CCUPATIONAL SAFETY AND HEALTH ACT 1984 - SECT 3A

3A .         Penalty levels defined

        (1)         Where a person is liable to a level one penalty for an offence against this Act the person is liable —

            (a)         if the offence was committed by the person as an employee —

                  (i)         for a first offence, to a fine of $5 000; and

                  (ii)         for a subsequent offence, to a fine of $6 250;

            (b)         if paragraph (a) does not apply —

                  (i)         in the case of an individual —

                        (I)         for a first offence, to a fine of $25 000; and

        (II)         for a subsequent offence, to a fine of $31 250;

                or

                  (ii)         in the case of a body corporate —

                        (I)         for a first offence, to a fine of $50 000; and

        (II)         for a subsequent offence, to a fine of $62 500.

        (2)         Where a person is liable to a level 2 penalty for an offence against this Act the person is liable —

            (a)         in the case of an individual —

                  (i)         for a first offence, to a fine of $100 000; and

                  (ii)         for a subsequent offence, to a fine of $125 000;

                or

            (b)         in the case of a body corporate —

                  (i)         for a first offence, to a fine of $200 000; and

                  (ii)         for a subsequent offence, to a fine of $250 000.

        (3)         Where a person is liable to a level 3 penalty for an offence against this Act the person is liable —

            (a)         in the case of an individual —

                  (i)         for a first offence, to a fine of $200 000; and

                  (ii)         for a subsequent offence, to a fine of $250 000;

                or

            (b)         in the case of a body corporate —

                  (i)         for a first offence, to a fine of $400 000; and

                  (ii)         for a subsequent offence, to a fine of $500 000.

        (4)         Where a person is liable to a level 4 penalty for an offence against this Act the person is liable —

            (a)         in the case of an individual —

                  (i)         for a first offence, to a fine of $250 000 and imprisonment for 2 years; and

                  (ii)         for a subsequent offence, to a fine of $312 500 and imprisonment for 2 years;

                or

            (b)         in the case of a body corporate —

                  (i)         for a first offence, to a fine of $500 000; and

                  (ii)         for a subsequent offence, to a fine of $625 000.

# McGowan Government to increase penalties for workplace safety offences

Sunday, 27 August 2017

* Significant increase to penalties for businesses who commit safety offences
* Safety of WA workers a priority of the McGowan Government
* Penalties in the Occupational Health and Safety Act 1984 to be consistent with the model Work Health and Safety Act

The McGowan Government will increase penalties for workplace safety offences to bring Western Australia into line with other States and ensure penalties better reflect the importance of a safe workplace.

The amendments will increase penalties for businesses which commit safety offences under the Occupational Health and Safety Act 1984 (OSH Act) for the first time since 2004.

The new penalties will be consistent with the national model Work Health and Safety Act (Model Act), with a further increase for inflation (1.14 per cent) from 2010.

Harsher penalties for offenders include increasing the maximum term of imprisonment from two to five years.

First offence fines for body corporate offenders will also drastically increase, Level 4 first time offences will increase from $500,000 to more than $2.7 million.

Level 1 penalties will increase from $50,000 to $456,000.

With the exception of WA and Victoria, other Australian jurisdictions have adopted the Model Act and, as a result, penalty levels in WA's OSH Act are significantly less than those applying in many other jurisdictions.

# City of Armadale fined $47,000 over 2014 accident at Hopkinson Road Waste Disposal Site

CITY of Armadale has been fined $47,000 after a man was seriously injured at the Hopkinson Road Waste Disposal Site in Hilbert.

During a recent hearing at the Armadale Magistrates Court, the City pleaded guilty to failing to ensure the safety and health of a person who was not their employee and to a charge of failing to comply with a prohibition notice.

They were fined $47,000 and told to pay costs of $5510.

The fine came after a man visiting the landfill site in August 2014 was hit by a loader driven by a City of Armadale employee.

The man suffered a number of serious injuries which have left him unable to work.

The City’s former waste services division manager Robert George Druid-Sutton also pleaded guilty at the hearing and was fined $12,500, as well as costs of $4950.

WorkSafe WA commissioner Ian Munns said the City was given a prohibition notice the day after the incident to stop the use of loaders near members of the public, but CCTV footage captured workers at the landfill site continuing to use to the machinery.

“The City of Armadale did not ensure that safe systems of work were in place for an area in which it allowed mobile plant and pedestrians to be present at the same time,” he said.

“And even more worrying, the extremely dangerous practice continued through the receipt of Improvement Notices and even when the City was issued with a Prohibition Notice.

“This is a good opportunity to remind employers that not only are they ultimately responsible for the safety and health of their employees and anyone else who is lawfully in workplaces, but that their senior managers must also accept a level of responsibility for safety and health in their areas.”

Armadale chief executive Ray Tame said the City “sincerely regrets” that a member of the community was injured.

“The City pled guilty at the earliest opportunity and acknowledged its corporate responsibility in this matter,” he said.

“We have acted to remove the risks at this site and made significant changes to staff and procedures involved.”

