Recent *Prosecutions*

Cases heard 1 January to 31 December, 2000

This publication provides a brief summary of prosecutions brought by the Victorian WorkCover Authority under legislation administered by the Authority: *Occupational Health and Safety Act 1985, Dangerous Goods Act 1985, Equipment (Public Safety) Act 1994, Accident Compensation Act 1985, Accident Compensation (WorkCover Insurance) Act 1993.*

Please note that the sentencing remarks attributed to judges and magistrates should not be regarded as a verbatim record unless they appear in quotation marks.

INDUSTRIAL MANSLAUGHTER BILL – tougher accountability for workplace safety

The *Crimes (Industrial Manslaughter) Bill*, expected to be presented to the Victorian Parliament in the spring session, breaks new legal ground in Australia.

The Bill introduces higher penalties for workplace health and safety violations and introduces two new criminal offences – industrial manslaughter and negligently causing serious injury.

In 1999/2000 there were 103 compensated fatalities in Victorian workplaces.

By strengthening incentives to comply with health and safety regulations, these new provisions focus on preventing further workplace fatalities and serious injuries.

The new laws overcome concerns about successfully prosecuting workplace fatalities and serious injuries under common law.

The Bill strengthens corporations' and senior officers' duty of care.

Where gross negligence results in workplace death and serious injury, it makes corporations and senior officers accountable under the Crimes Act.

The maximum fine for corporations will be $5 million for industrial manslaughter and $2 million for negligently causing serious injury. The maximum penalty for corporate senior officers found guilty of manslaughter will be five years imprisonment and a $180,000 fine. For those convicted of negligently causing serious injury, a maximum penalty of two years imprisonment and a fine of $120,000 will apply.

Flexible sentencing options will also enable the courts to order a corporation to advertise its conviction and details of the offence.

According to Attorney General, Rob Hulls, and the Minister for WorkCover, Bob Cameron, the industrial manslaughter offence targets a very small fringe of reckless employers.

A.T. HAYES RECYLING PTY LTD

Date of offence: 24 November 1998

Date of prosecution: 1 February 2000 at Geelong Magistrates' Court

Magistrate: Max Beck

An employee of A.T. Hayes Recycling Pty Ltd sustained an amputation of her right arm below the elbow after her arm was caught and dragged into an unguarded conveyor belt.

Breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(a) and 21(1) & (2)(e).

The magistrate said it was obvious that employees of the corporation were exposed to the unprotected rollers of the conveyor belt. He said a guard over the rollers of the conveyor belt would have prevented this incident. Another grave shortcoming was the absence of an emergency stop along the length of the conveyor belt. The magistrate took into account the serious injury of the employee concerned, the defendant's plea of guilty and financial circumstances.

Result: **Convicted and fined an aggregate amount of $30,000 plus $1,500 costs.**

MACKIE AND STAFF PTY LTD

Date of offence: 1 May 1998

Date of prosecution: 9 February 2000 at Ringwood Magistrates' Court

Magistrate: Hugh Walter

On 1 May 1998 at a Bayswater construction site, a Victorian WorkCover Authority inspector saw three men on a steel beam, about four metres off the ground, without fall protection. The inspector issued a prohibition notice to ban any person from working at height without a fall prevention system in place.

On 10 June 1998, the inspector returned to the site and saw three people standing near the edge of the roof without fall protection – a breach of the prohibition notice.

Breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(a) × 2 and 44(3).

The magistrate stressed the need for deterrence in occupational health and safety breaches. He said the prohibition notices issued on 1 May 1998 ought to have alerted the corporation to the problems occurring with work at height. The magistrate did not record a conviction in light of evidence put forward by the director that this would prejudice the corporation's ability to tender for government work and would result in the retrenchment of 10 workers. However, the magistrate said the penalties must reflect the intentions of Parliament following the introduction of higher penalties into the legislation.

Result: **Without conviction, fined $5,000 re: Section 21(1) & (2)(a), $10,000 re: Section 21(1) & (2)(a), and $10,000 re: Section 44(3). Total fine $25,000 plus $3,200 costs.**

This matter was the subject of an appeal in the County Court.

SHELL REFINERY (AUSTRALIA) PTY LTD

Date of offence: **Between 30 September and 19 October 1998**

Date of prosecution: **16 February 2000 at Geelong Magistrates' Court**

Magistrate: **Duncan Reynolds**

An audit and investigation at the Shell Refinery in Corio revealed various breaches relating to the defendant's fire protection facilities.

Breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(a) and 21(1) & (2)(e), the *Dangerous Goods Act 1985*, Section 31(1)(a)(iv) and the *Dangerous Goods (Storage and Handling) Regulations 1989*, regulations 412 and 425.

The magistrate observed that an earlier audit disclosed serious shortcomings in the filament of the fire protection system. The fact that charges did not arise from a catastrophe did not diminish the seriousness of the breaches. The refinery is classified as a Class 1 hazard and it is therefore incumbent on Shell to maintain firefighting capacity at a proper level.

The magistrate acknowledged Shell's prior convictions and the corporation's plea of guilty. He said he would not impose an additional penalty under Section 53 of the *Occupational Health and Safety Act 1985*.

The magistrate said the audit had been a catalyst for improvement, and acknowledged that there had been considerable expenditure. He also noted that Shell had been cooperative.

Result: **Convicted and fined $70,000 re: Section 21(1) & (2)(a), $50,000 re: Section 21(1) & (2)(e), $25,000 re: Regulation 412, $20,000 re: Regulation 425, $40,000 re: Section 31, $20,000 re: Section 31. Total fine $225,000 plus $21,310 costs.**

SCOTT ALAN CHAMBERS

Date of offence: **Between 1 November and 25 December 1995**

Date of prosecution: **22 February 2000 at Frankston Magistrates' Court**

Magistrate: **Harley Harber**

On at least one occasion between 1 November 1995 and 30 November 1995, the defendant, an employee head technician of Peninsula Prestige Cars Pty Ltd, taped and bound a 16-year-old apprentice to a pole at the workplace.

Further, at some time between 20 December 1995 and 25 December 1995, the defendant placed the apprentice into a 60 litre oil drum and sprayed a highly flammable substance known as "carby clean" on his boots, setting him alight.

Breaches of the *Occupational Health and Safety Act 1985*, Section 25(1)(a)&(2)(b).

The magistrate acknowledged that this case involved a young vulnerable victim who, as an apprentice, was seeking to impress his employer.

In contrast, the defendant was an older employee in a position of responsibility who clearly exploited the victim's vulnerability.

The magistrate accepted that the victim had been frightened and that the incidents had an impact on his mental health.

He noted that the defendant had no prior convictions, had pleaded guilty (although at a late stage) and had exhibited remorse.

The magistrate concluded that the sentence must send a clear message to those in the industry, and to other employers, that such conduct would be detected and prosecuted.

Result: **Convicted and fined $2,000 plus $4,288.50 costs.**

TOM PHILLIPSON

Date of offence: **Between 1 August 1998 and 31 August 1998**

Date of prosecution: **25 February 2000 at Dandenong Magistrates' Court**

Magistrate: **William White**

Between 1 August and 31 August 1998 at Mordialloc, a 19-year-old apprentice employee of Gearmatics suffered physical and verbal abuse inflicted by senior employees Tom Phillipson and John De Sensi. Phillipson and De Sensi approached the apprentice from behind and thrust work tools (a screw driver and extension bar) into the area of his anus through his clothing.

Breach of the *Occupational Health and Safety Act 1985*, Section 25(2)(b).

The magistrate described the behaviour as stupid and said it was the type of conduct the community wished to actively discourage.

He acknowledged that the prosecution had argued strenuously for a sentencing disposition with conviction, but concluded this case was distinguishable from those that usually came before the courts and involved employers.

Result: **Without conviction released on a 12-month good behaviour bond with conditions and ordered to pay $500 to the Court fund plus $1,490 costs.**

ROB'S CRANE TRUCKS PTY LTD

Date of offence: **9 October 1998**

Date of prosecution: **8 March 2000 at Geelong Magistrates' Court**

Magistrate: **Max Beck**

On 9 October 1998, liquid petroleum gas (LPG) leaked from a broken drain valve on a LPG vessel when the load shifted. The LPG vessel was being transported at the time.

Breach of the *Dangerous Goods Act 1985*, Section 31(1)(a)(iii).

In determining whether a conviction was warranted, the magistrate said the principles of judicial discretion were equally applicable to corporations and individuals, but concluded that Rob's Crane Trucks Pty Ltd had the greater culpability in reference to the method employed to load the tank.

He acknowledged that the defendant had been in business for many years without prosecution, had been severely penalised by a loss of income after the incident, and that the person on site at the time of the incident was no longer an employee. The magistrate noted that while the public had been greatly inconvenienced, no harm had been inflicted, stressing that he would have dealt with the matter differently if anyone had been hurt.

Result: **Without conviction fined $8,000 plus $2,370 costs.**

WESFARMERS KLEENHEAT PTY LTD

Date of offence: **9 October 1998**

Date of prosecution: **8 March 2000 at Geelong Magistrates' Court**

Magistrate: **Max Beck**

On 9 October 1998, liquid petroleum gas (LPG) leaked from a broken drain valve on a LPG vessel when the load shifted. The LPG vessel was being transported at the time.

Breach of the *Dangerous Goods Act 1985*, Section 31(1)(a)(iii).

[See summary of magistrate's comments in the matter of Rob's Crane Trucks Pty Ltd.]

Result: **Without conviction fined $8,000 plus $1,356 costs.**

RIDLEY AGRIPRODUCTS PTY LTD TRADING AS MAFFRA FEED AND GRAIN

Date of offence: 5 January 1999

Date of prosecution: 14 March 2000 at Melbourne Magistrates' Court

Magistrate: Barry Braun

On 5 January 1999 at the Maffra premises of Ridley Agriproducts Pty Ltd, an employee's left arm was severed below the elbow after his hand was caught and crushed in an unguarded cooler machine used to process livestock food into pellets.

Breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(a) and 21(1) & (2)(e).

The magistrate noted that processed pellets found their way into metal vanes rotating in a horizontal plane at the bottom of the cooler chamber and dropped onto a conveyor belt. The vanes were fitted to an unguarded piece of equipment/rollers. The magistrate said that while the employer believed the equipment was concealed by the superstructure of the chamber and that a guard was therefore unnecessary, there was a large opening at the bottom of the superstructure and on top of the conveyor belt which allowed contact with the blades. The magistrate also observed that the hazard was concealed from untrained employees. He acknowledged the absence of prior convictions and the steps taken by the defendant to guard the cooler after the incident, but stressed the need for specific and general deterrence.

Result: **Convicted and fined $55,000 plus $1,450 costs.**

D.V.P. ENGINEERING PTY LTD

Date of offence: 16 April 1998

Date of prosecution: 14 March 2000 at Dandenong Magistrates' Court

Magistrate: Julian Fitz-Gerald

Breaches were observed during four inspection visits of the defendant's premises at Rowville between 10 April and 14 May 1998.

The defendant failed to ensure that its employees and subcontractors were wearing adequate fall protection while working on the roof of a partially constructed warehouse 10 metres above ground. Some of the defendant's employees and subcontractors were permitted to operate boom-type elevated work platforms and to undertake rigging work without appropriate certificates of competency, contravening the *Occupational Health and Safety (Certification of Plant Users and Operators) Regulations 1994*.

Breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(a) x 2, 21(1) & (2)(e), and 44(3).

The magistrate said the defendant was too ready to accept that its employees would follow instructions and use equipment supplied. He concluded that there was a lack of supervision.

Result: **Convicted and fined $5,000 re: Section 21(1) & (2)(a), $5,000 re: Section 21(1) & (2)(a), $8,000 re: Section 44(3), $5,000 re: Section 21(1) & (2)(e).**
Total fine $23,000 plus $5,000 costs.

STILCON HOLDING PTY LTD

Date of offence: 6 March 1995

Date of prosecution: 7 December 1999 & 22 March 2000 at Melbourne County Court

Judge: Crossley

On 6 March 1995, an employee of the defendant corporation sustained severe injuries when his left foot was crushed by a falling load of 15 metre long "I" section steel beams. His lower leg was later amputated. The load had been suspended from a DEMAG overhead travelling crane when the crane's wire rope broke. Although the load was less than half a metre off the ground, it weighed nearly 3,700 kilograms, exceeding the crane's two tonne maximum capacity by about 50 percent.

Breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(a) and 21(1) & (2)(e).

On 7 December 1999, the defendant was found guilty of the Section 21(1) & (2)(a) charge but was acquitted on the Section 21(1) & (2)(e) charge.

On 22 March 2000, when delivering sentence, the judge acknowledged the excessive weight of the load and noted that the crane was not fitted with a load limiting device. He said the corporation failed to ensure the continued maintenance of the crane to detect any defects in the crane ropes.

Reference was made to Judge Howse's judgment in the case of *Director of Public Prosecutions v. Melbourne Excavations and Demolitions Pty Ltd*, where it was said "the fact that the responsibility was spread over other persons doesn't in my view significantly alter the position so far as concerns the responsibility of the respondents".

The judge described the crime as serious and said there was considerable negligence on the part of the corporation. He took into account that the victim was placed at considerable risk and suffered a severe injury.

The judge accepted that the corporation showed remorse through its management, employed older and experienced employees and had taken steps since the incident to maximise workplace safety. He said that although the defendant had no prior convictions, general deterrence was the principal sentencing consideration.

Result: **Convicted and fined $17,000.**

PACK-TAINERS PTY LTD

Date of offence: 30 May 1997

Date of prosecution: 23 March 2000 at Sunshine Magistrates' Court

Magistrate: James Cashmore

The victim (a person other than an employee of the defendant) was rendered a paraplegic as a result of being struck by a 150-kilogram bale of wool that became dislodged from a semi-trailer in the process of being unloaded. At the time of the incident, the semi-trailer was inside the warehouse premises of Pack-Tainers.

Breach of the *Occupational Health and Safety Act 1985*, Section 22.

The magistrate said that the defendant did not have a system of work to prevent the victim from being exposed to the risk of a falling bale. He noted that the height and size of the wool bales and the length of the semi-trailer obstructed the forklift operator's vision, and that he could therefore not see the victim, who was walking on the opposite side of the semi-trailer.

The magistrate said he was impressed by the measures introduced by Pack-Tainers since the incident. He took into account the defendant's plea of guilty and the need for specific and general deterrence.

Result: **Convicted and fined $22,000 plus $1,600 costs.**

ORICA AUSTRALIA PTY LTD

Date of offence: **Multiple visits from 1997 to 1999**

Date of prosecution: **23 March 2000 at Melbourne Magistrates' Court**

Magistrate: **Kathryn Auty**

A series of visits by inspectors from 1997 to 1999 revealed sustained and multiple instances of non-compliance with the Dangerous Goods regulatory regime, including failure to comply with the conditions of the licence to store dangerous goods, failure to comply with fire protection requirements and failure to have a plan to test tanks every 10 years for integrity.

