavy vehicle-related accidents.

"While these incidents are not all the responsibility of heavy vehicles, we believe that a well-resourced national regulator can make a major difference."

The COAG meeting did agree to implement national regulation for heavy vehicles leading to improved safety.

"A single national heavy vehicle regulator will ... regulate all vehicles over 4.5 gross tonnes, ending the separate and at times conflicting regulatory imposts on the heavy vehicle industry," according to its communiqué.

# Call to protect managers from upward bullying

One in four Australian bosses faces bullying tactics such as office gossip, withholding of information and intentional missing of deadlines, according to new research.

The study into staff who target and harass their managers - a behaviour known as "upwards bullying" - revealed other common tactics included spreading workplace rumours, skipping meetings, and ignoring managers' views and opinions.

"Upwards bullying, like other forms of workplace bullying, is often more subtle and less obvious to other staff," said Dr Sara Branch, psychologist and study author from Griffith University. "However, it can also include more aggressive behaviours such as yelling, verbal threats, and confrontational phone conversations.

"We found that many managers felt uncomfortable about reporting the bullying for fear of not being taken seriously or being expected to deal with the situation on their own.

"Workplaces need to understand that bullying can occur at any level in an organisation. Although managers clearly have formal authority, they can also be victims of bullying and need just as much support as other staff."

Dr Branch presented her findings at the Australian Psychological Society's Industrial & Organisational Psychology Conference in Sydney.

The new study found that organisational change



Dr Sara Branch

was a major trigger for upwards bullying.

"If an employee is disgruntled by change, such as new working conditions, management, or processes, they may blame their manager and respond by bullying them."

She said this could potentially damage a manager's mental health and wellbeing.

"We know that bullying can cause psychological stress, anxiety, and in some extreme cases, even depression. Managers may also lose confidence in their abilities and feel less satisfied in their jobs."

She said upwards bullying could potentially impact the bottom line, with loss in productivity, increased absenteeism and higher staff turnover, plus the cost of intervention programs.

"Organisations must take all forms of bullying seriously, as it is destructive and can have devastating affects on people's careers.

"Workplaces should adopt grievance management processes that employees can trust. Encourage managers to report the bullying and bring employees together to discussing the issues openly."

The study involved 162 (105 male, 57 female) participants from public and private organisations across a range of industries and managerial levels including senior, middle and supervisory positions.

Dr Branch said the 25% rate of bullying reported by study participants was much higher than the average 11% revealed in similar studies in Europe.

# Working hours cause discontent for many workers

A study of 3324 employees shows almost half are unhappy with their working hours and many want to work less hours for a greater work-life balance.

Researcher Rosie Bauld from Griffith University found employees who worked 44.8 hours weekly were less satisfied with their jobs than those who worked 36 hours.

Ms Bauld, who presented her preliminary findings at the IOP conference, said employees wanted shorter working hours and more flexibility in their jobs.

"If staff feel their work is negatively impacting their personal life, they are more likely to have higher absenteeism rates or look for alternative employment."

She said staff indicated they would use flexible working options such as a four-day working week with 10-hour days (52%), flexible start and finish times (47%), working from home (36%) and working part-time (12%).

"There are pay-offs for organisations who offer flexibility, including increased staff retention, employee engagement and reduced staff absenteeism.

"The benefits often outweigh the cost of replacing staff or managing overworked and stressed employees.

"A challenge for organisations is to ensure employees understand that flexible work options are a viable

alternative and not just lip-service, as many staff still feel there will be negative consequences for choosing to work from home or outside of traditional office hours.

"Managers and supervisors need to lead by example and demonstrate flexibility themselves, so employees feel more comfortable taking up alternative options."

A household-based study from the Melbourne Institute found when it comes to job satisfaction workers are most dissatisfied with their pay and hours worked.

The *Household Income and Labour Dynamics in Australia* report says while low satisfaction rarely persists for more than one year, dissatisfaction with total pay, hours of work and job flexibility appear to be ongoing problems for some people.

Male workers are slightly more likely to experience continuing dissatisfaction with working hours, with 10% feeling that way in three or more of the six years between 2001 and 2006 compared to 6% of females.

