



Government of **Western Australia**  
Department of **Mines, Industry Regulation and Safety**

# Legal Actions 2017–18

## WORKSAFE OCCUPATIONAL SAFETY AND HEALTH

13 September 2018

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## **Legislation administered by the department**

*Occupational Safety and Health Act 1984 (OSH Act)*

Occupational Safety and Health Regulations 1996 (Regulations)

The OSH Act under section 16, requires the WorkSafe Western Australia Commissioner (WorkSafe Commissioner) to report annually to the Minister on the application and operations under the OSH Act. In compliance with the requirements of the OSH Act, a report on the operation of the OSH Act is produced and delivered each year to the Minister prior to its 31 October deadline. This report deals with the practical operations, the operation of this Act and any prescribed law during the preceding year ending on 30 June.

Legal actions and related activities summarises enforcement actions undertaken by WorkSafe under the occupational safety and health legislation. Traditionally this information has been published as part of the department's [Annual Report](#).

## **Legal actions and related activities under the OSH Act and Regulations**

The OSH Act and subsidiary regulations are enforced by the WorkSafe Commissioner. The Service Delivery and Safety Regulation Groups coordinates and supports this function.

In 2017–18, 14 new prosecution notices were signed for the commencement of proceedings in the Magistrates Court (17 charges).

There were also 11 convictions (15 charges) recorded during this financial period. A prosecution is deemed a conviction if at least one charge in the prosecution notice is successful (see Table 1 for convictions).

In 2017-18, an appeal, commenced in a previous year, was successful before the Supreme Court of Western Australia while another appeal was commenced with the decision still pending (see Table 2 for appeals).

Legal actions relating to the OSH Act and Regulations – Magistrates Court

Table 1: Outcome of matters before the Magistrates Court

| Offender                                   | Legislation  | Nature  | Outcome   | Fine (\$)                                  | Cost (\$) |
|--|--|---|---|--|-----------|
| Axedale Holdings Pty Ltd (ACN 009 322 927) | s.21(2)(b)(i)<br>s.21A(2)<br>s.3A(3)(b)(i) of the <i>Occupational Safety and Health Act 1984</i>         | As an employer, failed to ensure that the safety or health of persons, not being its employees, was not adversely affected, wholly or in part, as a result of a hazard that arose from or was increased by the system of work that had been or was being operated by the Accused, and by that failure caused the death of two people.   | Fined \$160,000                                     | 160,000                                    | 2,200     |
| Co-operative Bulk Handling Limited         | s.19(1)<br>s.19(A(2)<br>s.3A(3)(b)(i) of the <i>Occupational Safety and Health Act 1984</i>              | As an employer failed to provide and maintain a working environment in which the employees of the employer were not exposed to hazards and by that contravention caused serious harm to an employee.  | Fined \$37,500                                      | 37,500                                     | 3,577     |
| City of Armadale                           | s.21(2)<br>s.49.(5) of the <i>Occupational Safety and Health Act 1984</i>                                | Charge 1 – As an employer, failed to ensure that the safety or health of persons, not being its employees, was not adversely affected, wholly or in part, as a result of work being undertaken by an employee of the accused or any hazard that arises from the work of an employee of the accused and by that contravention caused serious harm to a person.<br>Charge 2 – Failed to comply with a prohibition notice. | Fined<br>Charge 1 - \$30,000<br>Charge 2 - \$17,000 | Charge 1-<br>30,000<br>Charge 2-<br>17,000 | 5,110.25  |
| DRUID-SUTTON Robert George                 | s.55(1)<br>s.55(1)(b)<br>s.21(2) and<br>s.21(A)(2) of the <i>Occupational Safety and Health Act 1984</i> | As a manager of the City of Armadale when the City of Armadale was guilty of an offence under the OSH Act and that offence occurred with the consent or connivance of, and/or was attributable to the neglect of the accused.   | Fined \$12,500                                      | 12,500                                     | 4,950     |