Breaches of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(a) and the *Dangerous Goods Act 1985*, Section 31.

Result: **Convicted and fined a total of $35,000 plus $2,766 costs.**

R.W. CAPPING PTY LTD

Date of offence: **5 November 1998**

Date of prosecution: **27 March 2000 at Melbourne Magistrates' Court**

Magistrate: **Heather Spooner**

An employee sustained serious injuries to his left forearm as a result of operating an unguarded "A frame" tyre-buffing machine at the defendant's Bairnsdale premises.

Breach of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(a).

The magistrate described the incident as unfortunate and serious. She took into account the circumstances of the offence and the need for general deterrence as well as the corporation's financial position, its good safety record and its plea of guilty.

Result: **Convicted and fined $10,000 plus $1,600 costs.**

CRANE AID PTY LTD

Date of offence: **26 October 1998**

Date of prosecution: **29 March 2000 at Dandenong Magistrates' Court**

Magistrate: **John Bolster**

A fitter and turner/crane mechanic employed by Crane Aid Pty Ltd was crushed between two overhead travelling cranes while carrying out repair work for Pilkington (Australia) Limited in Dandenong. The employee had positioned himself on top of a crane to replace its wire rope guide when another crane, which was in use nearby, moved across the top of the crane he was repairing. He suffered extensive crush injuries to his torso. The clearance between the two cranes did not comply with the relevant Australian Standard, and the obvious risk associated with the method of work could have been identified if a hazard identification and risk assessment had been undertaken by the defendant prior to the commencement of the work. There was no effective communication between the defendant and the client (Pilkington (Australia) Limited) about procedures that would have isolated the crane that was being repaired.

Breach of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(a).

The magistrate said the Occupational Health and Safety Act was designed to provide a safe workplace for employees. He said the penalty ($100,000 for this offence when heard summarily) reflected the seriousness of the legislation. The magistrate took into account the steps taken by the defendant to develop its safety procedures and performance.

Result: **Convicted and fined $25,000 plus $1,650 costs.**

PILKINGTON (AUSTRALIA) LIMITED

Date of offence: **26 October 1998**

Date of prosecution: **7 April 2000 at Dandenong Magistrates' Court**

Magistrate: **John Bolster**

On 26 October 1998, a fitter and turner/crane mechanic was crushed between two overhead travelling cranes while carrying out repair work. He had positioned himself on top of a crane to replace its wire rope guide when another crane, which was in use nearby, moved across the top of the crane he was repairing. He suffered extensive crush injuries.

The defendant failed to recognise the structural risk created by the cranes passing over one another. The defendant failed to inform staff of the presence of the crane maintenance crew in the area, and to isolate the area where crane maintenance work was being performed.

Breach of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(a).

The magistrate said the Occupational Health and Safety Act was designed to provide a safe workplace for employees. He said the penalty ($100,000 for this offence when heard summarily) reflected the seriousness of the legislation. The magistrate took into account the steps taken by the defendant to develop its safety procedures and performance.

Result: **Convicted and fined $40,000 plus $1,600.**

DENNIS JOHN VINES

Date of offence: **Between 1 August 1998 and 26 May 1999**

Date of prosecution: **7 April 2000 at Dandenong Magistrates' Court**

Magistrate: **Kay Macpherson**

An apprentice mechanic and other junior employees of the "Gearmatics" motor vehicle repair business suffered continual physical and verbal abuse perpetrated by two senior employees including the defendant.

The physical abuse consisted of grabbing the junior workers by the genitalia and buttocks, shoving work tools into the victims' anal regions through their clothing, exposing their genitalia to the junior employees, rubbing their groins against the junior employees' anuses and firing grease from pressurised air guns at junior employees.

The verbal abuse consisted of lewd comments suggesting sexual acts with the junior employees or their partners or family members, constant yelling and abuse, and threats that the junior employees would be set alight in the manner portrayed by Victorian WorkCover Authority television advertisements.

On 24 May 1999 the defendant told an apprentice to break up and remove five sheets of fibro cement sheeting. Subsequent investigation by the Victorian WorkCover Authority confirmed the sheeting contained asbestos.

Breaches of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(e) and the *Occupational Health and Safety (Asbestos) Regulations 1992*, Regulation 24(1).

The magistrate described the acts of abuse as atrocious and demeaning. She said it was appalling that young employees had suffered psychological injury.

The magistrate noted that the defendant was not aware of the abuse, but found it astonishing that he was not aware, considering that the business comprised of himself and only four other employees. She also noted that the defendant was told an employee had been given a hard time, but had responded that if an employee could not put up with such conduct, he should not be working there.

The magistrate further commented that a vigilant employer would make more enquiries about such events. She said an employer should provide a safe working environment for its employees and should not abrogate its responsibilities. Young employees starting out in the workforce were highly vulnerable and it was understandable that they would not complain in times of extremely high unemployment.

The magistrate took into account the defendant's plea of guilty, lack of prior convictions, ignorance of events and the fact that measures had been taken to ensure that such incidents do not recur.

She rejected the submission by defence counsel for a non-conviction, referring to the seriousness of the offence and the need for general deterrence.

Result: **Convicted and fined $15,000 re: Section 21(1) & (2)(e) and $3,000 re: Regulation 24(1). Total fine $18,000 plus $1,500 costs.**

MACHINE PARTS AND AGENCIES PTY LTD

Date of offence: **20 January 1998**

Date of prosecution: **19 April 2000 at Dandenong Magistrates' Court**

Magistrate: **Brian Clifford**

On 20 January 1998 at the Moorabbin premises of Mackay Consolidated Industries, the defendant failed to supervise the work of its employees and exposed an employee of a third party to the risk of injury.

Breach of the *Occupational Health and Safety Act 1985*, Section 22.

The magistrate expressed concern that although the defendant had subsequently introduced an occupational health and safety policy and procedure document, it was not in place and enforced before the incident. He said the defendant failed to carry out its duty to supervise the work of its employees. In passing sentence, the magistrate took into account the defendant's plea of guilty, and the absence of prior or subsequent convictions

Result: **Convicted and fined $30,000 plus $1,036 costs.**

MELBOURNE CONTAINER PARK PTY LTD

Date of offence: **20 October 1997**

Date of prosecution: **26 April 2000 at Sunshine Magistrates' Court**

Magistrate: **Rodney Crisp**

On 20 October 1997 at Melbourne Container Park, a shipping container repair and storage business in Tottenham, a forklift was reversed into three employees. Two of the men struck received superficial injuries; the third was seriously injured and one of his legs was consequently amputated above the knee.

The defendant had no adequate system for ensuring the segregation of forklifts from pedestrians in the workplace. It failed to adequately train or supervise its employees in relation to the safe use of forklifts at the workplace and the safety of employees and visitors was placed at risk as a result.

Breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(a), 21(1) & (2)(e) and 23.

The magistrate stressed that in occupational health and safety offences the responsibility went right to the top. He said employers needed to be vigilant in preventing the negligence of forklift drivers and surveyors, adding that segregation of pedestrians and forklifts was the best solution.

The magistrate said it was lamentable that the initiatives (i.e. for segregation) were not put in place until after the accident in this case. He noted that general deterrence was very important in these matters.

Result: **Convicted and fined $40,000 re: Section 21(1) & (2)(a),**
and an aggregate amount of $20,000 re: sections 21(1) & (2)(e) and 23.
Total fine $60,000 plus $3,157 costs.

NORMET INDUSTRIES NOMINEES PTY LTD TRADING AS NORSTAR STEEL RECYCLERS

Date of offence: 7 January 1998

Date of prosecution: 2 May 2000 at Sunshine Magistrates' Court

Magistrate: Ian McGrane

On 7 January 1998 at Laverton, an employee was struck by an object suspended overhead and seriously injured while he was attempting to detach wear plates from the inside face of a hammer mill. The employee was engaged in maintenance of the plant and was assisting another employee.

Breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(a) and 21(1) & (2)(e).

The magistrate concluded that the offence was at the lower end of the scale for moral culpability. He noted that the corporation had engaged safety experts to assess work procedures and to adjust those procedures; however, the experts' attention was not drawn to the procedure in question. He acknowledged that the operation was dangerous, that the excavator operator was unable to see properly and that the system for stopping movement was not safe. The magistrate accepted that the defendant was of good character and noted that a Section 86 compensation claim for a substantial sum had been settled. He said it was appropriate to record a conviction.

Result: **Convicted and fined an aggregate amount of $8,000 plus $2,168.40 costs. By consent paid $50,000 to the injured employee pursuant to Section 86 of the *Sentencing Act 1991*.**

This matter was the subject of an appeal in the County Court.

ANDYS ENGINEERS MILDURA PTY LTD

Date of offence: 26 February 1999

Date of prosecution: 5 May 2000 at Mildura Magistrates' Court

Magistrate: John Murphy

On 26 February 1999 at the dispatch area of Andys Engineers, a truck driver working for Kelly's and Young Trucking Company Pty Ltd received fatal crushing injuries when the tyne of an unoccupied moving forklift pinned his neck to the side of a truck tray. A practice had developed in the defendant's workplace where forklift drivers would dismount a forklift while the engine was left running. The victim had parked his truck and was untying ropes to unload a pallet at the time of the incident.

Breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(a), 21(1) & (2)(e) and 22.

The magistrate said the intention of Parliament was clear in setting a maximum penalty of $250,000 for such offences, stressing that this breach was not at the bottom of the scale.

He said the defendant was responsible for the practice of leaving machinery unattended. In passing sentence, the magistrate took into account the importance of specific and general deterrence and the steps taken by the defendant to improve the system of work.

Result: **Convicted and fined an aggregate amount of $100,000 plus $3,042 costs.**

This matter was the subject of an appeal against sentence by the defendant.

ARNOTT'S BISCUITS PTY LTD

Date of offence: 28 November 1998

Date of prosecution: 8 May 2000 at Melbourne Magistrates' Court

Magistrate: Lisa Hannan

On 28 November 1998 at Burwood, an employee of the defendant corporation died as a result of being struck by an automatic operated "Munk" guided storage and retrieval crane that was located in the High Bay Storage area of the factory premises.

Breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(a) and 21(1) & (2)(e).

The magistrate said that the death of the employee was a preventable tragedy. She said the use of gate no. 4 to the High Bay Storage area was not safe and that employees had engaged in conduct outside the procedural requirements. The magistrate stressed that employers had a responsibility to provide safe working environments and systems of work that negated, or at least minimised, the potential for such incidents. She said the defendant's prior convictions had to be viewed in the context of its long history and took into account the plea of guilty, steps taken to improve the workplace environment and the need for general and specific deterrence.

Result: **Convicted and fined $25,000 on each charge. Total fine $50,000 plus $4,295 costs.**

PROBUILD CONSTRUCTIONS (AUSTRALIA) PTY LTD

Date of offence: 16 October 1997

Date of prosecution: 31 May 2000 at Dandenong Magistrates' Court

Magistrate: John Bolster

On 16 October 1997 at Springvale, an employee of the defendant corporation was rendered a paraplegic after falling through a skylight and landing on the concrete floor 6.2 metres below.

Breach of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(a).

The magistrate noted that the purpose of the Occupational Health and Safety Act was to provide a safe workplace, and that accordingly penalties had been significantly increased since this incident. He accepted that the nature rather than the consequences of the breach had to be considered, but noted the dreadful result of this offence. In sentencing, the magistrate took into account the significance of general deterrence, the plea of guilty, the absence of prior convictions and the lengths the defendant had taken to address issues since the event.

Result: **Convicted and fined $20,000 plus $1,850 costs.**

HEALESVILLE SAWMILLS PTY LTD

Date of offence: 14 October 1998

Date of prosecution: 8 June 2000 at Ringwood Magistrates' Court

Magistrate: Hugh Walter

On 14 October 1998 at Healesville, an employee of the corporation Peter Corke of Lilydale suffered serious injury to his foot while changing the cutting blades on a woodchipping machine.

Breach of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(a).

The magistrate agreed with the comments of Justice Harper in *Holmes v. Spence* that the occupational health and safety legislation catches acts of human error. He concluded that in this case, the injury could have been foreseen. The magistrate acknowledged that specific deterrence had been addressed and that new operating procedures were being introduced to provide safer equipment. In fixing sentence, he took general deterrence into account.

Result: **Convicted and fined $12,000 plus $1,800 costs.**

AUSTRALIAN CO-OPERATIVE FOODS LTD

Date of offence: 11 December 1998

Date of prosecution: 9 June 2000 at Warrnambool Magistrates' Court

Magistrate: Terry Wilson

On 11 December 1998 at Allansford, an employee of the defendant sustained crushing injuries to his right arm as a result of cleaning an infeed cutting machine known as the Hayssen Line and Infeed System.

Breach of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(a).

The magistrate stressed that employers should never take risks around machinery and concluded that the defendant's system for cleaning the machine was ineffective. He said the tugging on the hose caused the perspex doors to close, activating the machine. Although the defendant had no prior convictions in Victoria, the magistrate took into account breaches of occupational health and safety laws in New South Wales. It was accepted that the defendant had, since the incident, taken steps to make the machine safe and to consider prevention issues seriously.

Result: **Convicted and fined $6,000 plus $2,050 costs.**

ENTIRE MECHANICAL SERVICES PTY LTD

Date of offence: 16 October 1997

Date of prosecution: 19 June 2000 at Dandenong Magistrates' Court

Magistrate: John Bolster

On 16 October 1997, at Springvale, an employee of the defendant was rendered a paraplegic after falling through a skylight and landing onto the concrete floor 6.2 metres below.

Breach of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(a).

The magistrate noted that the purpose of the Occupational Health and Safety Act was to provide a safe workplace, and that accordingly penalties had been significantly increased since this incident. He accepted that the nature rather than the consequences of the breach had to be considered, but noted the dreadful result of this offence. In sentencing, the magistrate took into account the significance of general deterrence, the plea of guilty and the absence of prior convictions. He concluded that both defendants were equally culpable in this case.

Result: **Convicted and fined $20,000 plus $1,850 costs.**

SWAN HILL RURAL CITY COUNCIL

Date of offence: **29 May 1998**

Date of prosecution: **28 June 2000 at Swan Hill Magistrates' Court**

Magistrate: **Steven Raleigh**

On 29 May 1998, a 35-year-old intellectually disabled employee of the defendant had four fingers and part of the thumb of his right hand severed as a result of attempting to clear a jam at the outfeed section of an unguarded paper shredding machine.

Breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(a) and 21(1) & (2)(e).

The magistrate accepted that the defendant had rectified the plant and that there was some relevant mitigation in the involvement of other parties. Although the defence counsel submitted that the defendant was not at fault because a consultant's report had not suggested how to address the hazard, the magistrate concluded the responsibility of the defendant as an employer was higher because of the type of workers involved. He noted also that on receipt of the consultant's report, the defendant did not ask the consultant how to address the problem.

