

Safe work procedures and PPE

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Meet your moderator

Melanie Stojanovic
Industry Manager
WorkCover Queensland



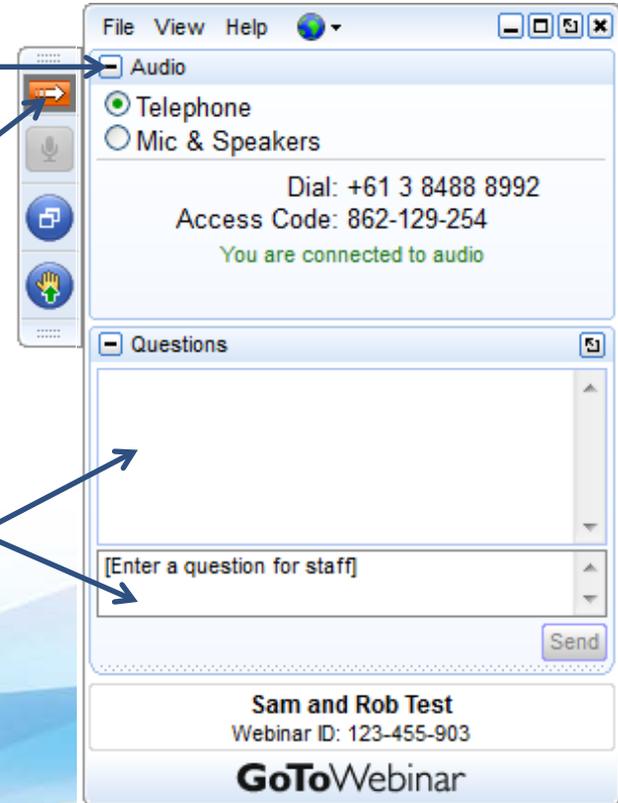
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After the webinar

- Webinar recording and presentation will be on workcoverqld.com.au in the coming days
- If we don't get to all of your questions, we will collect them and publish answers on our website afterwards
- So we can continually improve our level of service, we would appreciate you completing a short survey at the end of the webinar

Meet your presenter



Terry Killian
Partner
DibbsBarker Brisbane



Stacey Boulton
Special Counsel
DibbsBarker Brisbane

Session summary

- Liability—duty of care, breach and causation
- The scope of the employer's duty of care includes devising, maintaining and enforcing a safe system of work
- Overview of key issues and case examples
- Safe system of work and PPE to prevent foreseeable risks of injury
- Addressing risks—risk assessments, training, instruction and reinforcement
- Importance of documentary evidence of the system, training, instruction and enforcement
- Questions / queries

Key themes

- Devise, maintain and enforce
- Three distinct elements, which must all be present
- A system of work is
 - the way that we safely do the tasks that are a usual part of the job/business
 - the way that we address/manage tasks that are unusual or one offs

Devise

- Systems and procedures
- More than a technical guide
- More than a ‘folder on a shelf’
- Informed by statutory obligations, codes, standard, etc.

Maintain

- Systems and procedures are in fact ‘the way we do things around here’
- Embedded in the culture
- How are people trained in systems and how is that regularly reinforced at an operational level

Enforce

- How do you prove the system is actually followed day to day?
- Examples of action taken for failure to comply
- Are people trained in systems and how is that regularly reinforced at an operational level?

Safe system of work

The duty of care requires an employer to devise, maintain and enforce a safe system of work.

Example: In *Bankstown Foundry Pty Ltd v Braistina*, a hoist which would have avoided the risk of injury was available to be used by the injured employee for heavy work. It was held that a safe system of work would not only include access to a hoist for heavy work but also a direction that the hoist be used and workers trained in its use and enforcement of that direction by ensuring workers use the hoist for heavy work.

Successful defence—safe system of work

Case study: *Scott v Jackson Garden Landscape Supplies Pty Ltd*

- The plaintiff, a weekend sales assistant, sustained personal injury during a fall at her employer's premises when she stepped on "an object or something". The object that caused her to fall was never identified.
- Employer's evidence was that the cleaning system involved inspections at the end of the day on Friday, inspections by the weekend manager the following morning and the overarching manager and regular sweeping by a junior employee hired on the weekends for the primary purpose of sweeping the area where the plaintiff fell.
- The employer also instructed all employees to be vigilant about cleaning and to remove objects on the floor during the course of their normal duties and monitored this.

Cont'd: Scott v Jackson Garden Landscape Supplies Pty Ltd

- The Judge accepted that around 1-2 hours prior to the incident, the area where the plaintiff suffered her injury had been swept by the junior employee. The defendant's witnesses' evidence was accepted that the area was clean at the time of the fall.
- The judge was not satisfied the employer had breached its duty of care by failing to provide an adequate cleaning system or that the plaintiff's fall was caused by a failure to take reasonable care to provide an adequate cleaning system.
- The plaintiff's claim was dismissed.
- Outcome demonstrates successful defence by having an appropriate safe system in place together with evidence of adequate re-enforcement of the system.

Safe system of work

Case study: *Marshall v Queensland Rehabilitation Services Pty Ltd*

- The plaintiff was employed as an Assistant in Nursing. Whilst trying to transfer a patient, she allegedly sustained injuries.
- The employer provided an induction, instructions and training in manual handling tasks, patient transfers including the use of a sling and hoist and the plaintiff signed a manual handling competency form. Within 10 months, further manual handling training and instruction was provided by a physiotherapist and a further competency form signed. Instruction in respect of the care of dementia patients was also provided and under cross examination the plaintiff accepted she received instruction that if a resident resisted the process of being rolled she should stop the procedure.
- Adequate training and instruction was provided and the Court found in favour of the employer.

