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Editorial

In this last week or so we have seen news out of Victoria that Worksafe Victoria will effectively require Crush Protection Devices on quads as part of a broader quad safety program. The ‘requirement’ will operate much in the same way that requirements in Codes of Practices work.

Since WorkSafe has made the decision to declare them ‘an appropriate means of controlling the risk of rollover’ if a rollover involving a quadbike without an OPD was to occur, the employer could face prosecution for failing to reduce the risk to the operator by having had CPD installed. Read more, including the response from the Victorian Farmers Federation in our story below.

In our ‘in the courts’ section this week we look at a prosecution (the second in relation to the same incident) following a worker’s death in the coal seam gas industry.

In the sentencing remarks the Judge was required to consider whether the offence was a ‘serious’ one. An offence will be serious where there is an obvious and foreseeable risk to safety against which appropriate measures were not taken. In this matter, simple and effective measures were available which would have identified or otherwise reduced the risk to the killed worker’s health and safety. Reading our cases week to week it should be apparent that most involve ‘obvious and foreseeable risks’ and usually simple steps that could be taken to prevent them.

Kim Schekeloff
Director
Workplace Safety Australia Pty Ltd

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An announcement on 17 February by Worksafe Victoria that Crush Protection Devices (CPDs) will be required on quads as part of a broader quad safety program, has been welcomed by the Australian Centre for Agricultural Health and Safety. According to Dr Tony Lower, the Centre Director:

This is a significant step forward to assist farmers in improving safety. With quads accounting for 15 on-farm deaths in 2015 and being the leading cause of injury deaths for the fifth consecutive year in Australia, this is a very positive development. It provides certainty for farmers on the issue.

Deaths resulting from rollovers, crush injuries and asphyxiation are the dominate feature of farm incidents. So any quad safety program that ignores this issue is extremely limited and will not be as effective as it should be. This has not been a quick decision, but the requirement builds on evidence presented at coronial inquests in NSW and Queensland that were completed in 2015.

Victoria’s action on CPDs will likely have implications across all states of Australia. It could also have broader international consequences, particularly in North America where the bulk of quads are used.

Victoria will now join Israel which introduced and still maintains similar requirements in the early 1990’s, by requiring that riders are protected from risks in a rollover.

Any quad safety program must have a range of approaches working together and Victoria’s requirements on CPDs will now fill an existing gap in these programs. Recommendations to reduce deaths and injury start with selecting the safest vehicle for the task. In the majority of cases, this will not be a quad. However, if a quad is still to be used, then a suitably tested crush protection device must be fitted. Keeping children off quads of any size, not carrying passengers or loads / spray tanks, instruction/training, regular maintenance and wearing a helmet are also important preventive actions.

According to WorkSafe Victoria health and safety executive director Marnie Williams:

WorkSafe shares industry and community concern that the number of fatal and serious injuries involving quad bikes is too high. While it will not be compulsory for Victorian employers to fit [quad bikes with] an operator protective device (OPD), WorkSafe has made the decision to declare them an appropriate means of controlling the risk of rollover. This means that if a rollover [involving a quad bike without an OPD] was to occur, the employer could face prosecution for failing to reduce the risk to the operator.

In response, the Victorian Farmers Federation is calling on the State Government to support a rebate on fitting roll-over protection devices (ROPS) to quad bikes. According to VFF President Peter Tuohey:
If Worksafe is going to move towards ‘effectively’ mandating ROPS on quad bikes, as reported in the media today, then we need a rebate on the $700 cost, especially when we’ve got many farmers running several quad bikes.

If there’s a risk of roll-over, then Worksafe is saying farmers will need to reduce the risk by choosing a safer vehicle or fitting a ROPS. It’s basically coming down to – If you think the quad can roll over then you’ll have to fit a ROPS or buy another vehicle – like a two-seater.

The VFF’s current policy is to support the voluntary fitting of ROPS on quad bikes. Mr Tuohey said Worksafe would not be rolling out the new assessment tool overnight or racing out to prosecute people:

We’ll be negotiating with Worksafe on how they develop this new assessment tool, what they deem to be an ‘appropriate’ ROPS and encouraging the State Government to provide a rebate for farmers to fit ROPS. If the Government and Worksafe want to ‘effectively’ mandate ROPS then they need to work with the VFF and others on developing a rebate to cover the $700 cost of fitting these devices.

