



COAL SERVICES INDUSTRY TRAINING CONFERENCE

# The Role of Training in a WHS Act Investigation

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- The legislation does not tell you how to make your workplace safe; it is risk based legislation
- The legislation sets out the minimum framework (for example hierarchy of controls **cl 36 WHS Regulation**)
- The how is up to the person conducting the business or undertaking
- Understanding and knowing the legislation can be difficult but it is vital that you do; so that your safety management system is robust and meets the obligations set out in the legislation

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## *Work Health and Safety Act 2011*

### **Section 19(3)(f)**

(3) Without limiting subsections (1) and (2), a person conducting a business or undertaking must ensure, so far as is **reasonably practicable**: ...

- (f) the provision of any **information, training, instruction or supervision** that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking, and

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## Section 18 What is “reasonably practicable” in ensuring health and safety

In this Act, reasonably practicable, in relation to a duty to ensure health and safety, means that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters including:

- (a) the likelihood of the hazard or the risk concerned occurring, and
- (b) the degree of harm that might result from the hazard or the risk, and
- (c) what the person concerned knows, or ought reasonably to know, about:
  - (i) the hazard or the risk, and
  - (ii) ways of eliminating or minimising the risk, and
- (d) the availability and suitability of ways to eliminate or minimise the risk, and
- (e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

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## ***Work Health and Safety Regulation 2011***

### **Clause 39 Provision of information, training and instruction**

- (1) This clause applies for the purposes of section 19 of the Act to a person conducting a business or undertaking.
- (2) The person must ensure that information, training and instruction provided to a worker is suitable and adequate having regard to:
  - (a) the nature of the work carried out by the worker, and
  - (b) the nature of the risks associated with the work at the time the information, training or instruction is provided, and
  - (c) the control measures implemented.
- (3) The person must ensure, so far as is **reasonably practicable**, that the information, training and instruction provided under this clause is provided in a way that is readily understandable by any person to whom it is provided.

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## *Work Health and Safety Regulation 2011*

### **Clause 39 Provision of information, training and instruction**

(2) The person must ensure that information, training and instruction provided to a worker is **suitable and adequate having regard to:**

- (a) the nature of the work carried out by the worker, and**
- (b) the nature of the risks associated with the work at the time the information, training or instruction is provided, and**
- (c) the control measures implemented.**

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## *Work Health and Safety Regulation 2011*

### **Clause 39 Provision of information, training and instruction**

(3) The person must ensure, so far as is **reasonably practicable**, that the information, training and instruction provided under this clause is provided in a way that is readily understandable by any person to whom it is provided.

**Note also part 3.1 of the regs**

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## Human Organisational Factors

In all investigations human factors are an important component of the investigation

Human and organisational factors are the environmental, organisational and job factors, along with human and individual characteristics, that influence behaviour at work in a way that can affect health and safety.

Case studies are being developed and published on the departments website:

<http://www.resourcesandenergy.nsw.gov.au/miners-and-explorers/safety-and-health/topics/human-factors>

Further information is also available on the UK website:

<http://www.hse.gov.uk/humanfactors/>





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**So what have we found in our investigations?**

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## **What happens when we ask your workers about their training:**

Investigator: What I'm particularly interested in is if in any training process where you've been sat down and you've gone through the document, either individually or as a group. Has that ever occurred?

Operator Ans:

No, it hasn't. Not that I recall.

Investigator: So it's a document you think is available in the crib room but you haven't actually been trained specifically on the document?

Operator Ans.

No, not the strata.

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## Housekeeping

- Get rid of old or out of date documents from notice boards, crib rooms and inside vehicles
- If a document is worth putting up it is worth the time to explain it and ensure all the relevant persons understand it.

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## Appropriate training:

‘When questioned about this relationship between parts per million of CO and the volume of CO per minute few of the deputies could explain the relationship or recall what the various trigger levels were.

When the mine deputies were asked what training they had received with respect to the mines spontaneous combustion plan it became apparent they had been made aware of the document and received training that was the same as that for the general workforce.’

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## The Role of Training in a WHS Act investigation



So what  
do the  
Courts  
say?



Department  
of Industry  
Resources Regulator

Mine Safety

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## Safety training not necessary for stepladder

### [Cowie v Gungahlin Veterinary Services Pty Ltd](#) [\[2016\] ACTSC 311 \(25 October 2016\)](#)

An employer didn't breach its duty of care to a worker, in failing to instruct her on how to safely use a stepladder, because using the ladder was a "relatively straightforward" task, a court has found.

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## WorkCover Authority of NSW (Inspector Moore) v E & T Bricklaying Pty Ltd [2015] NSWDC 369

‘c) Ensuring that workers using the scaffold were properly trained and instructed in relation to the risks inherent in working with metal material from scaffold proximate to overhead power lines and in relation to the use of control measures to minimise those risks.

There was no instruction or training and accordingly the failure alleged in this particular is made out.

The greater and more foreseeable the risk the higher the duty to provide the appropriate information training and instruction.’

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The Defendant failed to ensure the provision of adequate information, training and instruction that was necessary to protect the Workers from the Risks in that the Defendant failed to take the following measures:

- (a) the provision to the Workers of a documented safe work procedure based upon a risk assessment of the process it developed for the Work;
- (b) the provision to the Workers of information and instruction about the steps and the sequence to be followed for undertaking the Task set out in a documented safe work procedure developed for the Work;



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## **NSW Resource Regulator**

<http://www.resourcesandenergy.nsw.gov.au/regulation>

## **Enforcement Policy**

<http://www.resourcesandenergy.nsw.gov.au/miners-and-explorers/safety-and-health/about-us/major-investigations/enforcement-policy>

## **NSW Resource Regulator monthly business activity**

[http://www.resourcesandenergy.nsw.gov.au/\\_data/assets/pdf\\_file/0004/682240/rr-bar-august-2016.pdf](http://www.resourcesandenergy.nsw.gov.au/_data/assets/pdf_file/0004/682240/rr-bar-august-2016.pdf)

## **Prosecution summaries**

<http://www.resourcesandenergy.nsw.gov.au/regulation/compliance-and-enforcement/prosecution-summaries>



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Questions?



Department  
of Industry  
Resources Regulator

Mine Safety