## Legal Actions 2017–18 – Occupational Safety and Health

Department of Mines, Industry Regulation and Safety

| Offender   | Legislation  | Nature  | Outcome  | Fine (\$)                               | Cost (\$) |
|--|--|---|--|---|-----------|
| FGS Contracting Pty Ltd<br>(ACN 605 075 161)               | s.19(1)<br>s.19(A(2) and<br>s.3A(3)(b)(i) of the<br><i>Occupational Safety and Health Act 1984</i><br>r.6.2(3) and<br>r.1.16(2)(b)(i) of the<br><i>Occupational Safety and Health Regulations 1996</i> | Charge 1 - As an employer failed to provide and maintain a working environment in which the employees of the employer are not exposed to hazards and by that contravention caused the serious harm to an employee.<br>Charge 2 – As an employer allowed a person, an employee, to perform rigging work, basic (high risk work) without holding the appropriate class of High Risk Work Licence. | Fined<br>Charge 1 - \$200,000<br>Charge 2 - \$25,000 | Charge 1 - 200,000<br>Charge 2 - 25,000 | No costs  |
| FRANCESCHI Ryan Wayne                                      | s.55(1)<br>s.55(1)(b)<br>s.19(1) and<br>s.19A(2) of the<br><i>Occupational Safety and Health Act 1984</i><br>r.6.2(1)<br>r.1.15(2)(a) of the<br><i>Occupational Safety and Health Regulations 1996</i> | As a director of FGS Contracting Pty Ltd when FGS Contracting Pty Ltd was guilty of an offence under the Occupational Safety and Health Act 1984 and that offence occurred with the consent or connivance of, and/or was attributable to the neglect of the accused.  | Fined<br>Charge 1 - \$100,000<br>Charge 2 - \$2,500  | Charge 1 - 100,000<br>Charge 2 - 2,500  | No costs  |
| LEMMON Bradley David as a partner in the firm Mobicrane WA | s.19(1) and<br>s.19A(3) of the<br><i>Occupational Safety and Health Act 1984</i>   | As an employer failed to provide and maintain a working environment in which the employees of the employer are not exposed to hazards.  | Fined \$15,000                                       | 15,000                                  | 3577      |
| Mineral Trans (WA) Pty Ltd<br>(ACN 144 696 935)            | s.19(1)<br>s.19(A(2) and<br>s.3A(3)(b)(i) of the<br><i>Occupational Safety and Health Act 1984</i><br>r.6.2(3)<br>r.1.16(2)(b)(i) of the<br><i>Occupational Safety and Health Regulations 1996</i>     | Charge 1 – As an employer failed to provide and maintain a working environment in which the employees of the employer are not exposed to hazards and by that contravention caused serious harm to an employee<br>Charge 2 – As an employer allowed a person to operate a forklift (high risk work) without holding the appropriate class of High Risk Work Licence                              | Fined<br>Charge 1 - \$55,000<br>Charge 2 - \$3,000   | Charge 1 - 55,000<br>Charge 2 - 3,000   | 5542.97   |
| Picton Civil Pty Ltd<br>(ACN 127 793 453)                  | r.3.117(1) and<br>r.1.16(2)(b)(i) of the<br><i>Occupational Safety and Health Regulations 1996</i>   | Did class 1 demolition work without having been issued a class 1 demolition licence.  | Fined \$4,000  | 4,000                                   | 1338.50   |