**Legislative Changes and Proposed Legislative Changes...**

**SAI Global Reminder on Updated Australian Standards for Fire Safety**

**Relevance: All States and Territories**
**Title of Instrument: Various Australian Standards**
**Commencement: See Standard for details**
**Industries: Construction; air conditioning – installation and maintenance;**
**Keywords: Construction – safety standards; construction – fire control measures**

SAI Global reports that important revisions have taken place for fire detection and control in buildings across a number of Standards. These set out the minimum requirements that should be in place during design and construction to ensure compliance.

- **AS/NZS 1668.1:2015** – The use of ventilation and air conditioning in buildings – Fire and smoke control in buildings;
- **AS 1670.1:2015** – Fire detection, warning, control and intercom systems – System design, installation and commissioning – Fire;
- **AS 1670.4:2015** – Fire detection, warning, control and intercom systems – System design, installation and commissioning – Emergency warning and intercom systems.

The Standards can be accessed at SAI Global’s website (for a cost).

**Dangerous Goods Restrictions for Legacy Way Tunnel**

**Relevance: Queensland**
**Title of Instrument: Traffic Amendment Regulation (No. 1) 2016**
**Commencement: 12 February 2016**
**Industries: Road transport; dangerous goods transportation**
**Keywords: Road safety; dangerous goods – transportation**
With the introduction of tunnels to the road network in south-east Queensland, a safety risk has arisen involving the carriage of dangerous goods through tunnels. Dangerous goods include, for example, toxic gases, flammable liquids, corrosive substances and substances liable to spontaneously combust.

Because of this safety risk, on 1 October 2014, a new offence was created which prohibits the transportation of a ‘placard load’ through a tunnel where there is a placard load prohibited sign. A ‘placard load’ exists when a vehicle is carrying a quantity of dangerous goods that is equal to or above the threshold levels specified in Queensland legislation. In these circumstances, the vehicle must display a diamond-shaped warning sign known as a ‘placard’.

To assist with the enforcement of this offence within the Legacy Way tunnel, the Traffic Regulation 1962 is being amended to approve the use of a new dangerous goods vehicle detection camera system.

The Traffic Amendment Regulation (No. 1) 2016 will:

- Approve a dangerous goods vehicle detection camera system for use in the Legacy Way tunnel;
- Specify appropriate operating and testing procedures for that camera system;
- Insert an evidentiary provision to support the camera system coding manual which is used in court proceedings to establish the exact location of the relevant camera; and
- Insert data block provisions which provide explanations of the various markings and codes that appear on images taken by the system.

Comcare Amendment Act Allows for Exit Contributions

The Safety, Rehabilitation and Compensation Act 1988 (the Act) establishes a scheme (the Comcare scheme) to provide compensation and rehabilitation support to injured Australian Government and Australian Capital Territory employees, as well as employees of private corporations that hold a licence under the Act.

The Act also establishes Comcare and the Safety, Rehabilitation and Compensation Commission (the Commission). The Commission administers the regulatory functions of the Act, other than those ascribed to Comcare, and has an oversight role under the Work Health and Safety Act 2011 (WHS Act). Comcare also has responsibility for regulation of the WHS Act, which prescribes the work health and safety requirements for employers and employees covered by the Act.

The Safety, Rehabilitation and Compensation Legislation Amendment (Exit Arrangements) Act 2015 has amended the Act to provide for financial and other arrangements for a
Commonwealth authority to exit the Comcare scheme. The framework established by these amendments will:

- Enable Comcare to determine and collect ‘exit contributions’ from former Commonwealth authorities and successors of former Commonwealth authorities. This will ensure that an exiting employer does not leave the Comcare scheme without contributing an appropriate amount to cover any current or prospective liabilities that are not funded by premiums the employer has paid before exit;
- Ensure that employees injured before the employer’s exit continue to be supported by an appropriate rehabilitation authority;
- Enable Comcare to determine and collect ongoing regulatory contributions from exited employers or successor bodies.

