

# SAFETY IN THE WORKPLACE

Welcome to our 2018 Winter Edition of “Safety in the Workplace – WHS Quarterly”. In this edition, we summarise the recent findings from the coronial inquest into the Dreamworld incident, examine the balance between safety and employee privacy and consider the risks associated with non-compliance with workplace Work-Health Safety standards and procedures.



## ***Dreamworld Inquest Demonstrates Need for WHS Managers to Maintain Accountability***

The ongoing coronial inquest into the deaths caused by Dreamworld’s Thunder River Rapid ride has uncovered critical evidence that workplace safety teams across various industries can learn from. In particular, the inquest illustrates that clear communication of safety protocol and procedure is key.

### **What caused the WHS failure**

In October 2016, electrical malfunctions caused the ride’s water levels to drop, in turn causing two rafts to

collide and become caught on the rails, which dragged the rafts into the conveyor mechanism, leading to deaths of four people.

The evidence revealed by the inquest thus far exposes three major points of failure.

- The ride breakdown procedure Dreamworld had in place required a supervisor to be notified if the same malfunction occurs twice within 24 hours. When the water pump failed for the second time hours before the incident, the ride should have been closed, pursuant to that procedure. Instead, it was reset by an engineer and remained open.
- During the inquest, one of Dreamworld’s electricians stated that the water pump’s drive should have been reset by electricians, not engineers. The electrician stated that he would not have shown or let an engineer reset a ride’s pump due the electrical experience it requires. Despite this, cross-examination revealed that the engineer who reset the pump the second time, had been shown how to reset the pump’s drive, but had not previously done so for that ride.
- The third failure was that the ride operator stated that she was unaware of the emergency stop button which would have halted the ride within two seconds. Notwithstanding that, the ride operator’s trainer gave evidence that she did instruct the operator on that point.

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## **Lessons to be learnt from the Dreamworld incident**

### Cost cutting

Sufficient allocation of resources to maintenance and safety has surfaced as a major issue following the inquest. The inquest heard evidence from an engineering management meeting in March 2016 which uncovered active efforts to cut costs, the minutes stating, “*repairs and maintenance spending needs to stop*”. The tragic outcome occurred seven months later and demonstrates the safety implications attached to maintenance systems must be carefully considered.

During the process of cost cutting, it is necessary to evaluate whether appropriate safety measures are being compromised due to resource redistribution. Essential operational functions require adequate financial support, ensuring the prioritisation of safety.

### Clear direction and need for continuous training

The differing accounts of Dreamworld’s safety and maintenance procedures from various staff has highlighted the necessity of direction and procedure to be clear and apparent to all staff. Cross-department training and communication are important measures to ensure staff are aware of safety protocols.<sup>6</sup>

The ride operator’s lack of knowledge in relation to the emergency stop button identifies the need for regular evaluation of training programs to ascertain whether the transference of knowledge between management and operators is effective. Assumptions in this context can be harmful. The inquest resumes in October this year.

WHS managers have the responsibility of consistently monitoring safety procedures and policies and to

ensure that any cost cutting measure do not degrade the performance of staff and equipment or increase safety risks.

If you have any questions relating to implementing effective workplace safety procedures please do not hesitate to contact Nick Stevens, Jane Murray or Angharad Owens-Strauss.



## **Commission Approves Urine Testing in New Drug and Alcohol Policy at Arnott’s**

The Fair Work Commission (‘**FWC**’) has given food manufacturer, Arnott’s Biscuits Ltd (‘**Arnotts**’) the green light to conduct compulsory urine testing. United Voice, Australian Manufacturing Workers’ Union (‘**AMWU**’); and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (‘**the Unions**’) disputed that the use of urine testing was necessary. The Unions submitted that using a less intrusive oral fluid test to determine drug or alcohol impairment at work was preferable. The Unions challenged Arnott’s introduction of urine testing in its Drug and Alcohol



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Policy ('DAP') through the FWC before it had been fully implemented. Commissioner Hunt of the FWC in Brisbane delivered the final decision on 31 May 2018.

Arnott's DAP allows for compulsory urine testing in four circumstances: (1) as part of the pre-employment process; (2) following a serious workplace incident; (3) where there are reasonable grounds to believe that an individual may be at risk of being impaired by alcohol or drugs; or (4) following a positive test result. Random testing would not form part of the DAP.