The magistrate took into account the lack of prior convictions, the amount invested by the defendant to engage firms to perform hazard reports, and steps taken to rectify the situation since the incident.

Result: **Released on a two-year good behaviour bond without conviction and ordered to donate $30,000 to the Lady Byrnes Centre at Yana Street, Swan Hill.**

This matter is the subject of an appeal.

FINEWRAP AUSTRALIA PTY LTD

Date of offence: **10 November 1998**

Date of prosecution: **29 June 2000 at Dandenong Magistrates' Court**

Magistrate: **Hugh Walter**

On 10 November 1998 at the premises of Finewrap Australia Pty Ltd, the injured worker, a contract machine operator employed by Drake Personnel Ltd, fractured his right arm when it became trapped in the unguarded, in-running nip point of rollers on a slitter-rewinder machine.

Breach of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(a).

The magistrate stated that it was apparent that the defendant corporation and its management adopted a responsible approach to workplace safety before and after the accident. He was particularly impressed by the fact that the corporation had taken the initiative to alert the industry to the hazard posed by the machine involved. He said the defendant's plea of guilty reflected the remorse felt by its management, and took into account steps taken to render the machine safe after the accident and the corporation's lack of prior convictions. He noted that the injured worker had made an application for compensation under Section 86 of the Sentencing Act which, when determined, would in all probability add to the substantial costs faced by the defendant. However, the magistrate noted that this was a serious indictable offence that warranted conviction.

Result: **Convicted and fined $25,000 plus $2,537.30 costs.**

POOWONG MEATS PTY LTD

Date of offence: 27 May 1999

Date of prosecution 30 June 2000 at Dandenong Magistrates' Court

Magistrate: Hugh Walter

On 27 May 1999, two employees of Poowong Meats Pty Ltd sustained serious injuries when a forklift driven on an incline overturned, trapping an employee underneath it. At the time of the incident, one of the employees was riding on the left hand side of the forklift and neither employee had certificates of competency or had undergone training to operate forklifts.

Breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(a) and 21(1) & (2)(e) and the *Occupational Health and Safety (Certification of Plant Users and Operators) Regulations 1994*, Regulation 7(2).

The magistrate accepted that the defendant pleaded guilty at an early opportunity, that it did not have any prior convictions and that since the incident it had undertaken remedial work. The magistrate supported the prosecutor's argument that the defendant should have planned an occupational health and safety program when it took over the meat works, instead of dealing with health and safety issues on the run. The magistrate said that although the incident may have been isolated, it appeared from the summary that it was common practice for employees without certificates of competency or training to operate forklifts, which were notoriously dangerous.

Result: **Convicted and fined an aggregate amount of $10,000 plus $1,782 costs.**

CITY EDGE PANEL REPAIRS PTY LTD

Date of offence: Between 7 August 1995 and 17 November 1995

Date of prosecution: 10 July 2000 at Melbourne Magistrates' Court

Magistrate: Roger Franich

Between 7 August and 17 November 1995, a 15-year-old first year apprentice panel beater was subjected to ongoing verbal and physical abuse by other employees of City Edge Panel Repairs.

Breach of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(e).

The magistrate was satisfied that the victim, a vulnerable young person who was just setting out in a trade, had suffered systematic abuse for a considerable period of time at the workplace. He said the abuse had broken the victim's spirit, acknowledging that he was a patient in a psychiatric hospital and unable to contribute to society. The magistrate concluded that the victim's psychological problems were at least in some part attributable to the abuse. He acknowledged that the defendant had no prior convictions and had put in place certain safeguards to prevent future abuse. The magistrate said apprentice bastardisation was a serious matter and was probably not regarded with as much abhorrence at the time of the offence as it is now.

Result: **Convicted and fined $25,000.**

EDO FATO (A DIRECTOR OF CITY EDGE PANEL REPAIRS PTY LTD)

Date of offence: **Between 7 August 1995 and 17 November 1995**

Date of prosecution: **10 July 2000 at Melbourne Magistrates' Court**

Magistrate: **Roger Franich**

Between 7 August and 17 November 1995, a 15-year-old first year apprentice panel beater was subjected to ongoing verbal and physical abuse by other employees of City Edge Panel Repairs, of which the defendant is a director.

Breach of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(e) (via Section 52).

The magistrate said the acquiescence of the defendant, a director of City Edge Panel Repairs Pty Ltd, was of real concern. He noted that the defendant was looking on in some cases and did nothing to stop the abuse. He also participated to a degree and on one occasion struck the victim. The magistrate said the appearance of the boss condoning such activity prompted others to follow suit.

Result: **Convicted and fined $8000 plus $826 costs.**

DARYL MARWOOD (A DIRECTOR OF CITY EDGE PANEL REPAIRS PTY LTD)

Date of offence: **Between 7 August 1995 and 17 November 1995**

Date of prosecution: **10 July 2000 at Melbourne Magistrates' Court**

Magistrate: **Roger Franich**

Between 7 August and 17 November 1995, a 15-year-old first year apprentice panel beater was subjected to ongoing verbal and physical abuse by other employees of City Edge Panel Repairs, of which the defendant is a director.

Breach of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(e) (via Section 52).

The magistrate was satisfied that the victim, a vulnerable young person who was just setting out in a trade, had suffered systematic abuse for a considerable period of time at the workplace. He said the abuse had broken the victim's spirit, acknowledging that he was a patient in a psychiatric facility and unable to contribute to society. The magistrate concluded that the victim's psychological problems were at least in some part attributable to the abuse. He acknowledged that the company of which the defendant was a director had no prior convictions and had put in place certain safeguards to prevent future abuse.

Result: **Convicted and fined $5000 plus $826 costs.**

JOHN ANTHONY PAUL DE SENSI

Date of offence: **Between 1 August 1998 and 26 May 1999**

Date of prosecution: **14 July 2000 at Dandenong Magistrates' Court**

Magistrate: **John Bolster**

An apprentice mechanic and other junior employees suffered continuous physical and verbal abuse perpetrated by the defendant – a senior employee of the "Gearmatics" motor vehicle repair business.

The physical abuse consisted of grabbing junior employees by the genitalia and buttocks, shoving work tools into the area of junior employees' anuses through their clothing, exposing their genitalia to junior employees, rubbing their groins against the junior employees' anuses and firing grease at junior employees from pressurised air guns.

The verbal abuse consisted of lewd comments suggestive of sexual acts committed on the junior employees or their partners or family members, constant yelling and abuse, and threats that the junior employees would be set alight in the manner of the Victorian WorkCover Authority television advertisements.

Breaches of the *Occupational Health and Safety Act 1985*, Section 25(2)(b) and the *Crimes Act 1958* (OPP charge), Section 18(1).

The magistrate described the defendant's behaviour as appalling, particularly considering he was the victim's supervisor. He said such behaviour could not be tolerated and must attract a significant monetary penalty, with general deterrence playing the major role in sentencing. The magistrate said the offences were serious and convictions therefore would be recorded. He noted that it was unusual to have overlapping police and Victorian WorkCover Authority prosecutions.

Result: **Convicted and fined $4,000 re: Section 25(2)(b); convicted and fined $4,000 re: Section 18(1). Total fine $8,000 plus $1,500 costs.**

DEISTRA PTY LTD

Date of offence **11 February 1999**

Date of prosecution **14 July 2000 at Shepparton Magistrates' Court**

Magistrate: **Bryan John Cosgriff**

An employee of the defendant sustained serious burns to his body and subsequently died as a result of an explosion in the dry cleaning area of the factory premises. At the time of the incident, the defendant believed it was using white spirit in the dry cleaning process of raw sheep skins. However, on 11 February 1999, the defendant used a flammable substance other than white spirit which ignited, causing the explosion. The flammable substance was supplied to the defendant by Moama Refinery Pty Ltd.

Breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(a) and 21(1) & (2)(e).

The magistrate was satisfied that the nature of the defendant's operations involved dangerous substances and that the circumstances of the incident were serious. In passing sentence, the magistrate took into account the substantial damage to the defendant's premises, the personal suffering of the director and the corporation's financial position.

Result: **Convicted and fined $20,000 re: Section 21(1) & (2)(a) and $10,000 re: Section 21(1) & (2)(e). Total fine $30,000 plus $3,500 costs.**

D & R HENDERSON PTY LTD

Date of offence: **21 May 1999**

Date of prosecution: **14 July 2000 at Benalla Magistrates' Court**

Magistrate: **Steven Raleigh**

An employee supervisor was injured when an unsecured lifting platform on which he was standing fell from a six-ton Merlot crane.

Breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(a), 21(1) & (2)(b) and 21(1) & (2)(e).

The magistrate commented that despite the fact the defendant had been operating for 29 years without a prior conviction, the issue of general deterrence was a sentencing consideration. He referred to the Supreme Court decision in Akan Packaging Pty Ltd v. Arnott, stating that a financial imposition was called for in this case.

Result: **Without conviction, placed on a 12-month good behaviour bond and ordered to pay $7,500 to the court fund, Benalla Magistrates' Court, plus $6,000 costs re: Section 21(1) & (2)(e). All other charges dismissed.**

MACKAY CONSOLIDATED INDUSTRIES PTY LTD

Date of offence: **20 January 1998**

Date of prosecution: **17 July 2000 at Dandenong Magistrates' Court**

Magistrate: **Harold Hallenstein**

An employee of the contractor J.C. Smale & Sons Pty Ltd suffered injury at the Mackay Consolidated Industries factory as a result of the defendant's failure to provide a safe system for the coordination of work on a John 6 power press.

Breach of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(a).

The magistrate commented that the work undertaken in conjunction with the independent contractor, Machine Parts and Agencies Pty Ltd, was within the expertise of the defendant. He said the defendant was therefore aware of the risks associated with failure to secure a safe plant. As the work was undertaken in the defendant's work environment, the defendant was aware of the procedures used to deal with risks associated with the work.

Result: **Convicted and fined $30,000 plus $1,200 costs.**

J C SMALE PTY LTD

Date of offence: **20 January 1998**

Date of prosecution: **20 July 2000 at Dandenong Magistrates' Court**

Magistrate: **Harold Hallenstein**

An employee of the defendant contractor suffered injury at the Mackay Consolidated Industries factory because the defendant failed to provide a safe system for the coordination of work on a John 6 power press.

Breach of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(a).

The magistrate commented that in this case, an employee was required to risk his life unnecessarily. He said that on an objective basis, had there been a system that provided back-up support, the actions of the third parties – MacKay Consolidated Industries Pty Ltd, J.C. Smale & Sons Pty Ltd, and the second contractor Machine Parts and Agencies Pty Ltd – would not have resulted in injury to the employee. The magistrate said that against a background of public responsibility in employment, the lack of independent support to protect employees was quite appalling.

Result: **Convicted and fined $30,000 plus $4,400 professional costs and $1,662.85 witness costs.**

GREATER GEELONG CITY COUNCIL

Date of offence: **25 April 1999**

Date of prosecution: **1 August 2000 at Geelong Magistrates' Court**

Magistrate: **Ian von Einem**

On 25 April 1999, approximately 21 members of the St Mary's Cricket Club Guild were involved in the removal of cement render and cement sheeting from three external walls of the clubrooms located at Frier Reserve, Newtown, which was later found to contain asbestos.

Breaches of the *Occupational Health and Safety Act 1985*, Section 22 and the *Asbestos Regulations 1992*, Regulation 24.

The magistrate described the matter as serious. He commented that asbestos exposure could result in disease or death and it was therefore reasonable to assume the people involved in the asbestos removal operation would experience apprehension about the effects of exposure, which would not be known for some time. The magistrate said the Council was negligent because it was ignorant about which buildings it was responsible for, had not assessed whether asbestos was present in the building and had failed to provide appropriate instructions. It was a matter of concern that Council was unable to explain how the omission had occurred. The magistrate noted the report of the hygienist, who described the case as one of the worst he had seen relating to AC sheet removal. The magistrate said the Council had since remedied the situation, but failed to do this at the time of the offences. He said general deterrence was a major sentencing factor, and that a message should be sent to all employers to undertake careful assessments.

Result: **Convicted and fined an aggregate amount of $20,000 plus $1,800 costs.**

PAUL CONWAY

Date of alleged offence: 17 March 1997

Date of prosecution: 2 August 2000 – 22 August 2000 at Bendigo County Court

Judge: Holt

On 17 March 1997, an employee of The Pasta Master Pty Ltd at Bendigo was fatally injured when he was caught in a pasta machine.

Alleged breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(a) (via 52) and 25(1).

Result: **The jury acquitted the accused on all counts.**

ALBA CHEESE MANUFACTURING PTY LTD

Date of offence: 23 March 1999

Date of prosecution: 14 August 2000 at Dandenong Magistrates' Court

Magistrate: Phillip Goldberg

On 23 March 1999 at Tullamarine, an employee of the defendant had the tips of his left hand index, middle and ring finger severed following an incident in which his hand was inserted into the chute of a cheese-stretching machine.

Breach of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(a).

The magistrate commented that the defendant maintained a sloppy system of work practice by allowing a hand to be inserted into the chute of a cheese-making machine. He noted that the employee had complained about the machine's electrical/hydraulic problems, but despite many requests for the machine to be fixed, the electrician only rectified the problem once a prohibition notice was placed on the machine. The magistrate noted that the defendant had no knowledge of the existence of regulations, but knew how the machine operated to ensure it was properly maintained and to ensure operators were trained. He commented that the breach was significant, and, in passing sentence, said it was appropriate to consider specific and general deterrence. The magistrate also took into account that the defendant had no prior reportable incidents and the defendant's financial circumstances.

Result: **Convicted and fined $15,000 plus $2,689 costs.**

D.L.P ENGINEERING PTY LTD

Date of offence: 13 January 1998

Date of prosecution: 15 August 2000 at Melbourne County Court

Judge: Kimm

On 13 January 1998 at Clayton North, an employee of the defendant sustained serious hand injuries while performing repetitive duties in the course of operating an unguarded 60 ton power press.

Breach of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(a).

The jury concluded that side and rear guards were absent from the machinery and found the defendant guilty. It found that the front guard was removed by the employee despite instructions from the corporation's director not to remove it.

In passing sentence, the judge considered that the defendant had no prior convictions or incidents, and that it was $70,000 in debt.

Result: **Convicted and fined $5,000.**

This matter is the subject of an appeal.

MARK ANDREW LACH

Date of offence: 13 January 1998

Date of prosecution 15 August 2000 at Melbourne County Court.

Judge: Kimm

On 13 January 1998 at Clayton North, an employee of the corporation of which the defendant is director sustained serious hand injuries while performing repetitive duties in the course of operating an unguarded 60 ton power press.

Breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(a), and 52(1).

The jury concluded that side and rear guards were absent from the machinery and found the defendant guilty. It found that the front guard was removed by the employee, even though the defendant had instructed the employee not to remove it.

In passing sentence, the judge noted that the defendant had taken on directorship of the corporation when he was 25 years but left all questions regarding safeguarding of machinery to his father. The judge acknowledged that the defendant was sole director and had no prior convictions. He said the defendant should not be penalised twice.