The amending Act also amends the Act to clarify that premiums for current Commonwealth authorities and entities should be calculated having regard to the principle that current and prospective liabilities should be fully funded by Comcare-retained funds and so much of the Consolidated Revenue Fund as would be available under section 90C of the Act.


Schedule 2 amends provisions related to the Commission. The amendments streamline appointment processes and ensure appropriate membership of the Commission.

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In Other News...

NZ Regulations Released

The majority of the first phase of Regulations to support the new Health and Safety at Work Act 2015 (HSWA) have been now been finalised and will come into force on 4 April 2016, along with the Act.

The Regulations supported with information and guidance from WorkSafe New Zealand are intended to support businesses (particularly small businesses) to understand what they need to do to comply with the general duties of the Act. The Regulations that have been released so far are:

Health and Safety at Work (General Risk and Workplace Management) Regulations 2016 – Persons conducting a business or undertaking (PCBUs) have duties to ensure, so far as is reasonably practicable, that the workplace is without risks to the health and safety of any person. These Regulations outline additional duties on PCBUs related to managing risks, monitoring in the workplace, and specific duties related to young persons in the workplace and obtaining a police vet for workers at limited child-care centres.

Health and Safety at Work (Worker Engagement, Participation and Representation) Regulations 2016 – These Regulations prescribe matters relating to work groups, health and safety representatives, and health and safety committees to support more effective worker participation. This includes information on who can be a health and safety representative or on a health and safety committee, and health and safety representative training. The Regulations also include matters that an inspector may decide if the parties
are unable to reach an agreement themselves, and specify the sectors that are high risk for the purposes of worker participation requirements.

Health and Safety at Work (Major Hazard Facilities) Regulations 2016 – These Regulations deal with matters relating to the health and safety of people involved in the operation of, and local communities located near, major hazard facilities. The Regulations provide threshold quantities of specified hazardous substances and ways to determine whether a facility is a lower tier or an upper tier major hazard facility and the duties of operators.

Health and Safety at Work (Asbestos) Regulations 2016 – These Regulations impose additional duties on PCBUs in relation to work involving asbestos. This includes managing asbestos risks, removal of asbestos and licensing of asbestos removalists.

Health and Safety at Work (Adventure Activities) Regulations 2016 – These Regulations deal with the provision of adventure activities. They set out the process for becoming registered as an adventure activity operator and make it an offence for unregistered operators to offer adventure activities to participants. These Regulations revoke and replace the Health and Safety in Employment (Adventure Activities) Regulations 2011. Only minimal changes were made to align terminology and concepts with the new Health and Safety at Work Act 2015 and to add a new offence of offering adventure activities while unregistered.

Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016 - The Regulations prescribe matters concerning health and safety in mining operations, including competency requirements in relation to safety-critical roles in mining operations, quarrying operations, and alluvial mining operations. These Regulations revoke and replace the Health and Safety in Employment (Mining Operations and Quarrying Operations) Regulations 2013. Only minimal changes were made to align terminology and concepts with the new Health and Safety at Work Act 2015 and fix some drafting and minor implementation errors in the 2013 regulations.

Health and Safety at Work (Petroleum Exploration and Extraction) Regulations 2016 – These Regulations deal with matters relating to the health and safety of people involved in the operation of installations for petroleum exploration and extraction. They revoke and replace the Health and Safety in Employment (Petroleum Exploration and Extraction) Regulations 2013. Only minimal changes were made to align terminology and concepts with the new Health and Safety at Work Act 2015, to use clearer terminology for duty holders, and to improve the emergency response duty in relation to onshore non-production installations.

Health and Safety at Work (Rates of Funding Levy) Regulations 2016 – These regulations prescribe the levy required to be paid by employers and self-employed persons under section 201 of the Health and Safety at Work Act 2015. They also revoke and replace the Health and Safety in Employment (Rates of Funding Levy) Regulations 1994. Only minimal changes were made to align terminology and concepts with the new Health and Safety at Work Act 2015. No changes to levy rates were made.

Regulations specifying infringement offences and fees will be finalised shortly. The Regulations for work involving hazardous substances are currently being consulted on and will be finalised later this year. Submissions are due by 5pm, Friday 26 February 2016.
Regulations to support the power in the new Act for the regulator to grant exemptions from regulatory requirements (clause 228A) will be developed this year.

