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E-Alert: First successful Work Health & Safety Category 1 prosecution in Queensland

By ,

First jail sentence of Queensland director for Work Health & Safety breach

Nearly four and a half years after the death of one of its employees, a director of the employer has been found guilty of reckless conduct and sentenced to 1 year's jail (suspended after 4 months) and the employer fined $1 million (from a maximum of up to $3 million) over the tragedy.

The case is the first Category 1 (Reckless conduct) prosecution under the *Work Health & Safety Act*2011 (Qld) (**WHS Act**) and Maroochydore's District Court took the step that work health and safety practitioners have been anticipating for over a decade.

Background

In 2014, 62-year-old roofer Whareheepa Te Amo fell approximately six metres to his death while working on the edge of a roof of an industrial shed without protection, despite elevated work platforms and safety harnesses being readily available.

The incident occurred at the Lake Macdonald construction site in the Sunshine Coast Hinterland.

The shed was part of a larger complex being re-furbished by Lavin Constructions Pty Ltd (**Lavin Constructions**), which was the builder in control of the site, with Multi-Run Roofing Pty Ltd (**Multi-Run Roofing**) engaged to fit roof sheeting.

In 2017, Lavin Constructions and Multi-Run Roofing, and respective company directors Peter Raymond Lavin and Gary William Lavin, were charged with breaching Section 19(2) and/or 20 of the WHS Act.

Earlier this week, Gavin Lavin and his company Multi-Run Roofing were found guilty of reckless conduct in breaching their duties. Mr Lavin was then sentenced to 1 year's jail (suspended after 4 months) while Multi-Run Roofing was fined $1 million.

Work Health & Safety Laws

Section 19 of the WHS Act imposes a duty of care on persons conducting a business or undertaking (**PCBU**) to ensure, so far as is reasonably practical, the health and safety of workers.

Specifically, section 19(2) provides that *"… A PCBU must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out."*

This includes ensuring:

- the provision and maintenance of a work environment without risks to health and safety, safe plant and structures and safe systems of work;
- the safe use, handling and storage of plant, structures and substances;
- providing adequate facilities for welfare of workers at work, including ensuring access to those facilities;

- providing information, training, instruction or supervision to protect all persons from risks to their health and safety;
- that the health of workers and workplace conditions are monitored to prevent illness or injury of workers.

Section 20 of the WHS Act, requires that a person with management or control of a workplace must ensure that the workplace, the means of entering and exiting the workplace, and anything arising from the workplace are without risks to the health and safety of any person.

A person with management or control of a workplace is defined under this section as *"a person conducting a business or undertaking to the extent that the business or undertaking involves the management or control, in whole or in part, of the workplace."*

During the trial, the Court heard that Mr Lavin had neglected to install safety railings on the roof in an attempt to maximise profits. This was despite being paid by his brother's company, Lavin Constructions, an amount ($284,000) inclusive of the price of safety rails to complete the job.

The jury delivered guilty verdicts for the majority of the charges against Mr Lavin and his company, but was hung on the issues concerning Gary Lavin and Lavin Constructions' involvement in the incident.

In handing down its decision, the Judge acknowledged the remorse expressed by Mr Lavin and that he had too suffered as a result of the incident.

Peter Lavin and Lavin Constructions are due to reappear in February on remaining charges.

Conclusion

This is a heavy reminder of the serious penalties employers may be exposed to if they fail to comply with Work Health & Safety laws.

It also marks the first jail sentence imposed on a director in Queensland under the laws, and second in Australia recently, and is likely to mark a significant transition point in the risk paradigm for safety-related offences throughout Australia.

Persons and directors of entities conducting businesses or undertakings can no longer take it for granted that penalties will be relatively light for WHS failures and need to re-assess their risk management practices and insurance coverage.

Should you wish to discuss any matters arising out of this article, please contact the author:

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