

BETWEEN:

KATHRYN DEAL
Appellant

and

FATHER PIUS KODAKKATHANATH
Respondent



10

RESPONDENT'S SUBMISSIONS

PART I – CERTIFICATION FOR PUBLICATION ON THE INTERNET:

1. The respondent certifies that these submissions are in a form suitable for publication on the Internet.

PART II – CONCISE STATEMENT OF THE ISSUES PRESENTED BY THE APPEAL:

2. The principal issues presented by the appeal are –
 - (a) the proper construction of regs 3.1.1–3.1.3 of the *Occupational Health and Safety Regulations 2007* (Vic); and
 - (b) whether the Court of Appeal erred in finding that there was no evidence upon which the jury could reasonably have found for the appellant in respect of her claim for breach of statutory duty.

20

PART III – SECTION 78B OF THE JUDICIARY ACT 1903 (CTH):

3. The respondent considers that notice need not be given under s 78B of the *Judiciary Act 1903* (Cth).

PART IV – MATERIAL FACTS:

4. The facts set out in Part V of the appellant's submissions are substantially accurate. In addition, the respondent refers to the appellant's evidence that –
 - (a) at the time of the injury, she was using the step ladder to remove a number of small, light, papier-mâché props of various shapes and sizes that had been affixed to a display board by pins (**T 147.7–13; T 167.8–9; T 170.19–23; T 171.4–10**);

30

- (b) the props were not heavy or awkward to carry (T 171.8–9);
- (c) the props consisted of scrunched-up paper that was only just joined to cardboard bases, so they could move on their own and had a tendency to move when other props were placed on top of them (T 171.11–16);
- (d) she carried three or four props placed on top of each other (T 167.27–8; T 172.17–18);
- (e) the props did move a little bit because of the way that she was carrying them (T 171.28–30);
- (f) she did not remove one prop at a time because that would have required her to make 28 separate trips, which was *'just not efficient'* (T 150.7–8; T 172.25–7);
- (g) removing the pins from the display board did not cause her any problem (T 148.29–T 149.10);
- (h) before September 2007, she did not know of any problem with the step ladder (T 153.6–8);
- (i) she probably did not consider that it would be in any way dangerous to use the step ladder for the purpose of affixing a number of small, light props to the display board (T 153.20–3); and
- (j) after returning to work and becoming a member of the occupational health and safety committee, she did not see the step ladders as being *'a problem as such'* and might not have raised any issue about them (T 151.17–T 153.8).

5. As to [9] of the appellant's submissions, in sworn answers to the appellant's interrogatories that were tendered at the trial (AB ##), the respondent –

- (a) stated that, prior to 19 September 2007, the respondent had undertaken hazard identification pursuant to reg 3.1.1 of the *Occupational Health and Safety Regulations 2007* (Vic) with respect to the task being performed by the appellant at the time that she sustained the injury;
- (b) identified a document entitled *'Manual Handling Risk Assessment (16)'* for the task of *'[h]anging large/heavy art work for displays'* around the school (AB ##) and a document entitled *'Manual Handling Risk Assessment (17)'* for the task of *'[h]anging paper & cardboard displays'* in classrooms and hallways (AB ##); and

- (c) stated that the respondent was unable to specify the date on which either hazard identification had been performed.
6. Further, the ‘*system of work summarised in the last preceding paragraph*’ should be understood as a reference to the system of work summarised by Digby AJA at [218] of the reasons (AB ##).

PART V – LEGISLATION:

7. In addition to the provisions identified in Part VII of the appellant’s submissions, the following provisions are relevant –
- (a) *Occupational Health and Safety Act 2004* (Vic) ss 20–1; and
- 10 (b) *Occupational Health and Safety Regulations 2007* (Vic) reg 1.1.7.
8. The additional provisions are contained in Annexure A.

PART VI – ARGUMENT:

9. Regulation 3.1.1 of the *Occupational Health and Safety Regulations 2007* (Vic) relevantly provides –

3.1.1 Hazard identification

- (1) An employer must, so far as is reasonably practicable, identify any task undertaken, or to be undertaken, by an employee involving hazardous manual handling.

Notes

20 Act compliance—section 21 (see regulation 1.1.7).

...

10. Regulation 3.1.2 relevantly provides –

3.1.2 Control of risk

- (1) An employer must ensure that the risk of a musculoskeletal disorder associated with a hazardous manual handling task affecting an employee is eliminated so far as is reasonably practicable.

Note

Act compliance—section 21 (see regulation 1.1.7).