Phase two Regulations will be developed over the next two years.

The Regulations can be viewed at: http://www.legislation.govt.nz/

WorkSafe WA Targets South Perth Construction Sites

Construction sites in Perth’s southern suburbs will be the focus of a proactive inspection program later this month. WorkSafe Acting Director Tony Poulton said the program would involve construction inspectors checking safety standards at construction sites across the southern suburbs as far as Mandurah in the last week of February:

The program will be part of a continuing series of proactive inspection programs targeting construction workplaces in specific geographical areas. As with all of WorkSafe’s proactive programs, the primary objective of the inspection program is to help employers to identify the risks to the safety and health of workers and provide them with information on how to comply with workplace safety laws. However, if the inspectors come across breaches of the workplace safety laws, they will take enforcement action.

Inspectors will focus on the priority areas of electrical safety and working at heights, and will also concentrate on ensuring that workers have construction induction training cards and High Risk Work Licences where needed. They will also check that sites have Safe Work Method Statements, Job Safety Analyses and Site Safety Plans in place where required. According to Mr Poulton:

Employer associations have been notified of the inspection program, so we anticipate that employers will be aware of what will be required if an inspector visits their sites. We firmly believe that raising awareness with proactive inspection programs is the best way in which to lessen the risk of work-related injury and illness.

NSW EPA Fines Century Yusa Batteries for Misleading Documentation in Relation to Dangerous Goods

The NSW Environment Protection Authority (EPA) has issued a $4,000 fine to Century Yuasa Batteries Pty Limited (Century Batteries) for the transportation of dangerous goods with false or misleading documentation.

On 24 August 2015 EPA officers at the Heavy Vehicle Checking Station at Mount White inspected a vehicle consigned by Century Batteries. The officers identified that the load on the vehicle included 34 tonnes of waste ferrous batteries, lead dross, lead paste, lead waste paint and lead contaminated battery plates, which are classified as dangerous goods under the Australian Code for the Transport of Dangerous Good by Road and Rail – 2007 (the ADG Code).

Transport documentation presented by the driver to EPA officers did not include sufficient information about the consigned goods, which is an offence under clause 121 of the
Dangerous Goods (Road and Rail Transport) Regulation 2014. Accurate and detailed documentation is critical as it ensures response agencies can make informed decisions about the treatment of potentially dangerous substances, if the vehicle is involved in an incident or there is a loss of containment.

The EPA officers also found that the load was not stowed and restrained in accordance with the ADG Code (a separate Penalty Notice was issued to the driver for this breach), that the vehicle was not displaying appropriate placards, and that the markings and labels on the dangerous goods did not fully comply with the Code.

EPA Manager Hunter Region, Adam Gilligan, said the multiple breaches present a risk to the vehicle’s driver, other road users, emergency services, and the environment:

The Code exists to protect people and the environment. Century Batteries is required by law to ensure all relevant staff understand and comply with the legislation, to minimise the risk associated with transportation of dangerous goods.

Penalty notices are just one of a number of tools the EPA can use to achieve compliance with the dangerous goods transport legislation and other environmental laws. Other tools include investigation, improvement and prohibition notices, cancellation, suspension and variation of dangerous goods vehicle and driver’s licences, official cautions and prosecutions.

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**NSW – Mine Safety Regulatory Reform Incident Prevention Strategy Released**

The NSW department of Industry Resources and Energy has initiated a process of reform for the regulation of Mine Safety, captured in the Mine Safety Regulatory Reform Incident Prevention Strategy.

This strategy sets an ambitious and comprehensive program of reform for the department as the mine safety regulator. It is intended to help the Department keep employees of the NSW mining and extractive industries safe.

The strategy is underpinned by three key foundations:

- The development of a risk-based intervention framework;
- The integration of considerations of human and organisational factors on risk management and reporting;
- The collection and use of robust and quality data to support the risk-based intervention strategy.

The strategy will involve the progression of several interdependent and interrelated projects. Together they will inform new processes and procedures to be implemented by the department’s Mine Safety unit.

This is likely to include new procedures for undertaking inspections, the development of new guidelines for risk-based control measures and the adoption of targeted intervention strategies.
The incident prevention strategy is made up of nine different project areas. Many of these have already started. The Department is aiming to start implementing some of the outcomes from 1 July 2016, although some changes will take longer to come into effect.

