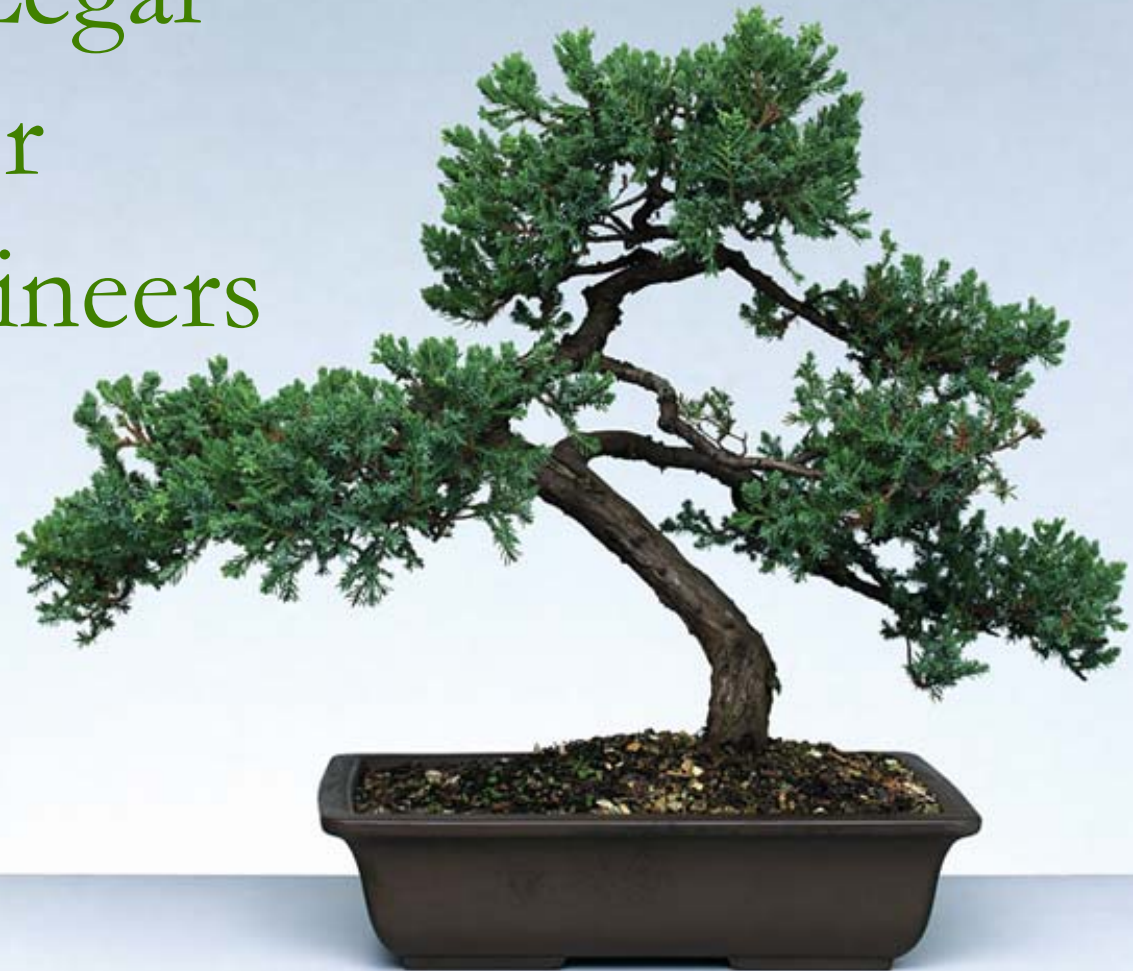


TRUMAN HOYLE
Lawyers

OH &S and Legal
Obligations for
Electrical Engineers

Fiona Inverarity
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What I will cover

- Outline of OH& S Act for
- How the Coal Mine Health & Safety Act impacts on those obligations
- Tips to avoid an OH & S prosecution
- Case examples
- Trends in prosecutions

What Legislation Applies

- Occupational Health and Safety Act 2000
- OH & S Regulations
- OH & S Amendment (Coal Workplaces) Reg 2006
- Coal Mine Health and Safety Act 2002
- Coal Mine Health and Safety Regulation 2006

How will all these statutes interact?