What is Personal Protective Equipment ?

- Personal protective equipment (PPE) is anything used or worn by a person to minimise risk to a person's health or safety and includes a wide range of clothing and safety equipment. PPE includes helmets, boots, goggles, face masks, hard hats, ear plugs, respirators, gloves, safety harnesses, high visibility clothing etc.
- PPE should be used to supplement higher level control measures.



PPE considerations

When choosing PPE consider:

- the specific task and consultation with users
- compatibility of PPE items where more than one type of PPE is required (for example ear muffs with a hard hat)
- ensure PPE is suitable for the work and workplace conditions
- purchase from reputable manufacturer / supplier
- PPE that complies with the relevant Australian Standard or equivalent standard.

PPE must be maintained, repaired or replaced so it continues to minimise the risk to the worker using it. This includes ensuring the equipment is:

- clean and hygienic and
- in good working order.

Safe systems and PPE

Case study: *Caird v State of Qld* (2004) QSC 217

- The plaintiff was employed as a slaughterman/knifeman for Queensland Abattoir Corporation. Prior to beginning his employment there in 2000, he had worked for other abattoirs as a slaughterman for 21 years.
- He suffered a severed laceration of his left wrist and hand when an animal struck his right arm, leading to the knife injury on his left arm.
- Two aspects of the employer's operations were in issue:
 - whether the employer provided a safe system of work on the slaughter line
 - the supply of cut-resistant gloves

Cont'd: *Caird v State of Qld* (2004) QSC 217

- Plaintiff alleged employer failed to: provide cut-resistant gloves, instruct him to wear the gloves & provide training how to perform duties when wearing the gloves
- Employer argued cut-resistant gloves provided and that plaintiff was at fault for not wearing them (contributory negligence)
- Evidence - cut-resistant gloves were available at the time of the injury however employer did not direct or insist on wear cut-resistant
- The employer did not insist on workers wearing cut-resistant gloves as workers were resistant to change, not averse to industrial action and employer wanted to be seen as a humane and considerate employer
- The Court held employer negligent as failed to provide a safe system of work - although employer supplied gloves, had not instructed or forced workers to wear them. No contributory negligence.

Safe systems and PPE

Case study: *Tompkins v Kemp Meats Pty Ltd & Kemp Meats Pty Ltd v Tompkins*

- The Plaintiff, an experienced slaughterman & supervisor trained in WH&S sustained injury when using a knife
- Plaintiff argued employer negligent as did not require use of cut resistant gloves
- Employer argued Plaintiff contributory negligent for failing to wear cut resistant gloves provided and he was an experienced meat worker & had prior history of cuts
- At first instance and on appeal: no reduction for contributory negligence as employer's system of work was deficient - it should have been mandatory for workers to wear gloves. The employer did not properly instruct workers to use gloves. Also there were insufficient gloves available for all of the workers
- Case demonstrates need for employers to properly instruct and enforce the requirement for workers to wear PPE (e.g. cut resistant gloves) even for experienced workers/leading hands.

Contributory negligence

A worker's damages can be reduced to reflect the extent to which the worker has negligently contributed to his or her injuries – this rarely exceeds 20%.

At common law, a claimant's behaviour must exceed mere inattention or inadvertence before it is considered to be contributory negligence.

- failing to comply with instructions given by the employer
- failing to use protective clothing and equipment provided
- failing to use anything provided that was designed to reduce the worker's exposure to risk of injury
- failed, without reasonable excuse, to attend safety training organised by the employer that was conducted during normal working hours at which the information given would probably have enabled the worker to avoid, or minimise the effects of, the event resulting in the worker's injury.

Case study: *Noel Bartley v Coles Myer Ltd*

- The Plaintiff, a butcher was unsuccessful at first instance, on appeal he argued that the employer was negligent on 2 occasions as employer did not provide a mesh glove and/or alternatively, if provided, failed to supervise him to ensure he used it.
- Court cited *McLean v Tedman* High Court decision '*in deciding whether an employer has discharged his common law obligation to employees the Court must take account of the power of the employer to prescribe, warn, command and enforce obedience to his commands*'.
- PPE was provided but the employer only discharged part of its duty.
- Attempts to enforce the use of gloves by employer were increased after the first injury.
- A workers refusal to obey cannot justify permitting a dangerous situation to continue.
- The plaintiff resisted and disobeyed employer's instructions and was found contributory negligent and damages reduced by 50%.

Evidence—examples supporting documents

- Written work procedures
- Safe work method statements
- Risk assessments
- Diary entries
- Instruction and training documentation
- Minutes of tool box meetings
- Disciplinary warnings (written and verbal notes of warnings) re: enforcement of safe system of work and/or use of PPE
- Details of PPE issued and date issued and acknowledgements of instructions on use

Session summary

- The scope of an employer's duty of care includes devising, maintaining and enforcing a safe system of work
- Involves risk assessments, training, instruction, supervision and reinforcement
- Further, an employer must provide its employees with proper equipment, personal protective clothing and other aids or devices as far as reasonably necessary to prevent foreseeable risks of injury and also enforce their use
- Importance of documentary evidence to successfully defend common law claims

Questions submitted during the webinar

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- Considerations for working with a young or ageing workforce—30 April 2015