

# SAFETY IN THE WORKPLACE

## Safety in the Workplace – WHS Quarterly

Our Winter 2021 edition includes:

- SafeWork NSW Investigate Covid-19 Breaches relating to recent Sydney outbreak;
- NSW Government Department Fined for Work Health and Safety Breach; and
- SafeWork Australia Launches New Lung Safety Campaign.



### SafeWork NSW Investigating Covid-19 Breaches

In recent news, NSW Police have announced that they have referred the case of the airport transport driver involved in the recent Sydney Covid-19 outbreak to SafeWork NSW. This referral is

intended to allow SafeWork NSW to investigate whether the driver and the business for which he worked have complied with work health and safety legislation.

In the regular daily Covid-19 press conferences on 24 June 2021, Deputy Commissioner of NSW Police Gary Worboys announced the referral to SafeWork NSW. He stated that this investigation was in addition to investigations regarding alleged breaches of public health orders which applied. It is important to remember that there might be several layers of regulation which apply to managing the risks to health and safety at work.

The specific details of SafeWork NSW's investigation are not yet known. What is known is that consideration is being given to whether the relevant business had work practices in place which were designed to reduce the risk of transmission of Covid-19, which was a known risk in their particularly vulnerable line of work.

It is important to note that, while this is new ground, it is now becoming apparent that relevant authorities are treating the risk of transmitting Covid-19 as a risk which is captured by work health and safety legislation. All businesses should put in place steps to reduce the risk of transmission not only to their workers, but also to others who attend their workplaces. The steps that need to be taken will depend on the nature of the industry and work performed.

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As NSW works through another outbreak of Covid-19, businesses should consider revisiting some of the measures that were put in place during earlier outbreaks, particularly those that were relaxed as the situation appeared to improve. It will also be important to keep a keen eye on the latest public health guidance from official Government sources.

If you need assistance in reviewing your safe work practices in the context of Covid-19, please contact [Nick Stevens](#), [Luke Maroney](#) or [Daphne Klianis](#).



## NSW Government Department Fined for Work Health and Safety Breach

Following a tragic accident leading to the death of a disabled child (**Child**) and his pregnant Support Worker, the NSW Government Department of Communities and Justice (**Department**) and the Support Worker's employer (**Company**) have both

been handed significant fines for failing to comply with work health and safety legislation.

On 5 September 2017, in the course of her work for the Company, the Support Worker was required to drive the Child from the Hunter Valley to the Central Coast. While they were travelling on the M1 Pacific Motorway at around 110km/h, the Child freed himself from his seatbelt and as the Support Worker pulled over to restrain him, exited the car into traffic. The Support Worker pulled the car over into the breakdown lane and tried to get the Child off the roadway. They were both hit by a truck and killed.

The Department and the Company had a contract for the Company to provide support services, including supervised transport, to children in the care of the Department. The Department was responsible for the placement of the Child with various care services prior to his respite placement with the Company and held a file with respect to his care needs, including the need for support by two Support Workers at any time due to his propensity to try and escape. The Department did not share key documents and information with the Company, including the Child's behaviour management plan, or the need for a second Support Worker to be present during transportation.

Following pleas of guilty to offences under the *Work Health and Safety Act 2011* (NSW) (**Act**) relating to failure to comply with relevant health and safety duties, and thereby exposing the Support Worker,

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the Child and other employees of the Company to risk of death or serious injury, the Company was fined \$90 000 and the Department was fined \$150 000.

It is important to note that, in this case, the work health and safety duties did not necessarily relate to employees of the relevant organisations that were fined. The work health and safety duty of the Company extended not only to its employee (the Support Worker), but also to its client (the Child). The Department did not directly employ anyone involved in the incident, but nonetheless had duties to the Child, the Support Worker and the other employees of the Company.

This case serves as an important reminder that the *Act* casts duties to ensure work health and safety broadly. There is an obligation on all businesses and undertakings to ensure that the health and safety of other persons is not put at risk because of their business or undertaking, so far as is reasonably practicable. This extends to employees, contractors, clients, customers, volunteers and even visitors. The duties include sharing information with other relevant duty-holders and cooperating with them to reduce and eliminate risks where possible. It is important that businesses have in place effective safety policies and procedures to deal with all health and safety duties.

If you would like us to review your work health and safety policies and procedures, or in the unfortunate event that you need to respond to a

safety incident, please contact [Nick Stevens](#), [Luke Maroney](#) or [Daphne Klianis](#).



## SafeWork Australia Launches New Lung Safety Campaign

SafeWork Australia has announced a new campaign related to occupational lung diseases. The campaign, entitled 'Clean Air. Clear Lungs', focuses on less known and often unseen risks to the health of workers' lungs in a variety of working environments.

The knowledge of the workplace risk of developing lung diseases has increased in recent years. While we have for many years understood that asbestos and coal dust can cause serious disease for workers who are exposed to them, there are many other risks to lung disease that workers might be exposed to.

The campaign aims to target the construction, manufacturing, agricultural and engineered stone industries to provide information about different

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hazards that workers might face which can cause occupational lung diseases. Some of the hazards identified by the campaign include dusts, gases, fumes, vapours, mists and microorganisms that are in the air as a result of common workplace practices in those industries, such as welding, sawing, and the use of chemicals or pesticides.

Under work health and safety law, businesses have an obligation to identify and assess hazards, eliminate or minimise risks, and monitor and review their safety practices and compliance. SafeWork Australia has developed a model code of practice for managing the risks of hazardous chemical, one of the key sources of risks to lung health in the workplace. It has also developed 'workplace exposure standards' for various different chemical and non-chemical substances that might cause lung disease. It is important that all businesses are aware of the levels of risk associated with the work they are undertaking and implement work practices to eliminate or reduce those risks.

If you need assistance in conducting a review of your current safe working practices, please contact [Nick Stevens](#), [Luke Maroney](#) or [Daphne Klianis](#).

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