New mining regs designed to “compliment” the OH &S Act

Proposal is to expand all OH & S regs to “coal workplaces” and “mines”

Risk management processes

Set out detailed requirements for specific hazards

Provide certification for individuals on certain hazardous activities and techniques

OH & S Act applies to override CMHS Act

CMHS will contain provisions re supervision of mining plant
not in OH & S Act

Not all OH & S codes of practice apply in mines and coal
workplaces

Control of Hazardous substance yes

Labelling and MSDS no

Check www.workcover.nsw.gov.au

And www.dpi.nsw.gov.au

**OH & S Regs that apply to
mines and coal workplaces**

Risk Assessments

Detailed proscriptive risk
assessments

Plant design and manufacture
obligations

detailed certification of certain
workers by WorkCover

Previous Position

CMRA regs

Not so prescriptive or disclosure
obligations

Currently not required

The Occupational Health and Safety Act 2000 (NSW) (“2000 Act”)

- Employers must ensure the health, safety and welfare at work of all employees (s. 8(1)).
- Employers (and Self employed persons) must ensure the health and safety of people at their places of work (other than employees) by not exposing them to risk (s. 8(2)) and (s. 9).
- Persons who control non - domestic premises, plant or substances must ensure they are in safe condition and that plant or substances are safe when used at work by non -employees (S.10).

The Occupational Health and Safety Act 2000 (NSW) (“2000 Act”)

- Manufacturers, designers and suppliers of plant and substances for use by people at work must ensure that they are safe and without risk to health and that adequate information is provided to ensure safe use (s.11 (1), (2)).
- Persons who erect or install equipment at a workplace have the same obligation as a manufacturer (s. 11(3)).
- Directors/Managers liability (s. 26).

Key Elements of offences

- **Persons who control Plant is in safe condition**
- **Manufacturers, designers and suppliers of plant must provide adequate information**
- **Erect and install plant**
- **Employees take reasonable care**
- **Director and person concerned in the management of the corporation**

Key things Prosecutor must prove

- Who is the employer of the persons put in danger.
 - Ask the question, group certificates
- If the person endangers non employees the place of work must be their undertaking
 - workplace and environs
 - Woolworths case

Manufacturer must supply safe Plant BUT

- Is not excused by improper use
- Well settled that plant must be safe regardless of the use to which it is eventually put
- Knowledge of the manufacturer or supplier important

Adequate Information

- To ensure its safe use
- If supplying by lease or hire broader duty to keep informed over the time of the hire
- If machinery is unsafe liability cannot be avoided by issuing advice or instruction

Obligations of OH&S Regs

- Clause 122 anyone who sells or transfers plant is to ensure all available information concerning health & safety about the plant
- Obligations under schedule 1 of OHS regs re history of equipment
- Clauses 96 and 105 re obligations on manufacturers and suppliers

Risk Assessments

- To discharge duty suppliers and manufacturers must supply a risk assessment S11

Obligations re Plant for employers

Identify hazards

Risk assessments

Ensure designs meet relevant standards

Ensuring adherence to safe work systems and operator competencies

Maintenance and other records

Registration and renewal of plant if required

Specific OH & S Regs

135 Installation and erection of plant

136 Use of plant

137 maintenance and repair

138 dismantling and storage

140 plant under pressure

141 powered mobile plant

142 Plant designed to lift or move persons or other loads

143 and 144 appropriate record keeping

Occurrence happens !

- Inspector and Check Inspector notified
- Investigation takes place
 - 154CMHS 2002
 - Different powers, signed statements
 - Gather documentary evidence
 - Pleading the “5th”
 - Remember the elements of the offence

When will DPI prosecute for breach of OH&S Act?

- Advice from legal department
- Two years from occurrence to commence proceedings
- Additional two year extension if coronial proceedings
- Need statements that cover evidence and reports that include all relevant documents

Decision to prosecute

- Court proceedings filed within 2 years. Summons that particularises the exact breaches
 - Failure to have/instruct employees on safe system to change conveyor booms
- Who are the defendants?
 - Owner of equipment
 - Employer of workers

Guilty Plea

- Often to a reduced charge
- Acceptable to negotiate to reduce the charge or drop some claims. In return for a prompt guilty plea
- Statement of Agreed Facts, this may also involve some concessions
- Evidence from defendants about what they have done to remedy problem
- First offence, contrition, severity of occurrence

Not Guilty Plea

- Onus of proof – beyond reasonable doubt
- Prosecution goes first to prove all element of offence.
- Documents such as group certificates, mining leases, hire agreements
- Witnesses to occurrence and persons at risk to prove method of work and risk to health and safety
- Defendant presents evidence that system or training was adequate, or persons not at risk