Males also more commonly experience continuing dissatisfaction with flexibility to balance work and non-work commitments with 12% reporting low levels in at least three years compared with 8% of females, with more of the latter holding part-time jobs.

## Emails can be unhealthy at work

A specialist in workplace health and a provisional psychologist have warned of the effects of emails on employer well-being.

Visiting Canadian Professor Linda Duxbury (pictured) says “our life is being run by our email; it’s hurting, not helping” and employers must do something about it.

She told the Australian Human Resources Institute conference in Sydney that email had raised expectations of availability, volume of work and response times, but reasonable and realistic response times must be set.

She called for a shift in people-management priorities so employees are perceived to be as important to the company as shareholder value, budgets and operations.

Professor Duxbury, of the Sprott School of Business, said leaders must be held accountable for people management and the long-hours culture must be challenged with a focus on output and quality rather “than hours and being seen”.

She called for the introduction of new performance measures and rewards for people who successfully combined work and non-work activities rather than those who worked extensive hours and expected others to do the same.

A study by psychologist Rowena Brown of 218 staff from the University of Queensland found interpreting ambiguous emails can be just as stressful as receiving large volumes of messages.

“Complex and emotionally driven emails may complicate the message and allow room for misinterpretation. Our study found poorly crafted and complex emails can contribute to work-related stress such as feeling overloaded, as well as impacting on job satisfaction and working relationships.

“Employees reported that poorly written emails can also create confusion and disagreements over work-related activities and responsibilities.

“Feeling stressed, overwhelmed and emotionally exhausted are other common strains caused by emails.”

Ms Brown noted the study showed large numbers of emails also increased job satisfaction which “may suggest that receiving workplace emails enables users to feel connected and important within their work environment”.

She said the findings showed email was a “double-edged” sword.

“We know email can help employees to feel engaged with and connected to their work colleagues; however, the impact of a poor-quality email, combined with the expectation to respond immediately, can create unnecessary stress.”

Ms Brown, who addressed the IOP conference, urged employers to train staff in appropriate email etiquette. This included:

- keeping language professional and concise;
- providing a clear outline of the expected response;
- ensuring, where possible, a timeframe for action or response is included;
- when constructing emails, be mindful of how the message could be interpreted by the receiver; and
- considering a better way to communicate, especially if tasks are highly complex.

## Paramedic strike action put on hold

Victorian paramedics called off strike action from midnight on June 30 after the state government sought further crisis talks in the Australian Industrial Relations Commission.

Ambulance Employees Australia state secretary Steve McGhie said there had been positive noises coming from the government but there were still major obstacles before an agreement could be reached.



## Dairy producer faces huge fine

A global dairy producer and researcher based in the US faces penalties of \$1,145,200 over a variety of alleged safety hazards at its whey processing plant in Ohio.

The US Department of Labor’s Occupational Safety and Health Administration cited the Milk Specialties Company for violations of federal OHS standards involving industrial truck operators.

The OSHA, which inspected the plant in December 2008 in response to a complaint, issued willful citations related to the employer’s failure to comply with confined space entry and control of hazardous energy requirements.

It alleges untrained and uncertified employees entered confined spaces to maintain and clean powered equipment without protection from various hazards.

Other violations included combustible dust and electrical hazards; lack of exit route lighting and signage; and uninspected fire extinguishers.

The OSHA has inspected Milk Specialties 15 times since 1974, including four inspections in Wisconsin between 2006 and 2008.

## Fatalities probed

A Melbourne worker died in hospital two weeks after his coat was caught in an operating lathe at Tullamarine on June 4.

The 60-year man, who was working at a plastics manufacturing factory, was severely injured when dragged in.

WorkSafe Victoria is investigating the circumstances behind the 14th workplace fatality in the state this year and the second involving unguarded equipment.

• A 58-year-old worker died after being hit by a falling steel beam at a construction site in Kwinana, WA.

The man was understood to have been in the bucket of an elevating work platform when struck. He was rushed to hospital but later died.

