

Legal Alert

Workplace and Safety

February 2019

Imprisonment for breaching work health and safety duties

In a Nutshell

A Queensland company director, Mr Gary Lavin, was convicted and sentenced to **one year imprisonment** (suspended after four months) for breaching safety obligations through his reckless conduct in the 2014 death of a 62-year old roofer. Mr Lavin's company, Multi-Run Roofing Pty Ltd (Multi-Run), was also convicted and fined \$1 million, to be paid in 6 months, for its involvement in the employee's death. This is the first conviction for a category 1 offence in Queensland and is the **second** non-suspended custodial sentence in Australia for a safety prosecution in as many months. This is adding to a recent trend of increased penalties imposed on individuals and businesses who fail to comply with the WHS duties. Specifically, there is becoming a greater focus on individual liability, particularly of directors and workers, following serious workplace incidents.

The Facts

Wimmers Soft Drinks and Lavin Constructions contracted Multi-Run to perform roofing works at the Wimmers Soft Drink factory in Queensland in 2014. While working, Multi-Run's employee Mr Whereheepa Te Amo, fell from the roof of an industrial shed and died.

There was no fall protection or railings on or near the edge of the shed that the employee was working on.

The Charge

WHS Queensland issued charges against Multi-Run and Mr Lavin, but also Lavin Constructions Pty Ltd and its director Mr Peter Lavin, claiming that each duty holder contravened s 19(2) and/or s 20 of the *Work Health and Safety Act 2011* (Qld). It was alleged that each of the duty holders committed a category 1 offence, meaning they engaged in reckless conduct which exposed a person to the risk of death or serious injury.

The Trial

The matter proceeded as a trial by jury in the Queensland District Court. Evidence was given that it was reasonably practicable and expected that Multi-Run and Mr Lavin installed safety rails around the roof's edge. The cost of installing the safety rails was estimated to be \$5,000, and it was found that this cost was included in the \$284,000 contract price for the work.

Witnesses gave testimony at the trial that Mr Lavin believed installing the rails would have been too expensive. Instead Mr Lavin and his workers had agreed on using safety harnesses and two scissor lifts. They were not used by the workers on the day of the incident.

The jury delivered a majority verdict finding that both Mr Lavin and Multi-Run were guilty of engaging in reckless conduct. Judge

Cash told the court that Mr Lavin had shown a "flagrant disregard for proper safety methods", and was motivated by the desire to improve his and the company's financial position. His conduct was "so serious" that he "must serve a period of time in custody".

The jury delivered a hung verdict on the charges against Lavin Constructions Pty Ltd and director Mr Peter Lavin, who will reappear in February on the remaining charges.

Conclusion

It is increasingly apparent that penalties in safety prosecutions are becoming more severe, and there is a greater focus on individual liability and prosecutions following workplace incidents. It is more important than ever that employers and employees perform their duties and also understand individual rights and inspectors' powers when responding to WHS investigations.

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