## Legal Actions 2017–18 – Occupational Safety and Health

Department of Mines, Industry Regulation and Safety

| Offender                                      | Legislation   | Nature  | Outcome        | Fine (\$) | Cost (\$) |
|---|---|---|----------------|-----------|-----------|
| Rand Transport (WA) Pty Ltd (ACN 009 180 983) | s.23D(2) s.19(1) s.19A(3) and s.3A(2)(b)(i) of the <i>Occupational Safety and Health Act 1984</i> | As a principal, engaged a contractor to carry out work for it, failed to provide and maintain a working environment in which persons employed or engaged by the contractor to carry out or assist in carrying out work for the Accused, were not exposed to hazards, being matters over which the Accused had the capacity to exercise control. | Fined \$45,000 | 45,000    | 2900      |
| Round Table Roofing Pty Ltd (ACN 143 727 691) | s.19(1) s.19(A(2) and s.3A(3)(b)(i) of the <i>Occupational Safety and Health Act 1984</i>         | As an employer, failed to provide and maintain a working environment in which employees of the employer were not exposed to hazards, and by that failure caused serious harm to an employee.  | Fined \$70,000 | 70,000    | 1369      |

### Legal actions at Supreme Court – Court of Appeal

**Table 2: Matters before the Court of Appeal relating to legislation administered by the department 2017-18**

| Offender   | Legislation   | Nature                  | Outcome   | Fine (\$)                                       | Cost (\$) |
|--|---|-------------------------|---|---|-----------|
| Cleveland Freightlines Pty Ltd (ACN 007 853 465) | r.3.134(1) & r.1.16(2)(b)(ii) r.3.131(1)(a), r.3.132(2)(a) & r.1.16(2)(b)(ii) of the the <i>Occupational Safety and Health Act 1984</i> and Occupational Safety and Health Regulations 1996 | Appeal against sentence | Successful appeal – Sentence increased to global fines of \$30,000 for 9 offences and \$28,000 for 6 offences. Appeal costs of \$3000 awarded | 30,000for 9 offences and 28,000 for 6 offences. | 3000      |
| City of Armadale                                 | s.21(2) and s.49.(5) of the <i>Occupational Safety and Health Act 1984</i>  | Appeal against sentence | In Progress. Currently before the Supreme Court of Western Australia  |   |           |

## Occupational Safety and Health Administrative Hearings

In accordance with regulation 5.45G of the Regulations, the WorkSafe Commissioner can hold a hearing into any allegations of a Restricted Asbestos Licence holder breaching the Regulations, to determine whether a licence should be suspended or cancelled.

**Table 3: Administrative Hearings**

| Name/ defendant       | Legislation             | Nature  | Outcome                |
|-----------------------|-------------------------|---|------------------------|
| BAKER Peter Leslie    | r.6.20(2)(b)            | HWRL Assessor registration classes SB - SA and LF                   | Suspended for 3 months |
| HARROP Ian            | r.5.45H & r.5.45(2A)(b) | Restricted asbestos licence   | Suspended licence      |
| NILON Gerrard Charles | r.6.20(2)(b)            | HWRL Assessor registration classes LF, DG, RB- RA, C2 – CO, SB – SA | Registration cancelled |
| MACK Vincent Charles  | r.6.20(2)(b)            | HWRL Assessor registration classes -ALL                             | Registration cancelled |
| PASSFIELD Alan James  | r.6.20(2)(b)            | HWRL Assessor registration classes -ALL                             | Suspended for 3 months |
| SCHWARZ Peter         | r.6.20(2)(b)            | HWRL Assessor registration classes HM, DG and CT                    | Reprimand Letter       |
| TAYLOR Derek Conrad   | r.6.20(2)(b)            | HWRL Assessor registration classes RB-RA, LF and DG                 | Suspended for 6 months |

## Reviews of notices issued by WorkSafe inspectors

The Safety Regulation Group co-ordinates and supports the WorkSafe Commissioner’s review of notices issued by WorkSafe inspectors under the OSH Act and undertakes consideration of applications for exemptions under the Regulations.

WorkSafe inspectors issue improvement notices to persons who may be contravening the OSH Act and Regulations. An improvement notice tells the recipient they may be committing an offence and sets a deadline by when the contravention must be stopped. WorkSafe inspectors can also issue prohibition notices to persons who may be involved in an activity that involves a risk of imminent and serious harm or injury to a person. A prohibition notice tells the recipient that they must immediately stop the activity.

