



# HEALTH AND SAFETY MONTH 2016

Planning for tomorrow





# Recent decisions in OHS prosecutions

# Enforcement Group

- Receives referrals from the inspectorate
- Investigators conduct a comprehensive investigation
- Brief of evidence forwarded to legal
- Legal assess brief – decision made to prosecute, not prosecute or caution

# VWA General Prosecution Guidelines

- Publicly available document – provides guidelines regarding the prosecution of offences under Victoria's OHS and workers compensation laws

# VWA General Prosecution Guidelines cont'

- Target areas for prosecutions:
  - Work-related fatalities
  - Incidents involving allegedly high degrees of culpability
  - Published strategic focus areas (e.g. high-hazard and high-risk industries)
  - Failure to comply with notices or directions issued by inspectors
  - Offences against inspectors
  - Offences against HSRs
  - Offences against or by ARREOs
  - Discrimination or threats to discriminate for any OHS-related action

# VWA General Prosecution Guidelines (cont.)

- Enforcement Criteria – where the investigation reveals evidence of a breach, the decision to prosecute, not prosecute or caution is made in accordance with the following considerations:
  1. Sufficient evidence to support a prosecution
    - Prosecution Policy of the Commonwealth
    - Reasonable prospects of a conviction
    - Admissibility, relevance and strength of evidence
    - Witnesses
  2. The public interest

# DPP -v- Vibro-Pile (Aust.) Pty Ltd & Frankipile Australia Pty Ltd

- Frankipile was engaged to undertake piling work associated with building foundations at a site on Southbank. Frankipile in turn engaged Vibro-Pile to operate a piling rig owned by Frankipile.



## DPP -v- Vibro-Pile (Aust) Pty Ltd & Frankipile Australia Pty Ltd

- On 28 May 2011 a section of the piling rig collapsed.
- The rig was being operated by Vibro-Pile employee WT. Frankipile employee SS was on top of the section of the rig that collapsed.
- He and the section of the rig fell 40 metres, sustaining extensive and fatal injuries.

# DPP -v- Vibro-Pile (Aust.) Pty Ltd & Frankipile Australia Pty Ltd

## Critical pre-incident circumstances

- WT had arrived at the site two days earlier. The afternoon before the collapse, WT was asked to attach a 1.8 metre section to a 20 metre extension of the rig.
- The 1.8 metre section required 16 bolts to attach it securely to the rig. WT and his assistant only used 6 bolts. This was because WT mistakenly believed that the other 10 bolts were unnecessary.
- WT had never previously undertaken this particular task. His training in the task was verbal.
- The instructional document for erecting the piling rig did not include directions on how to safely fit the extensions.
- WT was not supervised during the task of fitting the extension.

# DPP -v- Vibro-Pile (Aust.) Pty Ltd & Frankipile Australia Pty Ltd

## Charges

1. Frankipile failed to identify the hazard of the piling rig collapsing if there was a failure to insert all of the bolts, and accordingly failed to control the risk by ensuring that there was a documented procedure for safely attaching the extension.
2. Frankipile failed to induct/train relevant employees in the safe attachment of the extension, and failed to supervise the attachment of the extension.

# DPP -v- Vibro-Pile (Aust.) Pty Ltd & Frankipile Australia Pty Ltd

## Charges (con't)

3. Vibro-Pile failed to identify the hazard of the piling rig collapsing if there was a failure to insert all of the bolts, and accordingly failed to control the risk by ensuring that there was a documented procedure for safely attaching the extension.
4. Vibro-Pile failed to induct/train WT in the safe attachment of the extension, and failed to supervise the attachment of the extension. (Vibro-Pile was acquitted of a third charge)

# Trial & Sentence

- By jury verdict, Frankipile and Vibro-Pile found guilty of all charges
- Sentence
  - Charges 1 & 2 – Frankipile convicted and fined aggregate \$350,000
  - Charges 3 & 4 – Vibro-Pile convicted and fined aggregate \$100,000

# Appeal

- Vibro-Pile appealed both conviction and sentence
- DPP appealed sentence for both Frankipile and Vibro-Pile

## Outcome

- Appeal of conviction refused
- DPP appeal of sentence allowed:
  - Frankipile
    - Charge 1 - \$250,000
    - Charge 2 - \$500,000
  - Vibro-Pile
    - Charge 1 - \$250,000
    - Charge 2 - \$500,000

# DPP -v- Vibro-Pile (Aust.) Pty Ltd & Frankipile Australia Pty Ltd

## What was the significance of this decision?

1. Don't focus on the result – focus on the risk and the means of addressing the risk.
2. Vibro-Pile and Frankipile both considered WT to be 'highly trained and experienced'  
– this is not something that an employer is entitled to rely on when determining how it should control risk.
3. The culpability of both duty-holders was the same  
– two or more duty-holders can share the same obligation and can be punished equally for failing to comply with that obligation.



**Thank you.**

