Article Information

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Workplace Health and Safety Penalties – Potential to Increase

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The Queensland District Court has this week found that a fine of $90,000 imposed by the Queensland Magistrates Court in Williamson v VH & MG Imports Pty Ltd [2017] QDC 56 was "clearly manifestly inadequate" when compared with fines imposed in other harmonised jurisdictions under the model Workplace Health and Safety laws. The ruling affirms the importance of national consistency in penalties, with the Queensland District Court accepting that its WHS Act permitted sentencing courts to consider comparable decisions from states and territories subject to the harmonised legislation. This decision sets a precedent which may see more lenient courts increasing penalties to the level set by courts nationally.

Tim Capelin, Partner *and* ***Emily Setter, Law Clerk*** *discuss the important implications of this decision.*

Background

In October 2012, a labourer employed by VH&MG Imports Pty Ltd was fatally injured when a strut on the prototype boat trailer he was building exploded and penetrated his skull above his right eye. The defendant company, a small to medium size manufacturer of camper and boat trailers, was found to have failed to ensure the safety of the employee, who had adopted "trial and error" practices in constructing the trailer. Relevantly, the employee was not a qualified welder and had warned his managers that he had "never designed anything from scratch" previously.

The incident in question occurred when a gas strut on the trailer exploded while being hammered by another employee, who was attempting to loosen it. The court found that the struts were overextended and were of poor manufactured quality and that hammering the strut is known to impact their safe operation.

WHSQ charged the employer with breaching a category 2 offence under the *Work Health and Safety Act 2011* (Qld) (**WHS Act**), by failing to conduct a risk assessment, failing to engage a competent person to calculate the correct load points of the struts and failing to adequately train employees on safe work method procedures. The maximum penalty for such offences is $1.5 million for corporations, however in this instance the court imposed a fine of $90,000 for the breaches.

The Appeal

WHSQ appealed the decision on the grounds that the penalty imposed at first instance was manifestly inadequate, and in particular that insufficient weight was given to general deterrence, and too much weight was given to the employer's post offence measures. WHSQ also alleged that insufficient weight was given to the failure to take even basic risk assessments or to seek expert advice when engaging in a novel area, as occurred when building the prototype trailer which caused the injury and that the sentence was "well out of line" with those imposed for similar offences under the harmonised WHS laws in other jurisdictions.

On appeal, the Queensland District Court found that the failure of the gas strut which fatally injured the employee "was just the final step in a sequence of systemic work health failures", and accordingly held that the penalty imposed by the Magistrates Court was manifestly inadequate in the circumstances.

In determining the appropriate penalty, the Court had regard to comparable interstate cases in which penalties imposed were in the range of $150,000 – $425,000. The court also agreed with WHSQ's submission that sentencing under the harmonised WHS laws "is analogous to the sentencing of federal offences by state courts", and referred to the objectives of the WHS Act to support this position.

Importantly, the court also acknowledged that, insofar as possible, looking to relevant decisions in harmonised interstate jurisdictions to ensure consistency "is fundamental to a fair system of justice".

Lessons for Employers

Employers in states which have historically imposed lower penalties under the model WHS laws should be aware of the potential for higher penalties to be imposed, in accordance with those across other harmonised jurisdictions.

Employers should not expect the courts' attitude to penalties to moderate. A lax approach to safety, particularly where the potential ramifications are very serious, will lead to severe penalties.

Should you have any questions concerning how the decision may affect your business, please contact a member of Piper Alderman's Employment Relations team.