



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

WorkSafe's General Prosecution Guidelines

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

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

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
- Coercion in designated workgroups negotiations
- Failure to notify WorkSafe of a 'notifiable incident' and failing to preserve incident sites when required to do so
- Certain alleged offences under the *Dangerous Goods Act 1985*
- Offences under the *Equipment (Public Safety) Act 1994*
- Other targets areas as published

The Employer

- Registered sole trader, operates building company.
- Employs qualified and apprentice carpenters, including apprentice X.
- Between April 2013 and April 2015, The Employer permitted, encouraged, participated in and failed to stop or control bullying conduct at the workplace.

The Employer

Offensive and degrading comments

- Comments of a sexual nature
- Comments regarding X's sexuality / sexual preference
- Comments regarding child abuse
- Abusive / vulgar comments

Inappropriate behavior

- Live mouse put down X's shirt
- X drenched with water
- The Employer posting an offensive sexual comment on the profile of X's social media page
- The Employer ripping X's work shorts

The Employer

Dangerous or potentially dangerous physical acts

- Another employee and X squirting liquid nails at each other
- The Employer holding a rag doused in methylated spirits over X's mouth
- The Employer holding a hot drill bits against X's bare skin
- The Employer smearing plaster on X's face
- The Employer slapping X with timber
- The Employer scraping X's face with sandpaper
- An employee spitting on X
- The Employer restraining X while another employee painted his face

Sentence

The Employer pleaded guilty to a charge alleging failure to:

- Implement policies, procedures or processes to ensure that bullying did not occur or was responded to if it did occur
- Failed to provide information, instruction and training to employees as was necessary to address and regulate workplace bullying
- Failed to supervise employees as was necessary to regulate workplace behaviour

Sentence:

- Convicted and fined \$12,500

The Employer takeaways

Devising and implementing systems to address risk associated with bullying the same as any other type of hazard:

- Develop policies, procedures and processes
- Train employees in those policies, procedures and processes
- Supervise to ensure adherence to policies, procedures and processes
- Include mechanisms for employees to report bullying conduct to employer



Thank you.