WorkSafe WA is investigating.

# Engineering firm fined \$72k over apprentice death

An Adelaide engineering firm was convicted and fined \$72,000 in the South Australian Industrial Court over safety failings which led to the death of a teenage first-year apprentice.

Diemould Tooling Services Pty Ltd had already pleaded guilty to failing to ensure an employee was safe from injury and risks to health while at work.

It received a 10% discount for its plea, which had been delayed by several years as the company appealed unsuccessfully up to the High Court on a point of law.

A SafeWork SA prosecution followed an investigation into the death of 18-year-old Daniel Madeley on June 5, 2004. Mr Madeley's dustcoat became caught on the unguarded spinning shaft of a horizontal borer and he was forcibly dragged into the machine.

He suffered what Industrial Magistrate Richard Hardy described as "catastrophic and overwhelming injuries" before dying in hospital the next day.

The magistrate described the defendant's culpability as "...close to being in the worst possible category," and that "...it was difficult to envisage a more aggravated offence".

SafeWork SA's investigation uncovered "multiple failures" including:

- the machine was completely unguarded;

- no interlock devices to prevent contact with dangerous moving parts;
- nothing to prevent accidental activation of the machine's continuous run button;
- inadequate training and supervision (Mr Madeley was alone at the time of the incident);
- dangers of the borer were not identified; and
- loose-fitting dustcoats should have been banned under a safe operating procedure.

"In my view, the defendant's failures put it at a level which demands a particularly high penalty," Magistrate Hardy said.

SafeWork SA executive director, Michele Patterson said the case was a sobering example of the worst that can happen when safety systems were neglected.

"This tragic outcome would have been entirely preventable had the right safety checks been done and the appropriate control measures put in place.

"We urge all employers to heed the lessons from this case, and be mindful of their obligations to their workers and others under the law, especially to their young workers who we know are the most vulnerable in any workplace," she said.

The full judgment is on <http://www.austlii.edu.au/au/cases/sa/SAIRC/2009/43.html>.

## Legal victory for Ford

A major motor company will not have to pay the full legal costs of a mechanic who died from asbestosis caused by his work.

The WA Court of Appeal ruled in Ford's favour, saying it had to pay only between 50 and 60% of costs after the family of Antonino Lo Presti sought an order for full payment.

Mr Lo Presti, 59, became Australia's first motor mechanic to win a successful negligence verdict against a car company for asbestos exposure when the WA Supreme Court ruled he was entitled to compensation in February last year.

The court awarded Mr Lo Presti - who died last April - \$840,000 in damages but ordered Ford to pay only a percentage of costs. The company had earlier rejected an offer to settle for \$450,000.

The family appealed, saying Mr Lo Presti was left with a large legal bill and argued Ford's rejection of the settlement was unreasonable.

It was submitted that because the company forced the case to go to trial and lost, it should have to pay the legal costs.

But the Court of Appeal upheld the decision of Justice Beech that the former mechanic was liable for his part of the costs.

The legal proceedings began in 2002, two years after Mr Lo Presti was diagnosed with asbestosis.

Read the full judgment on [www.austlii.edu.au/au/cases/wa/WASCA/2009/115.html](http://www.austlii.edu.au/au/cases/wa/WASCA/2009/115.html).

## Bakery fails to protect youth

A bakery was convicted and fined by SA Industrial Magistrate Stephen Lieschke over an incident in which a teenage worker was injured by machinery.

S & E Krotiris and Sons Pty Ltd (t/a Champion Bakery) pleaded guilty to failing to ensure an employee's safety and to report a notifiable injury.

SafeWork SA prosecuted the firm after the incident in November 2007 when a 17-year-old casual assistant's right arm was trapped by the rotating trays of a dough proving machine, as he reached in through an unguarded rear opening.

Emergency services took about half an hour to dismantle the machine to free the youth, who suffered nerve damage and soft-tissue injuries.

SafeWork SA was alerted to the incident by a media report and an inspector went to the premises the following day to find a lack of both a risk assessment on the machine and any safe operating procedures.

The teenager also was not instructed or trained to avoid accessing the machine through the rear panel.