Result: **Without conviction, released on a two-year good behaviour bond.**

This matter is the subject of an appeal.

CITY EDGE BUILDING SUPPLIES PTY LTD

Date of offence: 25 March 1999

Date of prosecution: 17 August 2000 at Melbourne Magistrates' Court

Magistrate: Jane Patrick

On 25 March 1999 at Brunswick, an employee of the defendant sustained a fractured spine and jaw, and serious injuries to his skull as a result of falling 3.6 metres from the roof of a building onto the concrete surface below. At the time of the incident, the victim and another employee were attempting to remove some unsecured corrugated sheets when a gust of wind blew the victim off the roof.

Breach of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(a).

The magistrate commented that the circumstances in this case were unusual. The employee climbed onto the roof despite an initial order not to go onto the roof because of the wind. However, the manager did not stop the victim from climbing onto the roof or instruct him to climb down. Instead, the manager asked another employee to climb onto the roof to assist the victim. The magistrate concluded that everyone appeared to realise the danger of being on the roof, yet the defendant allowed its employees to work on the roof. She accepted that the defendant and the victim were regretful and, in passing sentence, considered the need for general deterrence.

Result: **Convicted and fined $7,000 plus $700.00 costs.**

DAYLESFORD FINE TIMBERS PTY LTD

Date of offence: 17 February 1999

Date of prosecution: 11 September 2000 at Kyneton Magistrates' Court

Magistrate: William Gibb

On 17 February 1999 at Daylesford, an employee of the defendant, a family corporation, was seriously injured when he fell 5.5 metres through cement sheeting onto a concrete floor while cleaning part of the factory's saw tooth.

Breach of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(a).

The magistrate commented that the timber industry was inherently dangerous and said the attention of the defendant's directors, with the advice of consultants, had largely been focused on guarding and manual handling issues. He said the directors' attention was so focused on those aspects that scant regard was given to the annual activity of cleaning the saw tooth, even though at least one of the directors was aware of the dangers of working on a roof. In passing sentence, the magistrate recited the principles set out in Judge Mullaly's decision of DPP v. Ancon Travel Towers. He took into account the defendant's plea of guilty, the absence of prior convictions and other mitigating factors including the introduction of a full-time health and safety officer and the use of safety auditing.

Result: **Convicted and fined $5,000 plus $1,991.60 costs.**

DAYLESFORD FINE TIMBERS PTY LTD

Date of offence: Between 12 June and 30 August 1999

Date of prosecution: 11 September 2000 at Kyneton Magistrates' Court

Magistrate: William Gibb

Between 12 June and 30 August 1999, the defendant breached a prohibition notice issued in response to an incident on 17 February 1999, when an employee of the defendant was seriously injured after falling 5.5 metres while cleaning a saw tooth. Between 12 June and 30 August 1999, the defendant allowed employees to work on the removal of an AC sheet roof without providing a safe system of work and allowed unauthorised asbestos removal. The defendant failed to determine whether asbestos was present in the workplace and did not assess the risk of exposure of employees.

Breaches of the *Occupational Health and Safety Act 1985*, Section 44 and the *Occupational Health and Safety (Asbestos) Regulations*, regulations 11 and 24.

The magistrate accepted that the directors of the defendant corporation did not turn their minds to the fact that the roof contained asbestos material. He commented that people had lost lives as a result of exposure to asbestos and therefore only people with appropriate expertise should work with such material. The magistrate accepted that management was aware the roof was dangerous. In relation to breach of the prohibition notice issued after the fall of an employee, he commented that it was one thing to send workers onto a roof under these circumstances on a first occasion and "quite another" to send them up again. The magistrate recited the principles set out in judge Mullaly's decision of DPP v. Ancon Travel Towers.

Result: **Convicted and fined $7,000 re: Section 44**
and an aggregate amount of $3,000 re: regulations 11 and 24.
Total fine $10,000.

JEFFRIE FRANK BARKER

Date of offence: 17 February 1999, between 12 June and 30 August 1999

Date of prosecution: 11 September 2000 at Kyneton Magistrates' Court

Magistrate: William Gibb

On 17 February 1999 at Daylesford, an employee of Daylesford Fine Timbers Pty Ltd, of which the defendant is a director, was seriously injured when he fell 5.5 metres through cement sheeting onto a concrete floor while cleaning part of the factory's saw tooth.

Between 12 June and 30 August 1999, the defendant breached a prohibition notice issued after the fall incident by failing to provide a safe system of work during the removal of an AC sheet roof and allowing unauthorised asbestos removal.

Breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(a) and 44 (via section 52).

The magistrate commented that the defendant's verbal warnings indicated he was aware the roof was dangerous, as outlined in both parts of the prosecution case – the initial fall incident and the subsequent breach of the prohibition notice. The magistrate said it was one thing to send employees onto the roof in these circumstances on a first occasion and "quite another" to send them up again. He said the defendant did not turn his mind to the fact the roof contained asbestos material. In passing sentence, the magistrate took into account the defendant's plea of guilty, the absence of prior convictions and mitigating factors including the introduction of a full-time health and safety officer and the use of safety auditing.

Result: **Convicted and fined $3,000 on each charge. Total fine $6,000.**

DAVID JAMES BARKER

Date of offence: 17 February 1999, between 12 June and 30 August 1999

Date of prosecution: 11 September 2000 at Kyneton Magistrates' Court

Magistrate: William Gibb

On 17 February 1999 at Daylesford, an employee of Daylesford Fine Timbers Pty Ltd, of which the defendant is a director, was seriously injured when he fell 5.5 metres through cement sheeting onto a concrete floor while cleaning part of the factory's saw tooth.

Between 12 June and 30 August 1999, the defendant breached a prohibition notice issued after the fall incident by failing to provide a safe system of work during removal of an AC sheet roof and allowing unauthorised asbestos removal.

Breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(a) and 44 (via Section 52).

The magistrate commented that the timber industry was inherently dangerous. He said the attention of the defendant and his co-director, under advice of consultants, was so focused on guarding and manual handling issues that scant regard was given to the annual activity of cleaning the saw tooth. The magistrate accepted that the defendant and his co-director did not turn their minds to the fact that the roof contained asbestos material. He took into account the defendant's plea of guilty, the absence of prior convictions and mitigating factors including the introduction of a full-time health and safety officer and the use of safety auditing.

Result: **Convicted and fined $3000 re: Section 44 (via Section 52). All other charges dismissed.**

ACI OPERATIONS PTY LTD

Date of offence: **1 July 1998**

Date of prosecution: **12 September 2000 at Sunshine Magistrates' Court**

Magistrate: **Barry Braun**

On 1 July 1998 at Spotswood, an employee of the defendant had her right index finger severed at the first joint while attempting to feed a newly joined roll of plastic wrapping through a bottle covering plant, which is similar to a shrink wrap machine. The same employee was injured on 18 November 1997 when her left hand was crushed between two rollers of plant known as the foliomat machine.

Breaches of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(a) x 2.

The magistrate noted that the defendant had been notified of a problem with the foliomat plant on 28 October 1997. He commented that it was obvious such a problem would have rendered the machine dangerous, yet the defendant failed to repair or close down the plant and did not caution employees. The magistrate noted that the defendant had received a serious and substantial complaint regarding the bottle covering plant but had failed to recognise the safety problem. The magistrate said that although the defendant had implemented safety and reporting systems, those systems had proven inadequate.

Result: **Convicted and fined $27,500 re: Section 21(1) & (2)(a) and $30,000 re: Section 21(1) & (2)(a).**
Total fine $57,500 plus $1,699.80 costs.

SKYMOND PTY LTD

Date of offence: **14 February 2000**

Date of prosecution: **15 September 2000 at Ringwood Magistrates' Court**

Magistrate: **Lance Martin**

On 14 February 2000 at Mont Albert, one of the defendant's employees was injured and a second employee was exposed to the risk of electrocution from overhead powerlines when the brakes of an elevated platform where they were painting failed and rolled down a driveway. The elevated work platform had not been properly maintained.

Breach of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(a).

The magistrate commented that the Occupational Health and Safety Act was designed to protect workers from the risk of injury in the workplace. He said that the Supreme Court had considered this legislation and recognised the importance of general deterrence in the sentencing of such offences. The magistrate said specific deterrence was not applicable in this case because the defendant corporation had gone into liquidation.

Result: **Convicted and fined $35,000.**

SIMPLOT AUSTRALIA PTY LTD

Date of offence: 29 September 1997

Date of prosecution: 29 September 2000 at Melbourne Magistrates' Court

Magistrate: Peter Lauritsen

On 29 September 1997, an employee of the defendant sustained a serious crushing injury to her right hand when it became caught in an unguarded doughnut line machine known as the Kliklok machine.

Breach of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(a).

In passing sentence, the magistrate considered the significant injuries suffered by the victim and general deterrence. He took into account the defendant's lack of prior convictions.

Result: **Convicted and fined $8,000. Ordered to pay $1,500 costs.**

MURRAY GOULBURN CO-OPERATIVE CO. LTD

Date of offence: 31 July 1998

Date of prosecution: 2 October 2000 at Melbourne Magistrates' Court

Magistrate: Jillian Crowe

On 31 July 1998, an employee of the defendant was crushed and severely injured by a forklift truck driven by another employee. The injured employee's right foot was degloved, the tendons to four toes were severed, and his pelvis was fractured and separated, requiring surgical removal of the sacrum bone at the base of the spine.

Breach of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(a).

The magistrate commented that the most serious issues were the failure to have designated walkways to separate forklifts and pedestrians, and the fact that employees were allowed to operate forklifts while entering data into a computer using a keyboard on the forklift. She said it was not uncommon for pedestrians to be present in the area where the incident occurred and accepted that the travelling speed of the forklifts was common place and not unique to the corporation's facility.

Result: **Convicted and fined $35,000 plus $3,772.75 costs.**

SHELTON TIMBER TREATMENT CO PTY LTD

Date of offence: 18 August 1999

Date of prosecution: 2 October 2000 at Colac Magistrates' Court

Magistrate: Ian von Einem

On 18 August 1999, an employee of the defendant was drawn into a log de-barking machine, suffering a broken wrist and grazing. The employee's loose fitting jacket was caught by the unguarded, protruding shaft of the machine's end station as he reached across to turn off the machine's waste out-feed conveyor belt.

Breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(a) and 21(1) & (2)(e).

The magistrate stated that he took into account the fact that the defendant had identified the danger that gave rise to the injury a month before the incident, but had not fixed it immediately. However, he commented that the defendant had been in business for a considerable time in a high-risk industry, and he did not see the need to impose a higher penalty.

Result: **Convicted and fined an aggregate amount of $5,000 plus $2,169.50 costs.**

JOHN ANTHONY SCICLUNA

Date of offence: 7 and 8 December 1998

Date of prosecution: 13 October 2000 at Sunshine Magistrates' Court

Magistrate: Ian McGrane

On or about 7 and 8 December 1998, the defendant, an employee of Don Smallgoods Pty Ltd in Altona North, verbally abused and taunted another employee. The abuse was continuous and consisted of calling the victim names such as "poofter". During a break from work, the defendant set fire to another employee's shirt. Don Smallgoods was not aware of the harassment in the workplace.

Breach of the *Occupational Health and Safety Act 1985*, Section 25(2)(b).

The magistrate commented that it was clear from recent workplace prosecution cases that this sort of conduct in the workplace deserved serious condemnation. The magistrate said it appeared, from prosecution cases, that a lot of the workplace bullying occurred in the motor vehicle industry. He said that although the injury was not as serious in this case as in other cases, it was important that the Courts send a message to the community that those who engage in this conduct will be severely punished. The magistrate said the plea of guilty indicated remorse but noted the defendant had not apologised to the victim. He took into account the defendant's troubled childhood and financial circumstances. He accepted that the prior convictions related primarily to matters of dishonesty.

Result: **Convicted and fined $1,000 and plus $1,300 costs.**

CANDLEFIELD PTY LTD

Date of offence: 9 July 1999

Date of prosecution: 19 October 2000 at Melbourne Magistrates' Court

Magistrate: Roger Franich

On 9 July 1999 at the Edinburgh Castle Hotel in North Melbourne, a 45-year-old employee contractor was fatally injured after falling about 10 metres while painting the external walls of the building. The premises were occupied by Candlefield Pty Ltd at the time of the incident.

Breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(a) and 22.

The magistrate noted that the victim was working on site under the defendant's director, who was responsible for hiring sub-contractors and directly employed painters. The magistrate said the defendant failed to provide proper equipment, ensure powerlines adjacent to the workplace were disconnected, provide proper ladders, comply with the Code of Practice for Safe Work on Roofs, provide a system of work to meet requirements of the job site, and provide safety measures to control pedestrian traffic. He said it was incumbent on the defendant and its director to ensure that no one working under their direction and supervision was using unsafe equipment, and described the workplace as sloppy, based on a cursory examination of work practices, photographs and equipment. The magistrate commented that systems of work and safety standards could deteriorate over a period of time.

Result: **Convicted and fined an aggregate amount of $60,000 plus $2,271 costs (joint and several liability with Bruce Bonsema).**

BRUCE BONSEMA

Date of offence: 9 July 1999

Date of prosecution: 19 October 2000 at Melbourne Magistrates' Court

Magistrate: Roger Franich

On 9 July 1999 at the Edinburgh Castle Hotel, North Melbourne, a 45-year-old employee contractor was fatally injured after falling about 10 metres while painting the building's external walls. The premises were occupied by Candlefield Pty Ltd, of which the defendant is director.

Breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(a) and 22.

The magistrate noted that the victim was working on site under the direction of the defendant, who was responsible for hiring sub-contractors and directly employed painters. The magistrate said the defendant failed to provide proper equipment, ensure the powerlines adjacent to the workplace were disconnected, provide proper ladders, comply with the Code of Practice for Safe Work on Roofs, provide a system of work to meet the requirements of the job site, and provide safety measures to control pedestrian traffic. He said it was incumbent on the defendant to ensure that no one working under his direction and supervision was using unsafe equipment, and described the workplace as sloppy, based on a cursory examination of work practices, photographs and equipment. The magistrate commented that systems of work and safety standards could deteriorate over a period of time. He considered the glowing references put forward for the defendant and accepted that he was well regarded in the community.

Result: **Convicted and fined an aggregate amount of $10,000 plus $2,271 costs (joint and several liability with Candlefield Pty Ltd).**

O. D. TRANSPORT PTY LTD

Date of offence: 11 September 1998

Date of prosecution: 25 October 2000 at Broadmeadows Magistrates' Court

Magistrate: Robert Kumar

On 11 September 1998, a mobile crane with a 20 tonne capacity overbalanced and fell into an operating lane of the Tullamarine Freeway. The crane was lifting concrete sound panels into position along the side of the roadway at the time of the incident.

Breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(a), 21(1) & (2)(b), 21(1) & (2)(e) and 22, and the *Occupational Health and Safety (Plant) Regulations 1995*, regulations 702, 704, 707 and 711.