The incident prevention strategy will lead to significant changes in the way the department, as the mine safety regulator, operates. Many mines and extractive industry sites already implement effective risk-based control measures. However, the strategy may impact the way that the department audits and assesses the implementation of these measures, and the targeted identification of risks.

The process of regulating mine safety has evolved significantly over the past 20 years, prompted by the 1996 Gretley Colliery mine disaster and resultant 1997 Mine Safety Review. The implementation of the findings and recommendations of this review was the subject of the 2004 Wran Review, which strengthened the role of the Mine Safety Advisory Council (MSAC).

It is well recognised that a number of parties play a key role in keeping employees of the mining and extractive industries safe in NSW. They include the industry itself, industry peak bodies, insurers like Coal Services in NSW, employers, employees, the community and the regulator.

This strategy is focussed internally on the regulator and its role in assisting to keep NSW employees of the mining and extractive industries safe. It is anticipated out of this reform the limited resources of the regulator will be focussed, in the main, on the issues that present significant risk to the workers within the sector and accordingly will directly impact on safety outcomes for NSW.

The number of significant reviews and boards of inquiry looking at the work of the regulator clearly indicates that long term structural reform is required, which embeds a cultural of continual improvement.

The MSAC fatality review built upon the findings of both the 1997 and 2004 reviews, prompted by an apparent increase in significant incidents. This review made three recommendations that form the foundations of the Mine safety regulatory reform incident prevention strategy. These are:

1. The development of a framework for risk-based intervention incorporating risk control measures;
2. Consideration of the impacts of human and organisational factors, and;
3. The collection, analysis and use of quality data.

In addition to these recommendations, the incident prevention strategy provides the framework and outlines the various pieces of work required to move to a outcomes-focussed, risk-based regulator which is consistent, transparent and able to proactively respond to the challenges of regulating health and safety in the NSW resources industry. This is associated with the implementation of the Quality Regulatory Services (QRS) initiative across the NSW Government regulators.

The incident prevention strategy is underpinned by three key foundations, corresponding to the MSAC fatality review recommendations, being:
- **Risk-based intervention** – develop a framework for the ongoing identification and verification of risk profiling, incorporating risk control measure verification, and consideration of deployment practices to target areas of risk priority.
- **Human and organisational factors** – research and consider the impact of human and organisational factors on risk management and reporting.
- **Quality data** – collect, analyse and use robust data sources to support the risk-based intervention strategy, incorporating consideration of human and organisational factors.

Within these broad project areas, several interdependent and interrelated projects have been identified, which together inform the development of new processes and procedures. These outcomes will be integrated into the business-as-usual operations of the Mine Safety unit. This change management process will include consideration of the integration of new forms, procedural guidelines, data collection methods, and also training to support these new processes.

It became apparent that the timeline for at least one project (RBI1) was going to be unachievable given the extent of consultation that will be involved. As a result, the timeline has been extended to implementation being Q1 2017 with the recommendation that a sub-committee of MSAC be formed to enable extensive key stakeholder consultation to occur.


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**Open for Comment...**

**NTC Consultation on Automated Vehicles**

The NTC today released an issues paper and called for submissions from the public on how to develop the best laws and Regulations for this emerging road and rail technology.

Chief Executive of the NTC Paul Retter said Australia’s current laws and Regulations weren’t written with automated vehicles in mind, but now that increasingly automated vehicles were being developed it was time to look closely at what changes may be needed:

Automated vehicles will be safer, more productive and give senior Australians and those with a disability more independence in their lives. However the benefits offered by these vehicles will only be realised if we get Australia’s laws and Regulations right. Governments and industry need to work together to make sure Australians get the best laws for these new vehicles. While we have already identified a number of potential issues we are asking anyone with an interest in the future of transport to have their say. This feedback will help to make sure we address all of the issues associated with automated vehicles.

For example, many road safety laws assume that there will always be a human driver, but how do automated vehicles comply with a legal requirement to hold a
driver’s licence, or comply with authorised officers or give assistance if a person is injured? The NTC will need to look at fundamental concepts including defining the driver, what is meant by ‘control of the vehicle’ and consider how automated vehicles should interact with other road users.