The Unions accepted that urine testing was appropriate in circumstances (1) or (4) but submitted that oral fluid testing was more relevant for circumstances (2) and (3). The Unions argued that urine testing unnecessarily impinges on the privacy of an individual regarding their activities outside of work hours. Given that drugs may remain present in urine for several days after any impairing effects have worn off. For example, cannabis is in an individual's system 2-4 days after it has been used, while oral fluid tests detect only for the hangover effects of cannabis which can last up to 24 hours.

The Unions argued that urine testing in circumstances (2) and (3) went beyond the stated aim of the DAP which is to minimise the risks posed to workplace safety by the misuse of alcohol and drugs and to offer appropriate support to an employee who may experience drug or alcohol dependency issues. The Unions contended that the DAP does not address the concerns regarding worker privacy. Commissioner Hunt found that although Arnott's policy was intended to go beyond testing for potential impairment on the day, to manage the risk of workers who engaged in regular drug use, it was not

unreasonable to adopt a testing method that determined if a worker was affected by hangover or long-term effects.

Arnott's and the Unions gave evidence from various experts on the efficacy of urine testing in comparison to oral fluid testing. Commissioner Hunt held that the adoption of urine testing was a "reasonable exercise of Arnott's right to manage its business in the way it sees fit". The high-risk environment of the site which includes the operation of large machinery, heavy equipment, a powered mobile plant and ovens operating at high temperature means that safety measures in the workplace need to be strenuous.

Commissioner Hunt found urine testing's longer detection period would impose a more significant deterrent effect on workers. It was found that the introduction of the DAP was not "unjust or unreasonable" and that the FWC should only interfere if the outcome for employees had such effect. As the dispute before the FWC only relates to the Virginia, Queensland site, it remains to be seen whether Arnott's will implement the policy at its sites in South Australia and New South Wales.

The decision illustrates the importance of ensuring any drug or alcohol policy is carefully tailored to your workforce and industry, bearing in mind the intricate balance between safety and employee privacy.

Read the full decision here: [Arnott's Biscuits Ltd v United Voice \(C2017/5610\)](#)

If you have any questions relating to implementing effective and tailored workplace safety procedures please do not hesitate to contact Nick Stevens, Jane Murray or Angharad Owens-Strauss.

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## ***Auschem Pay the Price for Inadequate Compliance with Work-Health Safety Standards***

An Australian chemical distribution company based in Sydney's west ('Auschem') has been forced to pay up to almost \$100,000 for failing to adequately protect two employees from a worksite explosion and fire. In February 2015 two Auschem employees were decanting all-purpose thinners from a leaking 1000 litre container into another large container. Whilst this process was taking place, a stream of the liquid between the two containers ignited and caused an explosion.

The explosion left one of the men severely injured with burns to his stomach, shoulder, right arm and hand, and the other with cuts to his head that required stitches. Auschem pleaded guilty to an offence that being a person conducting a business or undertaking that had a health and safety duty

under [s 19\(1\)](#) of the [Work Health and Safety Act 2011](#) ('the Act'), it failed to comply with that duty and thereby exposed the employees to a risk of death or serious injury contrary to [s 32](#) of the Act.

Judge Russell in the Sydney District Court held that the volatility of the paint thinners was a well-established risk which could be found in relevant Australian Standards; Auschem's own safety data sheets; and the SafeWork Australia code of practice for managing risks of hazardous chemicals in the workplace. In allowing the workers to conduct such a dangerous procedure, Auschem failed to take reasonable steps to minimise this risk.

Auschem was fined \$80,000, which was reduced to \$60,000 to account for the guilty plea. Auschem was also ordered to pay the prosecutor's cost of \$31,000.

This case clearly demonstrates the risks associated with non-compliance with relevant Work-Health Safety standards as well as internal policies and is a timely reminder for businessmen to appraise the tasks carried out by employees every day from a work health and safety perspective.

Read the full case here: [SafeWork NSW v Auschem \(NSW\) Pty Limited \[2017\]](#)

If you require advice or assistance to ensure you're abreast of relevant codes and standard that might apply to your workforce, please do not hesitate to contact Nick Stevens, Jane Murray or Angharad Owens-Strauss.

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