A request for a review of an improvement or prohibition notice can be lodged with the WorkSafe Commissioner. Requests relating to improvement notices must be lodged before the deadline for compliance specified in the notice, and for a prohibition notice within seven days of the issue of the notice (or such further time as may be allowed by the WorkSafe Commissioner).

Improvement notices are suspended while they are being reviewed by the WorkSafe Commissioner, but prohibition notices remain in force. After considering a request for a review of a notice, the WorkSafe Commissioner can affirm, modify or cancel the notice. An applicant who is not satisfied with the decision of the WorkSafe Commissioner may refer the matter to the Occupational Safety and Health Tribunal for further review (section 51A of the OSH Act). The decision of the Tribunal may be further appealed.

During 2017–18, in accordance with section 51 of the OSH Act, 337 notices were reviewed by the WorkSafe Commissioner. Review outcomes are detailed in Tables 5 and 7.

**Table 4: Improvement notices issued and reviewed 2017–18**

| Year    | Improvement notices issued | Improvement notices reviews processed | Percentage (%) |
|---------|----------------------------|---------------------------------------|----------------|
| 2017–18 | 8,530                      | 337                                   | 4.0            |

**Table 5: Outcome of reviewed improvement notices during 2017–18**

| Outcome   | Number     |
|---|------------|
| Affirmed  | 2          |
| Affirmed with time extended                                   | 286        |
| Affirmed, modified and time extended                          | 1          |
| Notice cancelled by WorkSafe Commissioner                     | 19         |
| Review request withdrawn                                      | 1          |
| Compliance effected on time and while under review            | 10         |
| Received too late for review                                  | 15         |
| Occupational Safety and Health Tribunal notice cancelled      | 1          |
| Occupational Safety and Health Tribunal dismissed by Tribunal | 2          |
| <b>Total processed from 1 July 2017 to 30 June 2018</b>       | <b>337</b> |

**Table 6: Prohibition notice outcomes 2017-18**

| Year    | Prohibition notices issued | Prohibition notices reviews processed | Percentage (%) |
|---------|----------------------------|---------------------------------------|----------------|
| 2017–18 | 233                        | 4                                     | 1.7            |

**Table 7: Outcome of reviewed prohibition notices 2017-18**

| Outcome   | Number   |
|---|----------|
| Affirmed  | 1        |
| Notices cancelled by WorkSafe Commissioner              | 3        |
| <b>Total processed from 1 July 2017 to 30 June 2018</b> | <b>4</b> |



## Exemption from Regulations

The Commissioner may exempt a person from compliance with the Regulations. During 2017-18 the Commissioner received 45 applications for an exemption and granted 24 exemptions. One decision of the Commissioner was appealed in the Occupational Safety and Health Tribunal.

## Occupational Safety and Health Tribunal

In 2017–18, one new application for a further review of a decision of the Commissioner was lodged with the Occupational Safety and Health Tribunal (under section 51A of the OSH Act).

**Table 8: Proceedings before the Occupational Safety and Health Tribunal 2017–18**

| OSHT Number    | Name/Applicant       | Decision type  | Outcome   |
|----------------|----------------------|--|---|
| OSHT 2 of 2017 | Hanssen Pty Ltd      | Decision not to grant an exemption from the OSH regulations. | Decision affirmed   |
| OSHT 4 of 2017 | Mercor Group Pty Ltd | Decision not to cancel an improvement notice                 | Decision set aside and notice cancelled                                 |
| OSHT 5 of 2017 | Hanssen Pty Ltd      | Decision not to grant an exemption from the OSH regulations. | Following decision affirming OSHT 2 of 2017 - Tribunal dismissed matter |
| OSHT 6 of 2017 | Hanssen Pty Ltd      | Decision not to grant an exemption from the OSH regulations. | Following decision affirming OSHT 2 of 2017 - Tribunal dismissed matter |