Mr Retter said the NTC would work to ensure future Regulations promote innovation and competition, and continue to remain consistent with international standards and conventions whenever it is safe and appropriate to do so. He said many different types of automated vehicles would be developed in the future and therefore the NTC will consider a flexible and performance-based regulatory approach that helps to encourage new transport technology.

Automated vehicles are already having a significant impact on markets, public policy and the community. Clarifying what is required for the different levels of automated vehicles to legally operate across Australian jurisdictions is needed to support innovation, investment and consumer confidence.

Examining whether our current regulatory regimes can support trials and conditional, highly or fully automated vehicles will result in:

- Improved understanding of the current regulatory system and its ability to continue to support increased vehicle automation (both road and rail);
- Identification of any regulatory or operational barriers to be removed or overcome and potential time pressures or options;
- A nationally-consistent approach for increased vehicle automation with a single regulatory approach (as far as possible with emerging technology).

Regulatory barriers to more automated road and rail vehicles issues paper was released in February 2016. The issues paper provides an overview of current rules, identifies issues and potential solutions and scopes the parameters of the project. Key issues for road vehicles relate to:

- Clarity over control of the vehicle and compliance with traffic laws;
- Vehicle standards and safety assurance;
- Liability and responsibility for the actions of an automated vehicle;
- Data access and privacy protection – including access for enforcement purposes.

The NTC is seeking submissions on this issues paper by **Tuesday 8 March 2016**.

The NTC will consider feedback in the analysis and development of options in an NTC discussion paper, which will be published in mid-2016. The discussion paper provides a second opportunity for stakeholders to provide additional feedback on regulatory barriers and proposed options.

Submissions to the issues paper are due by Tuesday, 8 March 2016. These submissions will help the NTC develop a discussion paper with detailed options analysis to be published in mid-2016. Any individual or organisation can make a submission to the NTC at:


More information is available at:
EOIs Sought for Independent Chairperson of NSW Mining Competence Board

Expressions of interest are sought from suitably qualified people for the role of independent chairperson of the NSW Mining Competence Board.

The chairperson should be independent of mining industry stakeholder organisations and any registered training organisations that service it. Experience in the mining industry would be beneficial, but not required. The attributes of the chairperson should include:

- A highly developed capacity for analytical and critical thinking;
- Extensive experience in convening meetings at a senior level and leading negotiations between stakeholder groups with diverse perspectives;
- The ability to gain consensus on collaborative approaches accepted by stakeholders;
- The ability to provide high level advice to the Minister on board outcomes;
- The ability to treat sensitive and confidential information appropriately and ethically;
- Experience in mining education or professional skills development is desirable but not essential.

Further information about the board is available on the website at:


A two-page expression of interest outlining relevant experience and qualifications that address the above attributes and a short CV should be directed to:

MCB Executive Officer  
NSW Department of Industry – Resources and Energy Governance  
PO Box 344 Hunter Region Mail Centre NSW 2310  
Email: mcb.secretariat@industry.nsw.gov.au

Nominations close at **5pm Friday 26 February 2016**.

Information about the role of the chairperson of the Mining Competence Board is available by contacting John Flint on 02 4931 6636. Enquiries and expressions of interest will be treated with the strictest of confidence.

Safe Work Australia Calls for Comment on Lead in the Workplace

New scientific evidence suggests current legislated blood lead levels, and workplace exposure standards for lead may not adequately protect all workers.

Safe Work Australia’s Chief Executive Officer, Michelle Baxter invites businesses and workers who deal with lead and lead products in their workplaces to comment on proposed changes to work health and safety requirements for inorganic lead:

We are seeking feedback on proposed amendments to laws to improve workplace safety, including on the permitted levels of lead in workers’ blood and lead concentrations in the air; and the likely cost and impact to businesses any changes might have. We want work health and safety legislation to be evidence-based and
to work to reduce adverse health outcomes while remaining practical for businesses to implement.