- 30 (2) If it is not reasonably practicable to eliminate the risk of a musculoskeletal disorder associated with a hazardous manual handling task affecting an employee, an employer must reduce that risk so far as is reasonably practicable by—

- (a) altering—
- (i) the workplace layout; or

- (ii) the workplace environment, including heat, cold and vibration, where the task involving manual handling is undertaken; or
- (iii) the systems of work used to undertake the task; or
- (b) changing the objects used in the task involving manual handling; or
- (c) using mechanical aids; or
- (d) any combination of paragraphs (a) to (c).

Notes

10

1 Act compliance—section 21 (see regulation 1.1.7).

...

11. Regulation 1.1.5 provides (among other things) –

- (a) ‘*musculoskeletal disorder*’ relevantly means ‘*an injury ... that arises in whole or in part from manual handling in the workplace*’;
- (b) ‘*manual handling*’ means ‘*any activity requiring the use of force exerted by a person to lift, lower, push, pull, carry or otherwise move, hold or restrain any object*’; and
- (c) ‘*hazardous manual handling*’ relevantly means –

(a) manual handling having any of the following characteristics—

20

- (i) repetitive or sustained application of force;
- (ii) repetitive or sustained awkward posture;
- (iii) repetitive or sustained movement;
- (iv) application of high force being an activity involving a single or repetitive use of force that it would be reasonable to expect that a person in the workforce may have difficulty undertaking;

...

(v) exposure to sustained vibration;

(b) manual handling of live persons or animals;

30

(c) manual handling of unstable or unbalanced loads or loads that are difficult to grasp or hold ...

12. Each of reg 3.1.1(1), 3.1.2(1) and (2) contains at its foot a note that states: ‘*Act compliance—section 21 (see regulation 1.1.7)*.’ The effect this note is explained in reg 1.1.7 as follows –

If a note at the foot of a provision of these Regulations states “Act compliance” followed by a reference to a section number, the regulation provision sets out the way in which a person’s duty or obligation under that section of the Act is to be performed in relation to the matters and to the extent set out in the regulation provision.

Note

A failure to comply with a duty or obligation under a section of the Act referred to in an “Act compliance” note is an offence to which a penalty applies.

13. It follows that regs 3.1.1(1), 3.1.2(1) and (2) set out the way in which an employer’s duty under s 21 of the *Occupational Health and Safety Act 2004* (Vic) is to be performed. Section 21 provides that the employer must, so far as is reasonably practicable, provide and maintain for its employees a working environment that is safe and without risks to health. A contravention of that provision is an indictable offence.

14. Each of regs 3.1.1–3.1.2 and s 21 contains the phrase ‘*so far as is reasonably practicable*’.

10 That phrase is given content by s 20(2) of the Act, which provides –

To avoid doubt, for the purposes of this Part and the regulations, regard must be had to the following matters in determining what is (or was at a particular time) reasonably practicable in relation to ensuring health and safety—

- (a) the likelihood of the hazard or risk concerned eventuating;
- (b) the degree of harm that would result if the hazard or risk eventuated;
- (c) what the person concerned knows, or ought reasonably to know, about the hazard or risk and any ways of eliminating or reducing the hazard or risk;
- (d) the availability and suitability of ways to eliminate or reduce the hazard or risk;
- (e) the cost of eliminating or reducing the hazard or risk.

20

15. The table in Annexure B identifies provisions in other Australian jurisdictions that correspond to ss 20–1 of the Act, reg 1.1.5 (definitions of ‘*musculoskeletal disorder*’ and ‘*hazardous manual handling*’), reg 1.1.7 and regs 3.1.1–3.1.3.

16. At [99] of the reasons (**AB ##**), Warren CJ and Ashley JA correctly recognised that the applicable test was that discussed by members of the Court in *Naxakis v Western General Hospital*.¹ The question was whether, upon the proper construction of regs 3.1.1–3.1.3, there was evidence upon which the jury could reasonably have found for the appellant in respect of her claim for breach of statutory duty. If that question were answered negatively, as it was, then the trial judge was obliged to withdraw the appellant’s claim for breach of statutory duty from the jury’s consideration.

30

¹ (1999) 197 CLR 269, 274–5 [16]–[17], 281–2 [39]–[40], 289–90 [58] (*Naxakis*).