The magistrate considered that the matter was serious and identified Baulderstone as the main player. He said that as the principal contractor, Baulderstone should have taken more care. The magistrate concluded that the defendant, O.D Transport, had clearly shown remorse. He said the defendant had assisted WorkCover in the prosecution, pleaded guilty and accepted its responsibility.

Result: **Without conviction placed on a good behaviour bond and ordered to pay $2,000 into the court fund and $2,000 costs.**

DON MATHIESON & STAFF GLASS PTY LTD

Date of offence: 25 March 1999

Date of prosecution: 25 October 2000 at Dandenong Magistrates' Court

Magistrate: Harold Hallenstein

On 25 March 1999, an employee of the defendant was seriously injured when he was crushed by a case of sheet glass weighing approximately 1.5 tonnes, which he and two other employees were loading into a shipping container.

Breach of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(a).

The magistrate observed that there had been a complete failure by the defendant to comply with its obligations in relation to the system of work used for loading containers. He said it was wrong for the defendant to rely on an employee's familiarity with a work process which had come into practice without the defendant's involvement. The magistrate said that although the incident was unexpected (there had previously been no similar incidents), the events which gave rise to it were reasonably foreseeable. He said that prior to the incident, the defendant had failed to take any part in prescribing the procedure to be adopted for what was clearly an important work task which required care and safety in its execution.

Result: **Convicted and fined $10,000 plus $2,088.50 costs.**

ALCOA OF AUSTRALIA LIMITED

Date of offence: 20 January 1998

Date of prosecution: 2 November 2000 at Geelong Magistrates' Court

Magistrate: Jon Klestadt

On 20 January 1998 at Alcoa's Anglesea premises, an employee of the defendant sustained burns to 35% of his upper body and face as a result of being caught in a chemical explosion that occurred while he was cleaning a hydrogen cooler heat exchanger.

Breach of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(a).

The magistrate found that the defendant failed to include guidelines for the use of spark free tools in the documentation (work permit) given to the victim, which was an inherent part of safety procedures. He also noted that the defendant failed to supervise the victim, which led to the unsafe practice of using an electric rattle gun. The magistrate said there was no reason why these steps could not have been taken given the significant risk of hydrogen escaping into a confined space and igniting. Based on the evidence, he said he could not determine whether the rattle gun caused the explosion, as there were also other ignition sources. The magistrate concluded that Siemens or their contractors, who failed to understand the design of the plant and the design safety elements, in effect caused the explosion. He took into account the defendant's plea of guilty and its significant commitment to safety.

Result: **Without conviction fined $10,000 plus $3,500 costs.**

SLADES SOFT DRINKS PTY LTD

Date of offence: 22 April 1999

Date of prosecution: 16 November 2000 at Broadmeadows Magistrates' Court

Magistrate: Phillip Goldberg

On 22 April 1999 at Slades Soft Drinks Pty Ltd at Keon Park, an employee's arm was crushed when it became trapped in an unguarded bottle washing and filling machine. The injury required reconstruction and ongoing treatment.

Breach of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(a).

The magistrate noted that the defendant was aware of the state of affairs which gave rise to the significant injury suffered by the victim, although other machines in the factory did not need guarding. He said the defendant should not have placed an employee in dangerous circumstances. In passing sentence, the magistrate considered that the defendant had been in operation for more than 100 years but had recorded substantial financial losses. He said the penalty imposed should demonstrate to the defendant that its performance was substantially below the required level, and encourage the defendant to monitor machinery in future.

Result: **Convicted and fined $15,000 plus $3,645 costs.**

DENNIS HAIR

Date of offence: 11 September 1998

Date of prosecution: 17 November 2000 at Broadmeadows Magistrates' Court

Magistrate: Phillip Goldberg

On 11 September 1998, a mobile crane with a 20 tonne capacity overbalanced and fell into an operating lane of the Tullamarine Freeway. The crane was lifting concrete sound panels into position along the side of the roadway at the time of the incident.

Breach of the *Occupational Health and Safety Act 1985*, Section 25.

The magistrate commented that the fact no one was injured as a result of the incident was "more good luck than good management". He noted the difficulties of the defendant's job – operating a crane for lifting and positioning sound barriers – and accepted the description of the defendant as a competent, experienced and safety conscious worker with no prior matters. The magistrate referred to Mr Hair's personal circumstances, including a recent injury, his current situation of reduced income (being in receipt of TAC payments) and his stated willingness to give evidence at the trial. In view of the defendant's pecuniary circumstances, the magistrate considered it unnecessary to attach any conditions to the good behaviour bond and exercised his discretion not to award costs.

Result: **Without conviction placed on a 12-month good behaviour bond.**

TOPIC BUILDERS PTY LTD

Date of offence: 16 September 1999

Date of prosecution: 21 November 2000 at Dandenong Magistrates' Court

Magistrate: Max Beck

On 16 September 1999, scaffolding at a domestic building site under the control of the defendant was deemed unsafe.

Breaches of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(a) and 21(1) & (2)(e).

The magistrate noted that within the building industry, it had long been the practice that sub-contract bricklayers were left with sole responsibility for the erection of scaffold. He explained that this was the first prosecution against a head contractor for failure to exercise adequate control over bricklayers' activities since the legislation was introduced in 1985. He said that if the legislation had been enforced "to the letter" since 1985, the responsibilities it impressed would be better known. The magistrate said that as the defendant was a guinea pig, he was prepared to ameliorate the penalty significantly and to accede to the defendant's request to be released without conviction. He stressed that the next defendant in similar circumstances could not expect to receive the same leniency.

Result: **Without conviction fined $5,000 plus $6,500 costs.**

GORSKI TRUCK AND TRAILER ENGINEERING PTY LTD

Date of offence: 31 August 1999 and 23 November 1999

Date of prosecution: 27 November 2000 at Broadmeadows Magistrates' Court

Magistrate: Alan Spillane

On 31 August 1999, an improvement notice was issued in relation to the poor maintenance of a forklift which had worn tynes, a broken seat and did not display safe road limit signs. No appeal was lodged under Section 46 of the Act and the defendant failed to comply with the improvement notice.

On 23 November 1999, an improvement notice was issued in relation to electrical equipment which was left on the factory floor. No appeal was lodged under Section 46 of the Act and the defendant failed to comply with the improvement notice.

Breach of the *Occupational Health and Safety Act 1985*, Section 43(3).

The magistrate noted that the defendant should not have to bear the costs for the work legitimately carried out by the Victorian WorkCover Authority. He said costs were destructive, as in many cases they exceeded the relevant fine. The magistrate said the matter was serious because it related to health and safety, and the defendant was slow to comply. However, he said small fines were appropriate considering the defendant's financial circumstances, plea of guilty, lack of prior offences and the fact that the matter was at the lower end of the scale.

Result: **Convicted and fined a total of $1500 plus $1,000 costs**

CALCO TIMBERS PTY LTD

Date of offence: 24 September 1998

Date of prosecution: 28 November 2000 at Geelong Magistrates' Court

Magistrate: Ian von Einem

On 24 September 1998, a fourth year apprentice fitter and turner employed by the defendant had his right foot caught in an unguarded chain and sprocket transmission of a 'log deck'. Four toes and part of the fifth were severed as a result.

Breach of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(a).

The magistrate said the lack of supervision and the absence of guarding on the chain drive caused the incident. In passing sentence he took into account the defendant's long history in the timber industry.

Result: **Convicted and fined $10,000 plus $2,919.50 costs.**

PREVON PTY LTD

Date of offence: 22 August 1996 and 16 September 1997

Date of prosecution: 8 December 2000 at Ringwood Magistrates' Court

Magistrate: Hugh Walter

Prohibition notices and improvement notices were issued to the defendant for breaches of the Occupational Health and Safety Act on 22 August 1996 and 16 September 1997 in relation to ventilation, spray painting and the potential for ignition. The defendant had a history of non compliance dating back to 1992.

Breaches of the *Occupational Health and Safety Act 1985*, sections 44(3) and 47.

The magistrate concluded that while these offences were serious, they appeared at the lower end of the scale. He accepted that the issues dated back to 1992 and said there was substantial time – about three years – between inspectorial visits but no evidence to explain the reasons for this. The magistrate said that although the defendant experienced financial distractions, the matters should have been attended to earlier.

Result: **Convicted and fined $5,200 plus $3,200 costs.**

BERTRAM KROUPA (DIRECTOR OF PREVON PTY LTD)

Date of offence: 22 August 1996 and 16 September 1997

Date of prosecution: 8 December 2000 at Ringwood Magistrates' Court

Magistrate: Hugh Walter

Prohibition notices and improvement notices were issued to the defendant for breaches of the Occupational Health and Safety Act on 22 August 1996 and 16 September 1997 in relation to ventilation, spray painting and the potential for ignition. The defendant had a history of non compliance dating back to 1992.

Breaches of the *Occupational Health and Safety Act 1985*, Section 44(3) (via Section 52).

[See summary of magistrate's comments in the matter of Prevon Pty Ltd.]

Result: **Without conviction fined $1,100 plus $3,200 costs.**

DETMARK POLY BAGS PTY LTD

Date of offence: 22 December 1998

Date of prosecution: 12 December 2000 at Dandenong Magistrates' Court

Magistrate: Peter Couzens

On 22 December 1998 at the Dandenong South premises of Detmark Poly Bags Pty Ltd, an employee sustained crushing injuries to his left hand, including three broken fingers, as a result of operating an inadequately guarded GEM No 15 colour flexographic printing machine.

Breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(a) and 21(1) & (2)(e), and the *Occupational Health and Safety (Plant) Regulations 1995*, regulations 702(1)(e), 704(1) and 705.

The magistrate described the breaches as serious. He noted that the defendant's general manager had acknowledged that the machine could operate with the guard open and that the unguarded gears represented a hazard. The magistrate accepted the evidence that the guard could be easily opened and that it was frequently open – an obvious danger. He concluded that the defendant relied totally on employees to ensure the guards were in place. The magistrate said it was also relevant that others were aware the victim displayed signs of fatigue on the day of the incident and therefore required more supervision. He took into account the defendant's clear record and said the machine was seemingly a blind spot but added that the defendant's plea of not guilty coupled with the victim's evidence gave no indication of remorse on the defendant's behalf.

Result: **Convicted and fined $20,000 plus $11,876.56 costs.**
Charges relating to breach of the regulations were struck out.

HANNANPRINT T/AS DOUBLE BAY NEWSPAPERS PTY LTD

Date of offence: 9 August 1999

Date of prosecution: 13 December 2000 at Dandenong Magistrates' Court

Magistrate: Brian Clifford

On 9 August 1999, an apprentice printers' assistant had his hand trapped in the in-running nip point of an unguarded roller on a tensioning machine attached to a printing press.

Breach of the *Occupational Health and Safety Act 1985*, Section 22.

The magistrate said he would normally impose a considerable fine but because of the unusual circumstances he would impose a fine at the lower end of the scale.

Result: **Convicted and fined $15,000 plus $2,472 costs.**

THE AUSTRALIAN STEEL COMPANY (OPERATIONS) PTY LTD

Date of offence: **19 May 1998 and 10 June 1998**

Date of prosecution: **13 December 2000 at Sunshine Magistrates' Court**

Magistrate: **James Cashmore**

On 19 May 1998 at Doherty's Road, Laverton North, a dust extraction contractor employed by the defendant received burns to 30% of his body, including full thickness burns to the right and left hands, when a quantity of hot shale and dust fell from the hopper he was cleaning.

On 10 June 1998 at Doherty's Road, Laverton North, an employee of the defendant received partial thickness burns to his hands and legs when a quantity of material dislodged from the hopper he was cleaning, enveloping him in a cloud of steam and dust.

Breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(a) and 21(1) & (2)(e).

The magistrate accepted that the defendant had pleaded guilty at an early opportunity, did not have prior convictions and took some steps to avoid recurrence after the first incident. However, he said the defendant had done little by way of practical value to prevent employees' exposure to the hazardous emission. The magistrate observed that the victim had partly contributed to the second incident, but nevertheless, the duty was on the employer to prevent the consequences of employees' inadvertence.

Result: **Convicted and fined $35,000 plus $2,807 costs.**

AUSTRALASIAN CONFERENCE ASSOCIATION T/AS SIGNS PUBLISHING

Date of offence: **16 August 1999**

Date of prosecution: **15 December 2000 at Melbourne Magistrates' Court**

Magistrate: **Peter Mealy**

On 16 August 1999 at Signs' Warburton premises, an employee bindery assistant severed four fingers of his right hand as a result of operating an unguarded Sheridan Gold Blocking machine.

Breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(a) and 21(1) & (2)(e).

The magistrate commented that the machine involved in the incident was a dangerous piece of equipment. He said that in this case the victim was unconscious of the risk. The magistrate said the wellbeing of employees was paramount and that sometimes they had to be protected from themselves. In passing sentence, he considered the defendant's long and responsible history and the need for general deterrence.

Result: **Convicted and fined $33,000 plus $7,000 costs.**

JOHN BOWES

Date of offence: 22 June 1999

Date of prosecution: 15 December 2000 at Sunshine Magistrates' Court

Magistrate: Barry Braun

On 22 June 1999 at Sproutco Pty Ltd's Exford premises, an employee of James Cranes Pty Ltd was fatally electrocuted while moving shipping containers when the boom of a 25 tonne Franna crane contacted overhead power lines. At the time of the incident, the crane was operated by the defendant, who was also an employee of James Cranes Pty Ltd.

Breach of the *Occupational Health and Safety Act 1985*, Section 25(1)(a).

The magistrate noted that the defendant, who was charged with failing to take reasonable care for the health and safety of his workmate, was the appointed crane driver and the deceased was the rigger and dogman – roles they held appropriate certification to perform. He accepted that the men had previously worked together and were well respected employees of James Cranes Pty Ltd. The magistrate acknowledged the defendant's statement that there were numerous blind spots, that he was forced to reverse the crane because of the property layout and obstructions, and that he had given no thought to the proximity of power lines and his crane. He said the defendant should have known he could not rely on the deceased for guidance to move the crane because of the changing dynamics. He should have known that each time the container was put down the crane moved closer to power lines, and been aware that the deceased's vantage point, between the crane and the power lines, was obscured by the container's size. The magistrate said both men should have realised they were within metres of the power lines, concluding that they were jointly responsible. The magistrate said the incident was avoidable. He acknowledged the defendant's account of events, describing him as an offender of the lowest level, but said the sentence should emphasize the importance of responsible crane operation.

Result: **Without conviction, placed on a two-year good behaviour bond and ordered to pay $1,500 to the Court fund plus $5,047 costs.**

SLORACH DESIGNS PTY LTD

Date of offence: 4 March, 22 April and 6 May 1997

Date of prosecution: 15 December 2000 at Melbourne County Court

Judge: Morrow

On 4 March 1997 at Braeside, an employee of the defendant sustained serious injuries to his right hand as a result of operating an unguarded glue spreading machine. On April 22 1997, the defendant failed to comply with an improvement notice issued in relation to a high speed glue mixing machine, and on 6 May 1997, it failed to provide and maintain a safe Fritz taping machine.