Magistrate Lieschke said he "should not have been put in that position and would have been protected from the consequences of his decision to do so had the plant been properly guarded or had there been a clear safe operating procedure, or had he been appropriately instructed and trained".

The bakery was fined \$6160 after receiving a 20% discount for an early guilty plea and its cooperation.

# Instructions prove ‘hopelessly inadequate’

An equipment manufacturer was convicted and fined \$140,000 by the Victorian County Court over the death of a worker who was doing routine maintenance on a rock crusher.

Judge Philip Coish found Extec Sales & Distribution Australia Pty Ltd failed to provide accurate information in a manual for the rock crusher and that it was inconsistent with the instructions provided by an employee.

Extec pleaded not guilty to breaching the duties of manufacturers of plant over the July 2005 death of the employee of Barro Group Pty Ltd.

The 39-year-old died at a quarry while working on the crusher supplied by Extec.

Part of the crusher, a 1.3 tonne steel plate, fell from

its mounts and hit the man who was in the crusher box. Although he was an experienced quarry maintenance person, it is unclear why he was there.

It was alleged the manual supplied with the machine and the verbal instructions provided by Extec were “hopelessly inadequate” and the printed instructions were “confusing”, “unclear” and “wrong”.

Judge Coish also said Extec’s training was “completely unsatisfactory”, especially when the “task to be performed was inherently dangerous and had clear and significant risks”.

Crushers of the same type were re-commissioned after the incident.

Charges against Barro Group Pty Ltd are to be heard later.

# Simtars snares major mine safety contract

Queensland’s Safety in Mines Testing and Research Station will manage a major new mine safety demonstration project in China.

The Commonwealth appointed Simtars to the joint Australia-China project at the Xuandong coal mine, 150km from Beijing.

“The mine will showcase Australian mine safety technology, training and education in risk management; and adopt leading practices and technologies to minimise mine injuries and fatalities,” Mines and Energy Minister Stephen Robertson said.

The first team of Australian safety experts has already undertaken a safety audit of the mine - the first step towards it achieving world’s best safety practice.

“The lessons learned at Xuandong will set new standards for mine safety at other coal mines in China and around the world,” said Mr Robertson (pictured).

He said the appointment was an international coup for Simtars and the Department of Employment, Economic Development and Innovation and “reinforces Simtars reputation as a leader in mine safety and technology



both within Australia and around the world”.

Mr Robertson said the China project followed the recent delivery of its world-famous Camgas mine gas analysis system to South Eastern Coalfields Limited, a subsidiary of the world’s largest coal mining company - Coal India.

Camgas is an early-warning system for detecting dangerous gases in mines and minimising the risk of fires and explosions.

Meanwhile, legislative changes to the state’s Coal Mining Safety and Health Act 1999 and the Mining and Quarrying Safety and Health Act 1999 came into affect on June 25.

The amendments relate to the creation of a Commissioner for Mine Safety and Health and its powers and functions; extension of time for starting a prosecution in the event of a coronial inquiry into a fatal accident; protection of people making complaints or raising issues about safety and health at a mine; and extension of protection from liability for inspectors and other officers.

# ACT changes to reduce workers’ compo costs

Legislative changes in the ACT will reduce the costs of workers’ compensation and the waiting time for injured workers to receive it, says IR Minister John Hargreaves.

He tabled amendments to the Workers Compensation Act 1951 - that includes a workers’ compensation scheme for the private sector - in the Legislative Assembly.

The Act includes a Default Insurance Fund safety net to meet the cost of claims against non-insured employers or insurers who cannot meet their liability.

But the fund’s advisory committee raised concerns over the current need to get employer consent to settle a claim. Mr Hargreaves said costs can dramatically increase if employers could not be found or wouldn’t cooperate.

“In such cases, a claim would need to proceed through the court system which would see an increase in costs for all stakeholders as well as a delay in compensation being provided for injured workers.”

He said the amendments would give the fund manager powers to settle a claim without employer consent, bringing it into line with all private sector insurers.