17. In *Metropolitan Railway Co v Jackson*,² Lord Cairns LC emphasised the separate and distinct functions of the judge and the jury in the trial of a common law negligence action. His Lordship said –

10

The Judge has a certain duty to discharge, and the jurors have another and a different duty. The Judge has to say whether any facts have been established by evidence from which negligence *may be* reasonably inferred; the jurors have to say whether, from those facts, when submitted to them, negligence *ought to be* inferred. It is, in my opinion, of the greatest importance in the administration of justice that these separate functions should be maintained, and should be maintained distinct. It would be a serious inroad on the province of the jury, if, in a case where there are facts from which negligence may reasonably be inferred, the Judge were to withdraw the case from the jury upon the ground that, in his opinion, negligence ought not to be inferred; and it would, on the other hand, place in the hands of the jurors a power which might be exercised in the most arbitrary manner, if they were at liberty to hold that negligence might be inferred from any state of facts whatever.³

18. In *Commissioner for Railways (NSW) v Corben*,⁴ Jordan CJ (with whom Halse Rogers and Street JJ concurred) set out this passage and then observed –

20

The latter would simply mean, as was said by Hamilton LJ (as he then was) in *Newberry v Bristol Tramways & Carriage Co Ltd* [107 LT 801 at 804], ‘that a jury can fix a defendant with liability for want of care, without proof given or reason assigned, out of their own inner consciousness, and on their own notions of the fitness of things.’⁵

19. Further, in *De Gioia v Darling Island Stevedoring & Lighterage Co Ltd*,⁶ Jordan CJ said –

30

If the Judge is of opinion that the evidence given on behalf of the plaintiff, assuming it to be accepted by the jury, would be incapable of supporting a verdict for the plaintiff, either because it supplies no evidence of some essential matter or provides only such a mere scintilla of evidence that reasonable men could not act on it assuming that they accepted it, it is his duty to nonsuit or, if the defendant does not go into evidence and supply the deficiency in his case, to direct a verdict for the defendant ...⁷

20. In the present case, it was the duty of the trial judge to determine –

- (a) *first*, the proper construction of regs 3.1.1–3.1.3, which was a complex issue, having regard to the interlocking nature of those provisions and the ‘nested’ definitions employed within them; and

² (1877) 3 App Cas 193.

³ Ibid 197 (emphasis in original), cited in *Dickson v Commissioner for Railways (Qld)* (1922) 30 CLR 579, 583.

⁴ (1938) 39 SR (NSW) 55.

⁵ Ibid 58–9.

⁶ (1941) 42 SR (NSW) 1.

⁷ Ibid 3 (citation omitted).

- (b) *secondly*, whether, upon the proper construction of regs 3.1.1–3.1.3, there was a legal basis for the appellant’s claim for breach of statutory duty to be left to the jury.
21. The issue of construction had to be determined before the *Naxakis* test could be applied: until the trial judge had construed regs 3.1.1–3.1.3, he was unable to identify all of the facts that were material to the appellant’s claim for breach of statutory duty.
22. Applying the *Naxakis* test, Warren CJ and Ashley JA found that there was evidence upon which the jury could reasonably have found that –
- (a) the traumatic injury to the appellant’s right knee was a ‘*musculoskeletal disorder*’;⁸ and
- 10 (b) at the time she suffered that injury, the actual task being undertaken by the appellant involved both ‘*manual handling*’⁹ and ‘*hazardous manual handling*’.¹⁰
23. At [120] of the reasons (**AB ##**), Warren CJ and Ashley JA accepted Digby AJA’s view at [289]–[291] (**AB ##**) that regs 3.1.1–3.1.3 should be applied in a prospective manner to the extent that they require employers ‘*to look forward and address in a hypothetical way a certain class of tasks which may give rise to risk of musculoskeletal disorder as a result of manual handling in the workplace.*’¹¹ Thus, reg 3.1.1 required the respondent to identify the generic tasks to be undertaken by the appellant and to determine, so far as it was reasonably practicable to do so, whether any of those tasks involved ‘*hazardous manual handling*’, as that expression is defined in reg 1.1.5.
- 20 24. At [145] (**AB ##**), Warren CJ and Ashley JA identified the relevant generic task as ‘*removing light displays from pin boards using steps of the kind used by the appellant*’ and concluded that the jury could not have found that it was reasonably practicable for the respondent to identify that generic task as involving hazardous manual handling. Their Honours’ conclusion was correct. There was evidence that the actual task being undertaken by the appellant at the time of the injury involved ‘*hazardous manual handling*’ within para (c) of the definition, namely, manual handling of an unstable or unbalanced load or a load that was difficult to grasp or hold. In particular, the appellant gave evidence that –

⁸ Reasons, [136] (**AB ##**).

⁹ Ibid [111] (**AB ##**), [126] (**AB ##**).