Breaches of the *Occupational Health and Safety Act 1995*, sections 21(1) & (2)(a) x 2 and 43(3).

The judge made no significant comments.

Result: **Convicted and fined $5,000 re: Section 21(1) & (2)(a),**
convicted and fined $2,000 re: Section 21(1) & (2)(a),
convicted and fined $500 re: Section 43(4).
Total fine $7,500.

CASUAL LIVING AUSTRALIA PTY LTD

Date of offence: 19 January 1998

Date of prosecution: 18 December 2000 at Melbourne Magistrates' Court

Magistrate: Peter Mealy

On 19 January 1998 at Thomastown, a 15-year-old, inexperienced casual labourer received severe head injuries as a result of falling 3.6 metres from a first floor loading bay/platform to the concrete floor below. The first floor had no perimeter guarding or hand rail.

Breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(a) and 21(1) & (2)(e).

The magistrate concluded that the defendant was aware of the danger and that a rudimentary barrier could have been constructed before casual labourers were employed. He said there had been no act of bravado by the injured worker – that he was oblivious to the danger of working close to the edge and that an experienced person should have supervised the activity. The magistrate said that sadly, the incident had interfered with the life of a young boy.

Result: **Convicted and fined $50,000 plus $1,474 costs.**

STEVEN KAKOLIRIS

Date of offence: 19 January 1998

Date of prosecution: 18 December 2000 at Melbourne Magistrates' Court

Magistrate: Peter Mealy

On 19 January 1998 at Thomastown, a 15-year-old, inexperienced casual labourer received severe head injuries as a result of falling 3.6 metres from a first floor loading bay/platform to the concrete floor below. The first floor had no perimeter guarding or hand rail.

Breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(a) and 21(1) & (2)(e) (via Section 52).

[See summary of magistrate's comments in the matter of Casual Living Australia Pty Ltd.]

Result: **Convicted and fined $12,500 plus $600 costs.**

ANGELO KAKOLIRIS

Date of offence: 19 January 1998

Date of prosecution: 18 December 2000 at Melbourne Magistrates' Court

Magistrate: Peter Mealy

On 19 January 1998 at Thomastown, a 15-year-old, inexperienced casual labourer received severe head injuries as a result of falling 3.6 metres from a first floor loading bay/platform to the concrete floor below. The first floor had no perimeter guarding or hand rail.

Breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(a) and 21(1) & (2)(e) (via Section 52).

[See summary of magistrate's comments in the matter of Casual Living Australia Pty Ltd.]

Result: **Convicted and fined $12,500 plus $600 costs.**

BYVAN VIC PTY LTD

Date of offence: 20 April 1999

Date of prosecution: 19 December 2000 at Melbourne Magistrates' Court

Magistrate: John Hardy

On 30 April 1999, an employee maintenance worker was seriously injured after falling 7 metres down an exposed ventilation shaft. Lighting was insufficient and barriers had not been installed.

Breach of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(a).

The magistrate concluded that although borderline, the matter warranted conviction.

Result: **Convicted and fined $7,500 plus $1,742.95 costs.**

DRAKE PERSONNEL LTD T/AS DRAKE INDUSTRIAL

Date of offence: 10 November 1998

Date of prosecution: 21 December 2000 at Ringwood Magistrates' Court

Magistrate: Hugh Walter

On 10 November 1998 at the premises of Finewrap Australia Pty Ltd, the injured worker, a contract machine operator employed by Drake Personnel Ltd, fractured his right arm when it became trapped in the unguarded, in-running nip point of rollers on a slitter-rewinder machine.

Breach of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(a).

The magistrate said that in this case the principle of parity of sentence between the defendant and Finewrap Australia Pty Ltd did not play the same role as that in other cases involving labour supply companies. He concluded that the defendant was undoubtedly unaware of the hazardous practice employed by Finewrap that led to the incident. The defendant's culpability was its failure to make appropriate inquiries about Finewrap's practices and procedures using appropriately qualified officers.

Result: **Convicted and fined $20,000 plus $8,000 costs.**

GREGORY SHANE KOLT

Date of offence: Between 1996 and 1998

Date of prosecution: 19 January 2000 at Melbourne Magistrates' Court

Magistrate: John Hardy

The defendant, a physiotherapist, submitted invoices claiming payment from the Victorian WorkCover Authority in relation to his purported treatment of four injured workers. The invoices related to 137 physiotherapy consultations that had never taken place. As a result, the defendant fraudulently obtained a total of $5,864.15 from the Authority over a period of 14 months. When the matter was investigated, the defendant provided false information and documents.

Breaches of the *Accident Compensation Act 1985*, sections 248(1) and 249(1) x 2.

The magistrate noted that the defendant made admissions and full restitution to the Victorian WorkCover Authority. In ruling out conviction, the magistrate referred to Section 8(1) of the Sentencing Act i.e. the impact of a conviction on the defendant's career. He also acknowledged that the defendant had no prior convictions and an extraordinary record of professional achievement and community involvement.

Result: **Without conviction, fined $2,500 re: Section 248(1) and $1,500 re: Section 249(1).**
Total fine $4,000 plus $1,022 costs.

BRENDAN EDWARD BLOOMFIELD

Date of alleged offence: **Between 16 August 1996 and 10 August 1998**

Date of prosecution: **29 February 2000 at Dandenong Magistrates' Court**

Magistrate: **Margaret Harding**

It was alleged that the defendant filed a claim for compensation falsely stating that he had been injured at work, and thereafter fraudulently received compensation payments.

Alleged breaches of the *Accident Compensation Act 1985*, sections 248(1) × 22 and 249(1) × 2.

In dismissing the charges, the magistrate concluded that the evidence given by doctors and the defendant regarding the cause of the defendant's back injury was consistent. She said there was no evidence that the defendant had been engaged in any non-work activity that could have caused his injury. The magistrate was not persuaded by the evidence of the defendant's employer that the doctor and the defendant had conspired to make a false claim for compensation.

Result: **All charges dismissed.**

GLENN ANDREW PORTER

Date of offence: **Between 7 May 1998 and 28 August 1998**

Date of prosecution: **10 March 2000 at Ringwood Magistrates' Court**

Magistrate: **Thomas Hassard**

The defendant failed to advise that he had returned to work in a casual job and between 7 May 1998 and 28 August 1998, he obtained compensation payments to which he was either not entitled or only partially entitled. He submitted medical certificates stating that he was totally incapacitated for work, and failed to advise an employment consultant that he was working.

Breaches of the *Accident Compensation Act 1985*, sections 248(1) × 17 and 249(1).

The magistrate said he was not prepared to impose a penalty without a conviction. He said the fraud was clear and repetitious, involving a number of false statements and a significant amount of money. General deterrence was an important sentencing consideration. The magistrate took into account the defendant's plea of guilty and the fact that he had no prior convictions.

Result: **Convicted and fined $2,000. Ordered to pay restitution of $5,337.09 plus $1,045 costs.**

WOLTER JOOSSE

Date of alleged offence: **27 April 1997**

Date of prosecution: **3 April 2000 at Melbourne Magistrates' Court**

Magistrate: **Robert Tuppen**

It was alleged that the defendant provided false information in the form of 1997–98 group certificates which were sent to the Victorian WorkCover Authority by facsimile on 27 April 1999. Two of the group certificates provided by the defendant were allegedly false because they showed no wages being paid to employees, whereas the employees' copies of group certificates provided to the Victorian WorkCover Authority investigator showed amounts of $26,280.93 and $21,761.25 respectively.

Alleged breach of the *Accident Compensation Act 1985*, Section 249(1).

No comments were made.

Result: **Charge struck out.**

GARY NORMAN WARREN

Date of offence: **Between 1 May 1997 and 6 May 1998**

Date of prosecution **13 April 2000 at Werribee Magistrates' Court**

Magistrate: **Jennifer Goldsbrough**

The defendant failed to advise that he had returned to work, and between 1 May 1997 and 6 May 1998 he obtained weekly payments of compensation to which he was not entitled. He submitted medical certificates stating that he was totally incapacitated for work, and falsely told a doctor conducting an examination on behalf of a Victorian WorkCover Authority insurer that he had not worked.

Breaches of the *Accident Compensation Act 1985*, sections 248(1) × 57 and 249(1).

The magistrate said that fraud of this nature had a huge impact on the community. She found that the defendant was at least partly motivated by greed, although she accepted that he was also motivated by a desire to return to work after a long period of incapacity. She stated that the most serious aspect of the fraud was that it was repeated and would have continued if the defendant's former spouse had not reported him. The magistrate said it was appropriate to suspend the sentence of imprisonment, taking into account the fact that the defendant was now operating a successful business and had borrowed money to repay the Victorian WorkCover Authority.

Result: **Convicted and sentenced to an aggregate term of 12 months' imprisonment wholly suspended for 24 months re: Section 248(1) x 57; convicted and fined $1,000 re: Section 249(1). Ordered to pay $414 costs.**

GUGLIELMO MANIA (ALSO KNOWN AS WILLIAM MANIA)

Date of offence: **Between 24 March 1997 and 2 December 1997**

Date of prosecution: **8 May 2000 at Broadmeadows Magistrates' Court**

Magistrate: **Alan Spillane**

The defendant failed to advise that he had returned to part time/casual work, and between 24 March 1997 and 2 December 1997 he continued to receive weekly payments of compensation while working. He submitted medical certificates stating that he was totally incapacitated for work, and made false statements to a surgeon who examined him on behalf of the Victorian WorkCover Authority insurer and a psychologist who performed a vocational assessment that he had not and could not work.

Breaches of the *Accident Compensation Act 1985*, sections 248(1) × 10 and 249(1) × 9.

The magistrate said conduct such as the defendant's placed the Victorian WorkCover Authority system in jeopardy and caused an increase in WorkCover premiums. He accepted that the defendant had come forward and admitted that he had been working, but said general deterrence had to be considered and a significant penalty must be imposed.

Result: **Convicted on all charges and placed on a 12-month Community Based Order with a condition to perform 175 hours of unpaid community work. Ordered to pay restitution of $13,064 plus $765 costs.**

ELIO RASPA

Date of offence: **Between 12 November 1996 and 6 December 1997**

Date of prosecution: **9 May 2000 at Melbourne Magistrates' Court**

Magistrate: **Rodney Crisp**

On four occasions between 12 November 1996 and 6 December 1997, the defendant provided false and misleading information to three independent medical practitioners in relation to his current work capacity and activities. The information was to be used in support of the defendant's application for compensation under sections 98 and 98A of the *Accident Compensation Act 1985*.

Breach of the *Accident Compensation Act 1985*, Section 249(1) × 4.

The magistrate said general deterrence was an important sentencing consideration in these matters.

Result: **Convicted and sentenced to seven days' imprisonment wholly suspended for 12 months under Section 27 of the *Sentencing Act 1991*. Ordered to pay $4,715 costs.**

KENNETH SHIELDS

Date of offence: **Between July 1995 and April 1999**

Date of prosecution: **16 May 2000 at Geelong Magistrates' Court**

Magistrate: **Ian von Einem**

The defendant claimed compensation for injuries sustained in an accident he falsely reported occurred at his employer's premises. The accident actually occurred at the defendant's home. He was paid weekly compensation totalling $93,841 gross between July 1995 and April 1999, together with medical, hospital and legal expenses in excess of $30,000.

Breach of the *Crimes Act 1958*, Section 82(1) × 199.

The magistrate took into account the fact that the fraud continued over a long period and involved more than $100,000. He said it was unlikely the defendant would ever repay more than a small amount and a message must be sent to those planning to cheat the Victorian WorkCover Authority system. In mitigation, the magistrate acknowledged that the defendant had no prior convictions and pleaded guilty at the earliest opportunity. The minimum jail term was fixed in acknowledgement of the defendant's age (57 years) and the fact that he would find imprisonment more difficult than a younger person.

Result: **Convicted and sentenced to an aggregate term of 21 months' imprisonment, with a minimum of six months. Ordered to pay $164,999.35 restitution plus $753 costs.**

ADRIAN KLIMEK

Date of offence **February and March 1998**

Date of prosecution: **17 May 2000 at Dandenong Magistrates' Court**

Magistrate: **Harold Hallenstein**

The defendant operated a blind installation business, AAK Blinds, and was required to pay an injured employee compensation for loss of wages over a five-week period.

The defendant was uninsured and the claim was handled by NZI Insurance Australia. The defendant deposited a $1,144 cheque from NZI Insurance representing the employee's weekly payments and withdrew the funds over a four-week period. Despite repeated requests by the injured worker and the insurer, the defendant never paid the employee compensation.

Breach of the *Crimes Act 1958*, Section 74.

The magistrate took into account the fact that the money was received on trust for another party and that the defendant breached that trust by using the money as his own. He said the issue of general deterrence was relevant where public money, public responsibility and a breach of trust were involved.

Result: **Convicted and fined $500. Ordered to pay $1,144 restitution to the Victorian WorkCover Authority pursuant to Section 249A of the *Accident Compensation Act 1985* plus $609.43 costs.**

GEMCOURT HOLDINGS PTY LTD

Date of offence: **Between April and December 1998**

Date of prosecution: **5 June 2000 at Hamilton Magistrates' Court**

Magistrate: **Terry Wilson**

Ronald George Schultze, a director and shareholder of the defendant corporation, injured his knee at work on 7 April 1998. Despite the injury, he continued to work but submitted medical certificates stating that he was totally incapacitated. The defendant corporation's Employer Report falsely stated that Schultze had not returned to work and the corporation was paid $14,315 compensation.

Breaches of the *Crimes Act 1958*, Section 81 and the *Accident Compensation Act 1985*, Section 249(1).

The magistrate said the community took a dim view of this type of conduct. He took the corporation's poor financial position into account in fixing the fine.

Result: **Convicted and fined an aggregate amount of $1,000. Ordered to pay $14,315 restitution plus $6,764 costs (joint and several liability with Ronald George Schultze).**

RONALD GEORGE SCHULTZE

Date of offence: **Between April and December 1998**

Date of prosecution: **5 June 2000 at Hamilton Magistrates' Court**

Magistrate: **Terry Wilson**

The defendant injured his knee at work on 7 April 1998. Despite the injury, he continued to work but submitted medical certificates stating that he was totally incapacitated. Between April and December 1998 his employer Gemcourt Holdings Pty Ltd, of which he was a director and shareholder, was paid $14,315 compensation. The defendant falsely told a doctor, occupational therapist and private investigator that he had not worked.

Breaches of the *Crimes Act 1958*, Section 81 and the *Accident Compensation Act 1985*, Section 249(1) × 3.

The magistrate said the community took a dim view of this type of conduct. He indicated that he would have considered imposing a Community Based Order if the defendant had been in better health.