Current lead exposure standards are specified in the Model Work Health and Safety Regulations. These apply in nearly all States and Territories across Australia. Based on emerging evidence, Safe Work Australia has put forward options for regulatory change in a Consultation Regulation Impact Statement at:

http://safeworkaustralia.cmail20.com/t/j-l-hhhihtl-iyitddujd-o/

According to Ms Baxter:

We’re particularly interested in hearing from workers and businesses that deal with lead in the course of their work, as well as regulators, occupational hygienists and work health and safety professionals.

In particular Safe Work Australia seeks views on options for:

- Setting levels of lead in workers’ blood (blood lead levels) to identify:
  - Trigger points to commence mandatory health monitoring of workers undertaking lead risk work;
  - Workers who need to be removed from lead risk work, and;
  - When those workers may be returned to lead risk work;
- Setting a maximum concentration of lead in air for workplaces.

For the proposed amendments to work health and safety requirements for inorganic lead see:


Submissions are now open and will be accepted until **5.30pm AEDT, 26 February 2016**.

Submissions may be lodged electronically using our online form, by email or by post.

To submit online, you will need to download and complete the managing risks associated with lead in the workplace – Consultation RIS – Submission template at:


After you have completed the template, upload the document by completing the Online Cover Sheet below and submit when prompted.

**Submission by email** – Please email your submission, including a completed cover sheet (see above), to: lead@swa.gov.au.

**Submission by post** – Please post your submission, including a completed cover sheet (see above), to:

Director
Occupational Hygiene Section
Safe Work Australia
GPO Box 641
Canberra ACT 2601
Location Code: C2PL7

The public consultation period is open until **26 February 2016**.
National Construction Code – 2016 Seminars

The National Construction Code now moves to a 3 year amendment cycle and attending the information sessions will enable interested parties to hear and engage with presenters providing information about the changes that will come be coming into effect from 1 May 2016.

The National Seminars commencing in February through to March 2016 are held in each capital city. Strong attendance is expected in preparation for the introduction of the 3 year amendment cycle, and the ACBC has requested that interested parties register early to secure their place.

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Registration for the Seminars has been available online from 1 November 2015.

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In The Courts...

$120,000 Fine After Fatality in Coal Seam Gas Incident

Nash v Eastern Star Gas Ltd
NSW Industrial Court
September 2013

Extract from Judgment and commentary – The link to Transcript can be found at the end of summary

Eastern Star Gas Ltd (‘ESG’), now known as Santos NSW Pty Ltd was the holding company for a group of companies, including Eastern Energy Australia Pty Ltd (‘EEA’), that undertook coal seam gas exploration in New South Wales. ESG was the holder of Petroleum Assessment Lease 2 (‘PAL 2’) and Petroleum Exploration Licence 238 (‘PEL 238’). The land the subject of PAL 2 and PEL 238 is located near Narrabri in New South Wales.

The defendant required gas and water gathering pipelines to be installed on land within PAL 2 for what was known as the Bibblewindi West Production Pilot.

The defendant contracted with Green Pipeline Services Pty Limited, trading as GD Pipelines, to install as part of the Bibblewindi Project, pipelines to either side of Bohena Creek which was located within the Bibblewindi Project. Pipelines were installed using horizontal directional drilling (‘HDD’). This involves drilling a pilot hole using a directional drilling technique that allows control of direction and depth. A drill head is attached to metal rods, known as the drill string, and guided towards a
reception pit. Once the drill string arrives at the reception pit, a reaming device is attached and the pilot hole is enlarged as the reaming bit is returned along the path of the pilot hole.

Austerberry Directional Drilling Services Pty Ltd (‘ADD’) was engaged by EEA, on behalf of the defendant to install a pipe under Bohena Creek near Narrabri using HDD in order to complete the pipeline that was partly installed by GD Pipelines. The length of the pipeline required to be installed under Bohena Creek was between 280m - 350m. The pipeline was constructed from 200mm high density polyethylene pipe.

On 31 July 2009, the pipeline became stuck and was no longer being pulled through a bore hole because a reamer was no longer attached to the drilling rods. A reamer is employed to enlarge or ‘true’ a hole or bore. It can also be used on the inside of pipes and drill holes to remove burrs.

In these circumstances, Mr Shayne Austerberry who acted as the supervisor of the drill crew, decided to try and retrieve the pipeline from under the ground. (He was also responsible for overseeing ADD’s other drilling crews). By doing this, the reamer may have been retrieved. The reamer was owned by ADD and would have cost approximately $20,000 to replace.

