

A brief update of what is happening around Australia – remember you have an obligation to provide a safe workplace whether that is an office, car, on a site or working from home.

## Topics in this update

- Responding to COVID-19
- Prison sentences and \$3M fine – Queensland's first reckless conduct and industrial manslaughter convictions
- Fine – Edge protection company and its director
- Fine – Electrical breach by a sole trader (electric shock – powerlines)
- Legislative Amendments to NSW WHS Act
- Workplace Manslaughter laws to commence in Victoria on 1 July 2020

**Free** COVID-19 infection control training – <https://www.covid-19training.gov.au/>

Links to National State and Territories Health Departments.

### National

[NSW](#)  
[ACT](#)

[Victoria](#)  
[Tasmania](#)

[South Australia](#)  
[Western Australia](#)

[Queensland](#)  
[Northern Territory](#)

## **Stay up to date in your response to COVID-19**

- Are you monitoring the COVID-19 updates from the Federal and State Governments Health Departments to ensure you are complying with their directives?
- Have you communicated your internal COVID-19 response to your staff?
- Have you commenced your business continuity plan (work from home, virtual meetings, keeping customers informed of your current and expected capacity)?
- Have you informed your contractor of your expectations to minimise exposure to your teams and them?
- Have you informed your contractor of any limitations you have with resources (people / equipment / finances)?

**Have you undertaken a Business Safety Health check? Call to discuss.**



**Design Safety Solutions**

'Working with you to *Design Safety Solutions*'

## **Reckless conduct and industrial manslaughter convictions – Prison sentences and \$3M fine – Qld**

The defendant company, Brisbane Auto Recycling Pty Ltd was an auto wrecking business located on Marshall Road in the Brisbane suburb of Rocklea. The company conducted the business of purchasing used motor vehicles for the purpose of resale, recycling and parts.

On 17 May 2019, a forklift driver engaged by Brisbane Auto Recycling Pty Ltd was operating a forklift to reposition cars at the delivery area of the Marshall Road workplace. Whilst the forklift was carrying a partial car body, another forklift approached from the workshop shed carrying a car body on one tine.

When the forklift driver reversed, the pedestrian worker was crushed between the rear of the forklift and the driver's side of the tilt-tray. The injured worker was taken to the Princess Alexandra Hospital by paramedics. He died on 25 May 2019, from the injuries he sustained.

His Honour held that the moral culpability of each defendant was high. Judge Rafter SC found, "The defendants knew of the potential consequences of the risk, which were catastrophic. Steps to lessen, minimize or remove the risk posed by mobile plant were available. Those steps were neither complex nor overly burdensome."

Remember – Identify, Assess and implement Controls whilst considering the Hierarchy of controls – Elimination, Isolation, Engineering controls, Administrative controls, Personal protective equipment (PPE).

[More Information click here.](#)

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## **Edge protection company and its director fined for breaching Due Diligence and safety duties – Qld**

An edge protection company and its sole director have pleaded guilty to offences. The defendants were charged for breaching their respective duties, the defendants were fined a total of \$55,000.

The company had been engaged to install edge protection to a domestic dwelling, the roof of which was to be replaced by a separate contractor. A third-party roofing contractor leant against a horizontal edge protection rail. The rail gave way, and the worker fell 2.6 metres onto a concrete surface below. He suffered a significant fracture injury to his left knee as well as laceration injuries to his left leg and left hand.

The investigation by Workplace Health and Safety Queensland discovered that the railing on the edge of the roof had not been adequately secured by the scaffold coupling, which had not been sufficiently tightened.

[More Information click here.](#)

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### **Electrical breach by a sole trader fined – Qld**

An electrician who carried on an **electrical and air-conditioning business** as a sole trader in south east Queensland pleaded guilty to failing to comply with the duty imposed on him. The defendant was sentenced for having failed to carry out his work in an electrically safe manner, contravening his electrical safety duty. He was convicted and fined \$30,000 and ordered to pay costs of \$1,601.80. The conviction was not recorded.

- The defendant had been engaged to undertake repairs to a solar panel system on the roof of a shed.
- He engaged a company to install an edge protection system.
- There were powerlines in close proximity to the shed roof.
- The defendant was present whilst the workers were undertaking this installation work.
- In the course of that work, the worker positioned on the ground handed a 6.5 metre length of steel rail to the worker on the roof. While the steel rail was in the hands of the worker on the roof, it came into contact with, or within close proximity of, the powerline that was located nearest to the shed roof, causing the worker to receive an electric shock.

[More Information click here.](#)

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### **Legislative Amendments to NSW WHS Act**

The Work Health and Safety Amendment (Review) Act 2020 recently passed by the NSW Parliament has enacted the following changes to NSW WHS laws: These changes came into effect **10 June 2020**.

- **Enhancement of the Category 1 offence** by including “gross negligence” as a fault element – To make it easier to prosecute and create a stronger incentive for duty holders to manage WHS risks.
- **Prohibition of insurance and indemnity arrangements** – To ensure people can't avoid responsibility for paying WHS fines. Creating a new WHS offence relating to entering into, providing or benefiting from insurance and/or indemnity arrangements for the payment of WHS penalties, and
- **Increased penalty amounts for all WHS offences** in line with the Consumer Price Index – To ensure penalties retain their deterrent value.
- **Extension of time in which a person can ask WHS Regulators to start a prosecution** in response to a Category 1 or Category 2 offence from 12 to 18 months and addition of a requirement that the WHS regulator provide updates every three months to the requester until a decision to prosecute is made – To ensure that during investigations of workplace accidents, families are kept informed and have access to an effective review mechanism for decisions not to prosecute.
- **Increasing WHS fines.** For example, the maximum fine for a category 1 WHS breach will jump from \$3 million to \$3,463,000. Maximum fines for category 2 and category 3 contraventions will go from \$1.5 million to \$1,731,500, and from \$500,000 to \$577,000, respectively,
- **Clarification that a Health and Safety Representative (HSR) can choose their course of training** – To avoid unnecessary delays which can affect an HSR's ability to fulfil their role and exercise their powers.

[More Information click here.](#)

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### **Workplace Manslaughter laws to commence in on 1 July 2020**

Victorian businesses and officers will need to take notice of the Queensland decision as workplace manslaughter laws will commence in Victoria from 1 July 2020.

Under those provisions, the following persons can be found guilty of a workplace manslaughter offence:

1. Any person (other than an employee or volunteer) who owes a duty under Part 3 of the OHS Act. This means that any employer (whether incorporated or unincorporated) can be charged with workplace manslaughter.
2. An officer of a body corporate, unincorporated body, unincorporated association or partnership.

The offence is one of negligence (not recklessness) and requires the relevant persons to have a duty, and breach that duty which results in the death of a person.

When first enacted, the provisions provided for maximum penalties of a \$16.5 million fine for a body corporate and up to 20 years imprisonment for an individual. However, in late May, the legislation was amended to increase the maximum penalty for individuals from 20 years to 25 years imprisonment.

[More Information click here.](#)

**Design Safety Solutions Pty Ltd can provide you support with:**

- Business health check – consultation/hazards and controls/traffic/teams safety awareness.
- Toolbox talks (monthly) –presentation, questions and answers to your agreed requirements.
- Site contractor compliance verification audits, providing report and corrective action follow-up.
- Safety in Design presentation and process facilitation.
- Site Safety Supervision with end of shift electronic reporting.
- SWMS review – content and compliance with SWMS audits.

**Stay safe, look after  
your workmates.**

**Call to discuss a Business Safety Health check.**

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