“These amendments will reduce legal and administrative costs associated with a compensation claim, as well as reduce court time.

“However, most importantly, these amendments will expedite the time taken for injured workers to receive their workers’ compensation entitlements.”

# Dust, fume and fibre hazards misunderstood

Many WA employers are either unaware of the hazards of dusts, fumes and fibres or are not taking appropriate action to reduce the risks.

An inspection campaign by WorkSafe WA in April found hazards to workers at 61 out of 94 workplaces and inspectors issued 57 improvement notices, one prohibition notice and seven verbal directions.

Commissioner Nina Lyhne said lack of risk assessment was the most common problem identified.

"In some cases, inspectors reported employers and managers were not even aware that some of the substances being dealt with by workers were hazardous. For example, inspectors visited cabinetmakers who were not aware of the hazards of exposure to wood dust and restaurateurs who were unaware that fumes from high-temperature frying could be a health risk.

"But even when employers were aware the risks existed, inspectors found quite a few workplaces where workers were not being provided with adequate information and training with regard to the hazards.

"We firmly believe that raising awareness is the best way in which to lessen the risk of illness and injury, and it is evident that this particular campaign has been successful in raising awareness of the risks...."

During the campaign, inspectors also assessed whether hazardous or combustible dusts, fumes or fibres were present and, if they were, ran through a checklist based around identification, assessment and control.

Different industries and hazards were covered in the campaign, including welding fumes in metal manufacturing, pesticides in agriculture and asbestos in construction.

## Hardie seeks move to Ireland

James Hardie Industries NV says its proposed move to Ireland will not affect its overall commitment to its asbestos diseases fund but costs would likely reduce the company's liability in the fiscal year 2011.

The move of the corporate base from The Netherlands - subject to shareholder approval next month - will see the company transform into a new form of European corporation known as an SE\*.

The move will improve James Hardie's chances of qualifying for tax benefits in the US which it had failed to achieve through its earlier move to Holland.

CEO Louis Gries said in a statement that the proposal "will not change the overall commitment of James Hardie to make contributions to the Asbestos Injuries Compensation Fund".

"However, if a contribution is due to the AICF in the company's 2011 financial year, which is not yet known, the costs associated with the proposal and with the transfer of the intellectual property will most likely reduce the amount of the company's contribution in that year."

James Hardie agreed with the NSW government to apply to the Australian Taxation Office for new tax rulings covering its fund contributions, seeking confirmation its tax status will not change materially as a result of the move.

• An SE is a legal form of a public limited company recognised in the European Union which can be registered in any of its member states.

## 'Nervous butterflies' spread stress

New research shows 86% of Australians feel nervous butterflies in their stomach, particularly during times of high stress.

Facing looming deadlines (50%) is among the many effects of this anxiety, according to 1100 respondents to the Galaxy Research conducted in March.

Professor Terry Bolin of the Gut Foundation said it was time for digestive health to be taken seriously and for workers to stop easing stomach-stress symptoms through snacking on junk food, overeating and skipping meals.

"The link between high stress and gut trouble is well documented and a common cause of complaint for Australians, who are renowned hard workers.

"In an ideal world we could avoid stress and skip the butterflies altogether, but realistically it is important for people to pay close attention to nutrition when they notice tummy troubles starting."

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BenchmarkingHR

## Workers put OHS case

A delegation of workers converged on Canberra to try to convince politicians to beef up proposed national OHS laws to the NSW standard.

Unions NSW organised the rally of bank tellers, teachers and shop assistants to meet the likes of Tanya Plibersek, Jennie George, Bob Debus and Senator Doug Cameron.

A key issue pushed by the delegation was agreement by IR ministers on draft principles to stop unions taking court action for workplace safety breaches.

Unions NSW said this ignored compelling evidence that such action delivered justice to injured workers and prompted employers to invest in safer workplaces.

Secretary Mark Lennon quoted the dramatic reduction in armed hold-ups since the Finance Sector Union launched successful legal action against the big banks.



The OHS Bulletin is published fortnightly and available at \$450 (inc. GST) for a full year. Your subscription is backed with a money back guarantee.

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