Result: **Convicted and sentenced to an aggregate term of 3 months' imprisonment wholly suspended for 12 months. Ordered to pay $14,315 restitution plus $6,764 costs (joint and several liability with Gemcourt Holdings Pty Ltd).**

CHUN YUN LAO

Date of offence: **August and September 1998**

Date of prosecution: **21 June 2000 at Melbourne Magistrates' Court**

Magistrate: **Kathryn Auty**

The defendant worked in a fruit shop owned by her husband while receiving weekly compensation payments. In August and September 1998, she falsely told an orthopaedic surgeon and a consultant who conducted a vocational assessment that she had not worked and did not consider that she was capable of work.

Breaches of the *Accident Compensation Act 1985*, Section 249(1) x 2.

The magistrate did not make any relevant comments.

Result: **Without conviction, released on a 12-month good behaviour bond.**

WARICK CUPID

Date of offence: **Between 2 February 1998 and 16 March 1998**

Date of prosecution: **26 June 2000 at Frankston Magistrates' Court**

Magistrate: **Barry Docking**

The defendant failed to advise that he had returned to casual work as a taxi driver, and between 2 February 1998 and 16 March 1998 he continued to receive weekly compensation payments while working. He submitted medical certificates stating that he was totally incapacitated for work, and made a false statement to his treating doctor that he only worked four hours per fortnight.

Breaches of the *Accident Compensation Act 1985*, sections 248(1) x 7 and 249(1).

The magistrate described the offences as serious, but took the defendant's poor financial circumstances into account in fixing the fine.

Result: **Convicted and fined an aggregate amount of $200. Ordered to pay $2,499 restitution plus $345 costs.**

MONICO PTY LTD

Date of offence: 10 October 1997

Date of prosecution: 5 July 2000 at Broadmeadows Magistrates' Court

Magistrate: Robert Kumar

On 10 October 1997, the defendant corporation received a cheque for $2,793 from its insurer representing compensation due to an injured employee. The corporation failed to pay the compensation to the employee and failed to repay the money to the insurer when requested.

Breach of the *Crimes Act 1958*, Section 74.

The magistrate commented that it was the defendant's responsibility to forward the money it received to the injured employee and that the offence was a breach of trust. The magistrate was prepared to fine the corporation's director (who was also prosecuted for his role in the offence) without conviction, but concluded that the corporation as the employer deserved to be convicted.

Result: **Convicted and fined $1,000. Ordered to pay restitution of $2,793 and costs of $1,907.30 (joint and several liability with Stephen Alan White).**

STEPHEN ALAN WHITE

Date of offence: 10 October 1997

Date of prosecution: 5 July 2000 at Broadmeadows Magistrates' Court

Magistrate: Robert Kumar

On 10 October 1997, Monico Pty Ltd, of which the defendant was a director, received a cheque for $2,793 from its insurer, representing compensation due to an injured employee. The corporation failed to pay the compensation to the employee and failed to repay the money to the insurer when requested.

Breach of the *Crimes Act 1958*, Section 74.

The magistrate commented that it was the defendant's responsibility to forward the money his corporation received to the injured employee and that the offence was a breach of trust. The magistrate said the defendant's conduct warranted a fine, but imposed the fine without conviction, taking into account the 41-year-old defendant's age, clean record and plea of guilty.

Result: **Without conviction fined $1,000. Ordered to pay $2,793 restitution and $1,907.30 costs (joint and several liability with Monico Pty Ltd).**

PAUL JAMES OXLEY

Date of alleged offence: Between November 1996 and September 1997

Date of prosecution: 27 July 2000 at Wangaratta Magistrates' Court

Magistrate: Noel Purcell

It was alleged that between November 1996 and September 1997, the defendant submitted fabricated claims for travel expenses to see a doctor, obtaining $5,502 to which he was not entitled.

Alleged breaches of the *Accident Compensation Act 1985*, sections 248(1) x 26 and 249(1) x 54.

The magistrate found that the defendant was a truthful witness and did not accept that the defendant had not attended the doctor on each of the occasions for which he claimed travel allowance. He commented on the paucity of the doctor's records, which he found to be an unsatisfactory basis for the prosecution.

Result: **All charges dismissed. Informant ordered to pay $3,800 costs.**

ROBACE PTY LTD

Date of offence: **Between September and December 1997**

Date of prosecution: **7 August 2000 at Frankston Magistrates' Court**

Magistrate: **Harley Harber**

Between September and December 1997, the defendant made weekly compensation payments to an injured employee more than seven days after they were due. Some payments were up to four weeks late.

Breach of the *Accident Compensation Act 1985*, Section 242(4)(c) x 10.

The magistrate accepted the defendant's explanation that its late payment to the injured worker was a matter of poor administration rather than deliberate flouting of the law. However, he said workers relied on proper remuneration and that it was important they were paid on time.

Result: **Without conviction, fined an aggregate amount of $800 and ordered to pay $470.10 costs.**

REGINALD BRIAN RUNDELL

Date of offence: **Between 11 January and 12 July 1999**

Date of prosecution: **11 August 2000 at Bacchus Marsh Magistrates' Court**

Magistrate: **James Cashmore**

The defendant failed to advise that he had returned to work, and between 11 January and 12 July 1999, he obtained weekly compensation payments totalling $11,000 to which he was not entitled. He submitted medical certificates stating that he was totally incapacitated for work, and falsely told a surgeon who examined him on behalf of the WorkCover insurer that he had not worked.

Breaches of the *Accident Compensation Act 1985*, sections 248(1) x 26 and 249(1).

The magistrate said the defendant's conduct in falsely obtaining $11,000 was exacerbated by lying to a medical practitioner about his ability to work. The magistrate said the matter struck at the heart of the WorkCover system, which depends on the honesty of those involved. He said employers expected their premiums to be devoted to the proper cause.

Result: **Convicted and sentenced to an aggregate term of three months' imprisonment wholly suspended for 12 months. Ordered to pay $11,024 restitution and $450 costs.**

JOHN WILLOX MULLER

Date of offence: December 1996

Date of prosecution: 18 August 2000 at Melbourne County Court

Judge: Keon-Cohen

In December 1996, Muller Industries Australia Pty Ltd, of which the defendant was a director, received a cheque for $105,490 representing compensation due to an employee. The corporation was required to deduct tax and pay the balance, $81,014.40 to the employee. It failed to remit the tax to the Taxation Office and paid only two instalments of $10,000 each to the employee in early 1998.

Breaches of the *Crimes Act 1958*, Section 74 and the *Crimes Act 1914 (Cth)*, Section 29D.

The judge said commercial crime had become common and must be treated seriously. He was satisfied that personal deterrence was not significant in this case given the 67-year-old defendant's otherwise good character. However, he said general deterrence remained paramount and imprisonment was the only sentencing option. The judge said it was appropriate to suspend the sentence because the defendant pleaded guilty at the earliest opportunity, made full restitution, had no prior convictions, and lost his family business and reputation. He said that although the offences involved a serious breach of trust, the cheque was not banked into the corporation's account with the defendant's knowledge, and that it was the defendant's subsequent misuse of the money that constituted the offences.

Result: **Sentenced to two years' imprisonment wholly suspended for three years re: Section 74; convicted and fined $2,500 re: Section 29D.**

GRAEME RALPH REICHMAN

Date of offence: Between 1997 and 1999

Date of prosecution: 21 August 2000 at Warrnambool Magistrates' Court

Magistrate: Rowan McIndoe

In the financial years 1997/98 and 1998/99 at Warrnambool, the defendant, the director of a sheep shearing business, failed to keep in force a compulsory WorkCover insurance policy, evading premium to the sum of $24,128.

Breach of the *Accident Compensation (WorkCover Insurance) Act 1993*, Section 7.

The magistrate concluded that the sentencing outcome would be the same as that against G R Reichman Pty Ltd, including restitution and costs orders.

Result: **Convicted and fined $500. Ordered to pay $24,128 restitution and $1,833.40 costs.**

G. R. REICHMAN PTY LTD

Date of offence: Between 1997 and 1999

Date of prosecution: 21 August 2000 at Warrnambool Magistrates' Court

Magistrate: Rowan McIndoe

In the financial years 1997/98 and 1998/99 at Warrnambool, the defendant, a sheep shearing business, failed to keep in force a compulsory WorkCover insurance policy, evading premium to the sum of $24,128.

Breach of the *Accident Compensation (WorkCover Insurance) Act 1993*, Section 7.

The magistrate concluded that the sentencing outcome would be the same as that against Graeme Ralph Reichman, including restitution and costs orders.

Result: **Convicted and fined $500. Ordered to pay $24,128 restitution and $1,833.40 costs.**

JANETTE MARGARET O'NEILL

Date of offence: August and November 1997

Date of prosecution: 11 September 2000 at Geelong Magistrates' Court

Magistrate: Max Beck

In August and November 1997, the defendant submitted medical certificates stating she was incapacitated while she was working. She also made false statements about her work activities to a rehabilitation consultant and a WorkCover insurance claims officer.

Breaches of the *Accident Compensation Act 1985*, sections 248(1) x 2 and 249(1) x 2.

The magistrate described the charges as serious. He took into account the defendant's clean record, the amount of money involved and the defendant's genuine injury.

Result: **Convicted and fined $250 on each charge. Total fine $1,000. Ordered to pay $252 restitution and $613.52 costs.**

ALLISON EASTWOOD

Date of offence: Between 20 May and 14 December 1999

Date of prosecution: 25 September 2000 at Broadmeadows Magistrates' Court

Magistrate: Robert Kumar

The defendant failed to advise that she had returned to work, and between 20 May and 14 December 1999, she obtained weekly compensation payments to which she was not entitled. She also submitted medical certificates which falsely stated that she was totally incapacitated for work.

Breach of the *Crimes Act 1958*, sections 81 and 82.

The magistrate reminded the defendant that WorkCover exists to assist genuinely injured people. He took into account the defendant's lack of prior convictions and good character references, concluding that an immediate custodial sentence was not appropriate in this case.

Result: **Convicted and sentenced to an aggregate term of four months' imprisonment, wholly suspended for 12 months. Ordered to pay $11,516.39 restitution plus $350 costs.**

JASON MAXWELL SIMON

Date of offence: Between 14 July and 14 December 1999

Date of prosecution: 26 October 2000 at Ringwood Magistrates' Court

Magistrate: Thomas Hassard

Between 14 July and 14 December 1999 at Lilydale, the defendant fraudulently obtained WorkCover compensation payments from the insurer totalling $9965.62 while he worked as a security guard and as a warehouse supervisor at three different places of employment.

Breach of the *Accident Compensation Act 1985*, Section 248(1) x 10.

The magistrate commented that the fraud was committed over a long period of time and that the offending crime was repetitious. He took into account the plea of guilty, but said the circumstances of the offence, the sentencing factors of general and specific deterrence, and the maximum penalty for such an offence warranted the imposition of a jail sentence.

Result: **Convicted and sentenced to 50 days' imprisonment wholly suspended for 12 months. Ordered to pay $10,656.56 restitution plus $2,365.94 professional costs.**

MICHAEL MARTIN MIFSUD

Date of offence: **Between 30 September 1999 and 19 February 2000**

Date of prosecution: **30 October 2000 at Melbourne Magistrates' Court**

Magistrate: **Jillian Crowe**

Between 30 September 1999 and 19 February 2000, the defendant was in receipt of benefits totalling $5,527.46 while in paid employment.

Breach of the *Accident Compensation Act 1985*, Section 248(1) x 12.

The magistrate commented that this was a continuing offence but noted the defendant had repaid all compensation. She acknowledged the defendant's background of community involvement and said there was no specific deterrence to be satisfied in this case given his remorse.

Result: **Without conviction released on an 18-month good behaviour bond. Ordered to pay $200 to the Court fund.**

ROBIN GORDON BRIGGS

Date of offence: **Between 23 September and 11 November 1999**

Date of prosecution: **16 November 2000 at Ringwood Magistrates' Court**

Magistrate: **Lance Martin**

The defendant failed to advise that he had returned to work, and between 23 September and 11 November 1999, he continued to receive weekly compensation payments totalling $2,794 while working. He submitted medical certificates stating that he was totally incapacitated for work, and signed a declaration falsely stating that he had not worked.

Breach of the *Accident Compensation Act 1985*, Section 248(1) x 8.

The magistrate took into account the defendant's plea of guilty, his cooperation with investigators and his offer to make repayments. He accepted that it was not the defendant's intention to deceive WorkCover over a long period; that the defendant had returned to work but was not sure what would transpire and engaged in the deception during a short period. The magistrate acknowledged the defendant's criminal history and said a jail sentence was necessary to drive home the message that individuals cannot attack the WorkCover system. He said it was appropriate to suspend the term of imprisonment given the nature of the offences and the defendant's personal circumstances, including his responsibility for his aged mother and his psychological condition.

Result: **Convicted and sentenced to two months' imprisonment wholly suspended for 24 months. Ordered to pay $2,694 compensation and $402 costs.**

WILLIAM FOX (aka BILLY FOX, BILLY DUNN, CON NICOLOPOULOS)

Date of offence: **Between 25 August and 8 September 1997**

Date of prosecution: **11 December 2000 at Melbourne Magistrates' Court**

Magistrate: **Roger Franich**

The defendant failed to advise that he had returned to work, and between 25 August and 8 September 1997, he continued to receive weekly compensation payments totalling $1,017.06 while working part time. He submitted a medical certificate stating that he was totally incapacitated for work, and signed a declaration falsely stating that he had not worked.

Breach of the *Accident Compensation Act 1985*, Section 248(1) x 3.

The magistrate said he had taken into account the defendant's plea of guilty. He accepted that the defendant had suffered a genuine injury, and noted that the defendant was seeking to justify his behaviour by his apparent feeling of aggrievement in relation to his treatment by WorkCover. However, the magistrate said the defendant had an obligation to inform WorkCover that he was working.

Result: **Convicted and fined an aggregate amount of $500.**
Ordered to pay $1,017.06 compensation and $494.69 costs.

Committals

ESSO AUSTRALIA LTD

Date of alleged offence: 25 September 1998

Date of prosecution: 1 February 2000 at Melbourne Magistrates' Court

Magistrate: Barbara Cotterell

The charges related to an incident at the defendant corporation's gas processing facility known as Gas Plant 1 at Longford on 25 September 1998. The incident occurred when a heat exchanger (GP905) ruptured and released dangerous hydrocarbons, which resulted in a fire and explosion. The prosecution alleged that the incident caused the death of two of the defendant's employees and injured eight other workers.

Alleged breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) × 5, 21(1) & (2)(a) × 10, 21(1) & (2)(b) × 5, 21(1) & (2)(c), 21(1) & (2)(e) × 13, 21(4)(d) and 22.

The defendant did not contest a committal hearing. The magistrate found that the hand-up brief disclosed sufficient evidence upon which a jury, properly instructed, could convict the defendant. The defendant was committed to stand trial in the County Court.