It was agreed that a further attempt would be made to retrieve the pipe. Mr Milne tied one leg of a chain, which was present on the site to lift drill rods off and onto a truck, around the pipe and placed the other end of the chain around a bucket tooth on the excavator. The chain’s intended use was not to pull something out of the ground. It had a braking strength less than the pulling power of the excavator. Mr Austin then started operating the excavator approximately 2m - 4m from the end of the pit when the chain broke. The other leg of the chain was then attached as before by Mr Milne. The pipe was again pulled moving about 1m before shearing off the pipe. The chain was reattached one or more times but sheared off the pipe each time.

Mr Austin then suggested placing a piece of wood inside the pipe to prevent the pipe crushing and shearing. This was done by Mr Milne. This was not a procedure that ADD had ever used before. It was successful in stopping the pipe shearing and the pipe started to move as Mr Austin drove the excavator backwards.

After about 35m of pipe had been extracted, Mr Milne suggested Mr Austerberry take over driving the excavator as Mr Austin was having difficulty reversing the excavator in a straight line.

When Mr Austerberry took over the excavator, he told Mr Austin to go and sit on a log which was located about 17m from the pipeline in a southerly direction from the location where Mr Austerberry had taken over driving the excavator. There was at least one tree between the log and the pipeline. Mr Austerberry and Mr Milne both observed Mr Austin heading in the direction of the log but neither observed him reach his destination and no-one watched him to ensure that he stayed at the designated point.

At approximately 3.45pm, after about 145m of the pipe had been extracted from the ground, the chain broke, for the second time that day, and the pipeline recoiled. Mr Austerberry and Mr Milne retrieved the broken chain and walked back towards the entry pit with the intention of cutting the pipe and re-pulling whatever remained in the ground. They called for Mr Austin and received no reply. A short time later they found Mr Austin lying on the ground adjacent to the pit and inside bunting which had been placed around the pit with his head facing in a southerly direction right up against the barricade.
Mr Austin was treated at the site by ambulance officers before being transported by helicopter to Tamworth Hospital, arriving at approximately 7.15pm. Mr Austin was subsequently transferred to John Hunter Hospital in Newcastle and was admitted at around 4.50am on 2 August 2009.

On 4 August 2009, doctors having found that there was negligible neurological recovery and after the ventilator was removed, Mr Austin died from his injuries around 5.30pm. The autopsy found that the direct cause of death was a closed head injury and that Mr Austin had suffered an intracerebral haemorrhage, and extrajural haemorrhage around the upper spinal cord. He also received a laceration involving the left ear lobe.

The defendant was charged with a breach of s 8(2) of the *Occupational Health and Safety Act* 2000 by failing to ‘Ensure that people, other than employees of the Defendant, in particular, Mr Bruce Austin, were not exposed to risks to their health or safety arising from the conduct of the Defendant's undertaking while they were at the Defendant's place of work...’.

In sentencing, the Judge discussed the appropriate level of 'seriousness' that the offence should be viewed as:

In my view, the risk was obvious and foreseeable, particularly in circumstances where the chain had broken once on 1 August 2009 and there was a significant risk that it would break again given that the same chain was being used. It was also obvious and foreseeable that there was a risk of injury to any person at the site if struck by a recoiling pipeline, if the chain again broke. When the chain broke for the second time, approximately 145m of pipeline had been extracted from the ground.

It will be a serious offence where there is an obvious and foreseeable risk to safety against which appropriate measures were not taken. In this matter, simple and effective measures were available which would have identified or otherwise reduced the risk to Mr Austin’s health and safety. The stuck pipe could have been left in the ground; a clear exclusion zone could have been established; adequate information could have been provided to Mr Austin about the danger of standing within the exclusion zone area; clear instructions could have been given to Mr Austin to stay outside the exclusion zone. Furthermore, the pipe could have been cut prior to 145m of it was extracted from the ground to minimise any risk of recoil.

The company was fined $120,000.

*The Full Transcript of the Court’s Judgment can be found at:*


Yours Faithfully,

Workplace Safety Australia Pty Ltd

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Important Note

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