¹⁰ Ibid [116]–[118] (**AB ##**).

¹¹ Ibid [289] (**AB ##**).

- (a) at the time of the injury, she was using the step ladder to remove a number of small, light, papier-mâché props of various shapes and sizes that had been affixed to a display board by pins (T 147.7–13; T 167.8–9; T 170.19–23; T 171.4–10);
- (b) the props consisted of scrunched-up paper that was only just joined to cardboard bases, so they could move on their own and had a tendency to move when other props were placed on top of them (T 171.11–16);
- (c) she carried three or four props placed on top of each other (T 167.27–8; T 172.17–18);
- 10 (d) the props did move a little bit because of the way that she was carrying them (T 171.28–30); and
- (e) she did not remove one prop at a time because that would have required her to make 28 separate trips, which was *'just not efficient'* (T 150.7–8; T 172.25–7).
25. The actual task undertaken by the appellant, however, was materially different from the generic task. As Warren CJ and Ashley JA observed at [145] (AB ##), if the actual task fell within para (c) of the definition of *'hazardous manual handling'*, it did so because the appellant chose to handle multiple papier-mâché props at one time, which meant that she had to descend the step ladder using both of her hands to carry the props horizontally in front of her body. By contrast, the generic task identified by their Honours did not involve the handling of papier-mâché props that were constructed in such a way that they
- 20 had a tendency to move, especially when other props were placed on top of them; nor did it involve the use of both hands to carry three or four props placed on top of each other.
26. Although Warren CJ and Ashley JA's conclusion at [145] (AB ##) of the reasons was sufficient to decide the appeal, their Honours also considered the operation of reg 3.1.2. The analysis at [146] (AB ##) assumed, contrary to their Honours' conclusion at [145] (AB ##), that there was evidence upon which the jury could reasonably have found that the respondent should have identified the generic task as involving hazardous manual handling.
27. The critical phrase in reg 3.1.2 is *'the risk of a musculoskeletal disorder associated with a hazardous manual handling task'*, which directs attention to the expression *'associated with'*. At [25] of
- 30 her submissions, the appellant submits that the meaning given by Warren CJ and

Ashley JA to ‘*associated with*’ is not the plain and ordinary meaning of that expression, and she seeks to support her submission by reference to dictionary definitions.

28. The statutory meaning of ‘*associated with*’ should not be equated with the plain or ordinary meaning of that expression uprooted from its statutory context.¹² The statutory meaning cannot be determined simply by taking the text of reg 3.1.2 in one hand and a dictionary in the other.¹³ Rather, the statutory meaning must be determined according to the principles of statutory construction. Those principles require that attention be directed to a number of contextual considerations, including the surrounding text, the relationship between reg 3.1.2 and other regulations, and the operation of other regulations. Purpose is relevant.¹⁴ At [143] of the reasons (**AB ##**), Warren CJ and Ashley JA specifically referred to the fact that the Act and the Regulations are concerned with workplace safety. However, the beneficial purpose of the Regulations does not dictate the meaning of ‘*associated with*’. In *Waugh v Kippen*,¹⁵ Gibbs CJ, Mason, Wilson and Dawson JJ referred to a potential conflict between the principle that industrial safety legislation should be broadly construed and the principle that ambiguity in penal legislation should be resolved in favour of the subject. Their Honours went on to say –

If such a conflict was to arise, *the court must proceed with its primary task of extracting the intention of the legislature from the fair meaning of words by which it has expressed that intention*, remembering that it is a remedial measure passed for the protection of the worker. It should not be construed so strictly as to deprive the worker of the protection which Parliament intended that he should have ... In such a context the strict construction rule is indeed one of last resort. Furthermore, the process of construction must yield for all purposes a definitive statement of the incidence of an obligation imposed on the employer. The legislature cannot speak with a forked tongue.¹⁶

¹² *Collector of Customs v Agfa-Gevaert* (1996) 186 CLR 389, 396–7; *Aktiebolaget Hässle v Alphapharm Pty Ltd* (2002) 212 CLR 411, 428–9 [36]. See also *Charter Reinsurance Co Ltd v Fagan* [1997] AC 313, where Lord Hoffman said (at 391) in the context of a reinsurance policy –

I think that in some cases the notion of words having a natural meaning is not a very helpful one. Because the meaning of words is so sensitive to syntax and context, the natural meaning of words in one sentence may be quite unnatural in another. Thus a statement that words have a particular natural meaning may mean no more than that in many contexts they will have that meaning. In other contexts, their meaning will be different but no less natural.