Defences

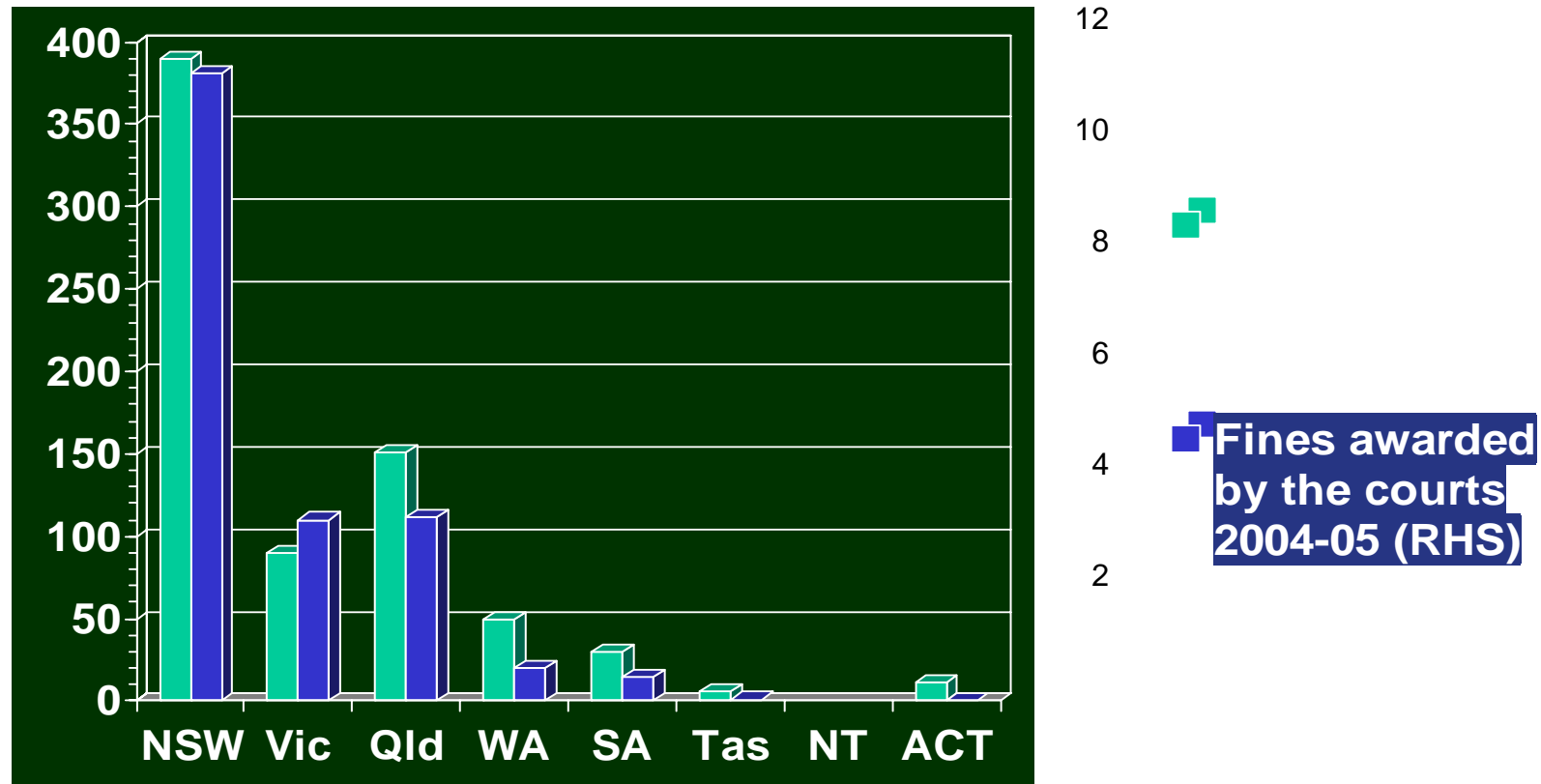
- Section 28
 - Not reasonably practicable
 - Narrower than “physically possible”
 - Due to causes over which they had no control and against the happening of which it was impracticable for the person to make provision
- Section 26 concerned in the management
 - Not in a position to influence
 - Used all due diligence

Judgment

- Fines
 - Corporation up to \$500,000 for a first offence, \$825,000 for second .
 - Individuals up to \$55,000 for a first Up to \$82,500 or 2 years imprisonment or both
- Remedial Orders to fix work practices
- Prosecutor's legal costs paid

SAFETY FIRST

Number Occupational health & safety convictions & fines by state \$m



Source: Workplace Relations Minister's Council

TRUMAN HOYLE

Lawyers

Fiona Inverarity

Partner

Truman Hoyle Lawyers

Level 11, 68 Pitt Street

Sydney NSW 2000

Phone: 9226 9888

Fax: 9226 9899

www.trumanhoyle.com.au