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| Offender | HVLV Pty Ltd (ACN 140 720 654) |

## Charges

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| Description of Breach(es) | Being an employer, failed so far as was practicable to provide and maintain a working environment in which its employees were not exposed to hazards and by that contravention caused serious harm to an employee contrary to sections 19(1) and 19(2) of the Occupational Safety and Health Act 1984. |
| Background Details | HVLV Pty Ltd is a business designing and manufacturing electrical switchboards and switch rooms from premises located at 155 Lakes Road, Hazelmere WA 6055.  Within the workshop on the premises, HVLV Pty Ltd carried out steel fabrication work for the electrical switch rooms.  HVLV Pty Ltd operated an electric travelling overhead crane within their workshop to assist with the work.    ACTIVITIES AT THE WORKPLACE ON 25 FEBRUARY 2013 On 25 February 2013, two employees of HVLV Pty Ltd were welding together a portal, which was used to make the framework for the electrical switch rooms manufactured by HVLV.  At the same time in the workshop, a group of employees were conducting penetration tests on material used in the outer cladding of the switch rooms.  To conduct the penetration test, a test weight (weighing 46 kilograms) was tied to the handrails of a scissor type elevated work platform (EWP), and the EWP was raised to a height of approximately 10 meters, where the test weight could be placed in a fabricated tube, which was affixed to the side of the workshop, and dropped onto the outer cladding.  Due to the combined weight of the worker in the EWP and the test weight, the worker asked his supervisor if he could be assisted by someone with the testing in the scissor lift to act as a counter-balance.    THE INCIDENT At approximately 3:00pm, the employees working on the steel portal had completed their task and intended to move the steel portal to an area at the south end of the workshop where they were stacked.  The employee operated the overhead travelling crane using a wireless remote control and his assisting co-worker was supporting the portal and keeping it steady. During this movement the overhead crane collided with the EWP the two workers were in and tipped it over.  One worker rode in the EWP basket to the ground and the other worker managed to grab the crane as it passed overhead and was left hanging from it for a few seconds but then he to fell to the ground.  The worker who rode the lift to the ground suffered numerous fracture injuries, including to his arm, shoulder, ribs and a punctured lung. The other worker who fell after briefly holding onto the crane suffered multiple injuries, including dislocation of his arm, leg and fractures to his arm, leg, foot, pelvis and lumbar spine.    POST INCIDENT When the director of HVLV Pty Ltd was interviewed following the incident he conceded that "with hindsight" a Job Safety Analysis or some form of hazard assessment should've been done in these circumstances.  It was practicable for HVLV Pty Ltd to identify the hazards associated with having a EWP in an area of other mobile plant such as an overhead travelling crane and take measures to reduce or control the hazard, such as:  a) Restrict the use of the overhead travelling crane while the EWP was used; b) Notify and actively communicate with all staff working in and around the area of the EWP; c) Isolate the area that the EWP was operating with bunting or use of a ground spotter. |
| Outcome Summary | Found Guilty by the Magistrate. Fined $180,000.00 and ordered costs of $784.30. |
| Court | Midland |
| Costs | $784.30 |

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| **Offender** | Leslie Taylor |

Charges

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| Description of Breach(es) | Being an employee, failed to take reasonable care to avoid adversely affecting the safety or health of any other person through any act of omission at work. Sections 20(1)(b) and 20A(2) of the Occupational Safety and Health Act 1984 |
| Background Details | Leslie Taylor was employed by a car dealership as a pre-delivery assistant.  The car dealership operated in Attadale and included vehicle servicing facilities (Workplace).  The Workplace consisted of both showrooms and a mechanical workshop at the rear of the premises. The mechanical workshop had four work bays. Opposite the workshop there were two wash bays.  On 10 July 2013 Mr Taylor was conducting a pre-delivery check on a new un-registered black Holden Cruze (Vehicle).  After lunch on this day Mr Taylor drove the Vehicle from the window tinting workshop to his work bay.  Mr Taylor noticed that another employee (a parts manager employed by the car dealership) was standing in the middle of the entry to the work bay. The parts manager moved to the right side of the work bay when he saw Mr Taylor.  After Mr Taylor had driven the Vehicle into the work bay he left the engine running and placed it into reverse gear with a view to checking the rear lights.  As the parts manager was standing nearby, Mr Taylor asked him to check that the lights were working.  Whilst the parts manager was leaning over the rear of the Vehicle to check the lights the Vehicle suddenly lunged backwards.  Mr Taylor had accidently pressed the accelerator rather than the brake pedal.  The parts manager was struck by the Vehicle and dragged under it for 11.6 metres (from the work bay to the wash bay).  The CCTV footage showed that the Vehicle reversed at speed from the work bay, colliding with another vehicle in the yard (Holden Commodore SS) and then finally stopping when it collided with another vehicle (Hyundai i20) down in the wash bay.  The parts manager suffered fatal chest injuries.  The Vehicle’s engine was not required to be running in order to check the rear lights. The key only needed to be turned to the accessories mode. Mr Taylor was aware of this fact.  The Vehicle was examined by the WA Police Vehicle Investigation Unit on 26 July 2013 and 2 August 2013. No defects were detected with the Vehicle.  By failing to ensure that the parts manager was not standing behind the Vehicle while it was in reverse gear and the engine was running, Mr Taylor has failed to take reasonable care not to adversely affect other persons.  Mr Taylor’s failure to take reasonable care has caused the death of the parts manager. |
| Outcome Summary | The Accused was found guilty after a two day trial and was convicted on 25 January 2017.   The Magistrate fined the Accused $9500.00 and ordered costs of $12,052.75. |
| Court | Magistrates Court of Western Australia - Fremantle |
| Costs | $12,052.75 |