Result: **Charges 1–36: committed to stand trial in the County Court and ordered to attend case conference on 4 April 2000. Charges 37–45: adjourned sine die.**

(Note: By application of the Director of Public Prosecutions, a presentment in this matter has been filed in the Supreme Court.)

JOHN WILLOX MULLER

Date of offence: December 1996

Date of prosecution: 22 May 2000 at Melbourne Magistrates' Court

Magistrate: Duncan Reynolds

Muller Industries Australia Pty Ltd (of which the defendant was a director) received a cheque for $105,490, representing compensation due to an employee. The corporation was required to deduct tax and pay the balance ($81,014.40) to the employee. It failed to do so until early 1998, when it paid only two instalments of $10,000 each to the employee.

Breach of the *Crimes Act 1958*, Section 74.

The Court did not provide a comment.

Result: **The defendant was committed (by way of straight hand-up brief) to the County Court at Melbourne for a plea on 18 August 2000. He entered a plea of guilty. He was granted bail in his own undertaking, with no special conditions.**

GLOBAL METAL RECYCLERS PTY LTD

Date of offence: 12 March 1998

Date of prosecution 11 July 2000 at Melbourne Magistrates' Court

Magistrate Michael Smith

On 12 March 1998, a 56-year-old truck driver received fatal crushing injuries when part of a load of obsolete heavy electrical equipment fell from his articulated vehicle.

Alleged breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(a), 21(1) & (2)(b), 21(1) & (2)(e), 22 and 47(1).

The magistrate did not comment.

Result: **Committed to stand trial in the County Court at Melbourne.**

DRYBULK PTY LTD

Date of offence: 12 November 1998

Date of prosecution: 24 October 2000 at Melbourne Magistrates' Court

Magistrate: Francis Hender

On 12 November 1998 at the premises of Drybulk Pty Ltd in Footscray, a casual employee was crushed to death and another sustained serious crushing injuries to his back and legs when a free standing concrete slab fell and pinned them to the ground. The slab weighed 5.5 tonnes. At the time of the incident, the employees were sweeping material away from the slabs that had been placed around the internal walls of shed No. 3.

Alleged breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(c), 21(1) & (2)(e), 22 and 23.

The magistrate found that the hand-up brief disclosed sufficient evidence for a jury to convict the defendant.

Result: **The defendant was committed to stand trial at the County Court.**

NEIL LESLIE COAD

Date of offence: 12 November 1998

Date of prosecution: 24 October 2000 at Melbourne Magistrates' Court

Magistrate: Francis Hender

On 12 November 1998 at the premises of Drybulk Pty Ltd in Footscray, a casual employee was crushed to death and another sustained serious crushing injuries to his back and legs when a free standing concrete slab fell and pinned them to the ground. The slab weighed 5.5 tonnes. At the time of the incident, the employees were sweeping material away from the slabs that had been placed around the internal walls of shed No. 3. The defendant was employed by Drybulk as a supervisor.

Alleged breach of the *Occupational Health and Safety Act 1985*, Section 25(1)(a).

The magistrate found that the hand-up brief disclosed sufficient evidence for a jury to convict the defendant.

Result: **The defendant was committed to stand trial at the County Court.**

BRUCE SCOTT CRAIB

Date of offence: **12 November 1998**

Date of prosecution: **24 October 2000 at Melbourne Magistrates' Court**

Magistrate: **Francis Hender**

On 12 November 1998 at the premises of Drybulk Pty Ltd in Footscray, a casual employee was crushed to death and another sustained serious crushing injuries to his back and legs when a free standing concrete slab fell and pinned them to the ground. The slab weighed 5.5 tonnes.
At the time of the incident, the employees were sweeping material away from the slabs that had been placed around the internal walls of shed No. 3. The defendant was employed by Drybulk as a company officer.

Alleged breaches of the *Occupational Health and Safety Act 1985*, sections 52, 21(1) & (2)(e), 22, 23 and 25(1)(a).

Result: **The defendant was committed to stand trial at the County Court.**

Appeals

MACKIE AND STAFF PTY LTD

Date of offence: **10 June 1998**

Date of appeal hearing: **24 May 2000 at Melbourne County Court**

Judge: **Ross**

On 9 February 2000 at the Ringwood Magistrates' Court, Mackie and Staff Pty Ltd was fined $10,000 without conviction in relation to breach of a prohibition notice.

Appeal against sentence lodged by the Director of Public Prosecutions.

Breach of the *Occupational Health and Safety Act 1985*, Section 44(3).

Judge Ross was of the view that the appeal was trying to revisit a matter that could not be appealed. He said this constituted a breach of the well recognised principle of double jeopardy – that a court cannot record two punishments on the same facts. The judge relied on the case of *Pennisi v. O'Sullivan* 74 ACR at 168 and *Pearce v. R* [1998] HCA 57 (10.9.98).

Result: **Appeal disallowed. Original sentence handed down in Melbourne Magistrates' Court reimposed: without conviction, fined $10,000 re: Section 44(3).**
Respondent's costs to be paid by the appellant.

METALISING AUSTRALIA PTY LTD

Date of offence: **29 October 1997**

Date of appeal hearing: **21 July 2000 at Melbourne County Court**

Judge: **Robertson**

On 5 July 1999 at Dandenong Magistrates' Court, Metalising Australia Pty Ltd was fined $55,000 for breach of the Occupational Health and Safety Act in relation to an incident on 29 October 1997 in which an employee sustained full-thickness burns to his arms, face and neck. The injuries resulted from the ignition of flammable solvent vapours (X-95) escaping from a flow coater machine.

Appeal lodged by the defendant.

Breach of the *Occupational Health and Safety Act 1985*, Section 21(1) & (2)(a).

The judge said the penalty must consider both specific and general deterrence.
In this case, the corporation was required to use a flowcoater machine to clean plastic components with solvent. The solvent was a highly flammable substance, X-95, which had a flashpoint of minus 6 degrees celsius and could produce an explosive mixture of air and electrostatic charges. Material Safety Data Sheets for X-95 required adequate ventilation systems and precautions against static electricity discharges. The judge said an exhaust system should have been provided and the solvent vapours should have been regularly monitored by the defendant. He said the defendant failed to address a forseeable risk by taking steps to obviate the danger of fire and explosion. He was satisfied that the victim was a responsible and experienced employee who did not spill any X-95 solvent. The judge noted that since the incident, the defendant had made improvements to render the machine safe.

Result: **Convicted and fined $15,000.**

(Note: original fine imposed in Magistrates' Court was $55,000).

NORMET INDUSTRIES PTY LTD

Date of offence: 7 January 1998

Date of appeal hearing: 11 August 2000 at Melbourne County Court

Judge: Fagan

On 2 May 2000 at Sunshine Magistrates' Court, Normet Industries Pty Ltd was convicted and fined a total of $8,000 in relation to an incident on 7 January 1998 at Laverton, when an employee was struck by an object suspended overhead and seriously injured. The employee was attempting to detach wear plates from the inside face of a hammer mill.

Appeal against sentence lodged by the Director of Public Prosecutions.

Breaches of the *Occupational Health and Safety Act*, sections 21(1) & (2)(a) and 21(1) & (2)(e).

Result: **The penalty imposed by the Magistrates' Court was set aside and reimposed.**

(Note – original penalty was conviction and total fine of $8,000 plus $2,168.40 costs. In addition, an order was made by consent for payment to the victim of $50,000 under Section 86 of the Sentencing Act).

ANDYS ENGINEERS PTY LTD

Date of offence: 26 February 1999

Date of appeal hearing: 23 August 2000 at the Melbourne County Court

Judge: Coate

On 1 May 2000 at Mildura Magistrates' Court, Andys Engineers Pty Ltd was convicted and fined $100,000 in relation to an incident on 26 February 1999. A truck driver working for Kelly's & Young Trucking Company Pty Ltd received fatal crushing injuries in the dispatch area of Andys Engineers when the tyne of an unoccupied forklift pinned his neck to the side of a truck tray. A practice had developed in the defendant's/appellant's workplace where forklift drivers would dismount a forklift while the engine was left running.

Appeal against sentence lodged by defendant.

Breaches of the *Occupational Health and Safety Act 1985*, sections 21(1) & (2)(a), 21(1) & (2)(e) and 22.

The judge commented that the penalty could never reflect the tragedy. She imposed a penalty of $50,000 which she said represented a significant deterrent. The judge said that in this case, there were significant mitigating factors. The corporation, notwithstanding its involvement in heavy industry, had no prior history and had been in business for over 50 years. It had 65 employees with an average stay of 12 years and the directors made a significant contribution to the Mildura community.

Result: **Convicted and fined an aggregate amount of $50,000 plus $3,042 costs.**

(Note: original fine imposed in Magistrates' Court was $100,000).

What the charges are about

Note: The information below is a summary only, not a full and precise statement of the law. Neither does it constitute legal advice. Copies of Acts and Regulations can be obtained from Information Victoria, 356 Collins Street, Melbourne 3000 or telephone 1300 366 356.

Occupational Health and Safety Act 1985

Section 21(1) states the employer's general duty to employees – to "provide and maintain so far as is practicable for employees a working environment that is safe and without risks to health." (Note: Section 21(3) states that "employees" include independent contractors and their employees.)

Section 21(2) contains five paragraphs which elaborate on that general duty. Thus, employers are in breach of Section 21(1) if they fail to:

(a) provide and maintain safe plant (e.g. equipment, machinery) and systems of work

(b) make arrangements to ensure the safe use, handling, storage and transport of plant and substances (e.g. chemicals, components)

(c) maintain in a safe condition any workplace under their control and management

(d) provide adequate facilities for the welfare of employees at any such workplace

(e) provide the information, instruction, training and supervision necessary to enable employees to perform their work in a safe manner

Section 21(4)(d) requires that an employee shall, so far as is practicable, monitor conditions at any workplace under his/her management and control.

Section 22 requires employers and self-employed persons to ensure so far as is practicable that people other than their employees (e.g. members of the public) are not exposed to health or safety risks arising from the conduct of their undertaking i.e. the activities of their business.

Section 23 requires the occupiers of workplaces to take measures to ensure that the workplaces – and entrances and exits – are safe.

Section 25(1)(a) requires an employee to care for the health and safety of himself/herself and anyone else affected by his/her acts or omissions in the workplace.

Section 25(2)(b) requires that an employee shall not wilfully place at risk the health or safety of any person in the workplace.

Section 43(3) creates an offence of not complying with an improvement notice. Such notices require anyone in breach of the Act or regulations to promptly remedy the breach.

Section 44(3) creates an offence of not complying with a prohibition notice. Such notices are issued in circumstances of immediate risk to the health and safety of any person.

Section 52 states that where an offence is committed by a body corporate with the consent or connivance of, or wilful neglect by, an officer of the body corporate, that officer is also guilty.

Accident Compensation Act 1985

Section 248(1) makes it an offence to obtain or attempt to obtain fraudulently any payment under this Act or the *Accident Compensation (WorkCover Insurance) Act 1993*.

Section 249(1) makes it an offence to provide false or misleading information under this Act or the Accident Compensation (WorkCover Insurance) Act in relation to a WorkCover claim.

Section 249A states that if any person convicted or found guilty of an offence against this Act or an offence against the *Crimes Act 1958* in connection with a claim for compensation under this Act any payments made by the Authority, a self-insurer or an employer as a result of the offence may be recovered together with:

- an additional amount equal to half the amount of the payments made; and
- interest until the debt or set-off is paid.

The court may, on application of the Authority, a self-insurer or an employer, order the person to pay a sum equal to the amount of any payments made as a result of the offence together with:

- an additional amount equal to half the amount of the payments made; and
- interest until the debt is paid.

Crimes Act 1958

Section 18(1) makes it an offence for a person to cause injury intentionally or recklessly to another person.

Section 74(1) makes a person guilty of theft, guilty of an indictable offence.

Section 81(1) makes it an offence for a person by any deception to dishonestly obtain property belonging to another with the intention of permanently depriving the other of it.

Section 82(1) makes it an offence for a person by any deception to dishonestly obtain any financial advantage for himself, or herself, or for another.

Occupational Health and Safety (Plant) Regulations 1995

Regulation 702 requires employers to identify the hazards involved with plant and the associated systems of work.

Regulation 702(1)(e) states that it is an employer's duty to undertake hazard identification subject to sub-regulation for all plant in the workplace at the date of commencement of these regulations, as soon as is practicable after that date.

Regulation 704 requires employers to ensure that any risk associated with plant is eliminated, or if that is not practicable, reduced so far as is practicable.

Regulation 704(1) states that it is an employer's duty to undertake control of risk associated with plant and associated systems of work, including installation, erection, commissioning and use of plant.

Regulation 705 requires employers using guarding as a measure to control risk to ensure that the guarding prevents access to dangerous parts of the plant.

Regulation 706(1)(b) states an employer's duties in relation to an operator's controls, emergency stops and warning devices. It states that an employer must ensure that any operator's controls for plant are located so as to be readily and conveniently operated by each person using the plant.

Regulation 707 states an employer's duties in relation to installation, erection and commissioning of plant.

Regulation 708(1)(a) states an employer's duties in relation to use of plant and states that an employer must ensure that plant is maintained.

Regulation 708(1)(b) states an employer's duties in relation to use of plant. It states that an employer must ensure that plant is inspected to the extent necessary to ensure that the risk associated with the use of the plant is monitored.

Regulation 711 states an employer's duties in relation to general requirements for powered mobile plant.

Occupational Health and Safety (Certification of Plant Users and Operators) Regulations 1994

Regulation 7(2) states that an employer must not allow an employee to do any work encompassed by a certificate of competency unless that employee holds an appropriate certificate of competency with respect to that work.

Dangerous Goods Act 1985

Section 31(1)(a)(ii) requires, inter alia, that an occupier or a person in charge of premises where dangerous goods are manufactured, stored or sold, takes all reasonable precautions to prevent any fire or explosion involving dangerous goods in the ownership, control or possession of that person.

Section 31(1)(a)(iii) requires, inter alia, that an occupier in charge of premises where dangerous goods are manufactured, stored or sold, takes all reasonable precautions to prevent any leakage involving dangerous goods in the ownership, control or possession of that person.

Section 31(1)(a)(iv) requires, inter alia, that an occupier or a person in charge of premises where dangerous goods are manufactured, stored or sold, takes all reasonable precautions to prevent any damage to property or danger to the public incurred by an accident involving dangerous goods in the ownership, control or possession of that person.

Dangerous Goods (Storage and Handling) Regulations 1989

Regulation 412(1)(d) creates an offence if a tank used for storage of dangerous goods is not located in an impervious spill collection compound.

Regulation 425(c) requires a person involved with dangerous goods to ensure access to firefighting equipment is available at all times.

Occupational Health and Safety (Asbestos) Regulations 1992

Regulation 11 makes it an offence for persons other than approved asbestos removalists to remove asbestos from a building or structure.

Regulation 24(1) states that an employer or occupier of a workplace must determine, as far as is practicable, whether asbestos is present in the workplace.

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