¹³ See *Weiss v The Queen* (2005) 224 CLR 300, 305 [10].

¹⁴ *Interpretation of Legislation Act 1984* (Vic) s 35(a).

¹⁵ (1986) 160 CLR 156.

¹⁶ *Ibid* 164–5 (emphasis added) (citations omitted).

29. Their Honours' emphasis on the primacy of the statutory language is consistent with the modern approach to construction that has been identified in more recent decisions of the Court.¹⁷

30. Further, in *Carr v Western Australia*,¹⁸ Gleeson CJ said –

In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act is to be preferred to a construction that would not promote that purpose or object. ... That general rule of interpretation, however, may be of little assistance where a statutory provision strikes a balance between competing interests, and the problem of interpretation is that there is uncertainty as to how far the provision goes in seeking to achieve the underlying purpose or object of the Act. Legislation rarely pursues a single purpose at all costs.¹⁹

31. As Warren CJ and Ashley JA recognised, the expression '*associated with*' takes colour from its context. In the present case, [143]–[144] of the reasons (AB ##) disclose that three contextual matters were of importance –

- (a) *first*, the fact that reg 3.1.2 requires an employer to eliminate, reduce or control the risk of musculoskeletal disorder associated with a hazardous manual handling task suggests that the risk to be eliminated, reduced or controlled should be associated with one or more of the hazards identified in paras (a)–(c) of the definition of '*hazardous manual handling*';
- (b) *secondly*, the obligations imposed on an employer by reg 3.1.2 have to be applied prospectively; and
- (c) *thirdly*, as stated at [13] above, an employer who contravenes reg 3.1.2 will have committed an indictable offence under s 21 of the Act.

32. Having regard to these matters, Warren CJ and Ashley JA were correct to hold that reg 3.1.2 should be construed such that a close connection is required between the risk of musculoskeletal disorder and the hazardous manual handling task. The nature of the close connection is to be understood by an examination of the considerations supporting their Honours' reasons. The connection must be close in that –

¹⁷ See, eg, *Sbi v Migration Agents Registration Authority* (2008) 235 CLR 286, 311–12 [92]; *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue (NT)* (2009) 239 CLR 27, 46–7 [47]; *Federal Commissioner of Taxation v Consolidated Media Holdings Ltd* (2012) 250 CLR 503, 519 [39].

¹⁸ (2007) 232 CLR 138.

¹⁹ *Ibid* 142–3 [5]. See also *Kelly v The Queen* (2004) 218 CLR 216, 232–3 [41]–[43]; *Nicholls v The Queen* (2005) 219 CLR 196, 207 [8].

- (a) it must be reasonably practicable to identify prospectively the connection between the risk and the task; and
- (b) the risk must be associated with one or more of the hazards identified in paras (a)–(c) of the definition of ‘*hazardous manual handling*’.

33. At [146] of the reasons (**AB ##**), again applying *Naxakis*, Warren CJ and Ashley JA observed that there was evidence upon which the jury could reasonably have found a ‘*certain causative relationship*’ between the musculoskeletal disorder suffered by the appellant and the actual task that she was undertaking at the time of the injury. But such a connection was insufficient: when reg 3.1.2 was applied prospectively, it could not be said
10 that the risk of musculoskeletal disorder was closely connected to the generic task of ‘*removing light displays from pin boards using steps of the kind used by the appellant*’, because that risk was not capable of being associated with the hazard identified in para (c) of the definition of ‘*hazardous manual handling*’.

34. The appellant’s submissions at [26]–[28] are directed to [147]–[149] of the reasons (**AB ##**), where Warren CJ and Ashley JA referred to observations made by J Forrest J in *Lindsay-Field v Three Chimneys Farm Pty Ltd*.²⁰ In response, the respondent makes the following submissions –

- (a) *First*, at [149] of the reasons (**AB ##**), Warren CJ and Ashley JA said only that, while the circumstances of the present case were markedly different from those
20 of *Lindsay-Field*, the first three sentences of J Forrest J’s observations ‘*fit in*’ with what they had said at [143]–[145] (**AB ##**). Their Honours’ comment is justified when one considers the ‘hazard’ associated with the risk of injury in *Lindsay-Field*. In that case, the plaintiff had suffered injury as a result of being kicked in the head by a mare. J Forrest J found that, at the time of her injury, the plaintiff was not engaged in any lifting, pushing or pulling, and she was not holding the mare.²¹ It was the position that the plaintiff had taken up at the rear of the mare that constituted the ‘hazard’, but that was not a hazard identified in paras (a)–(c) of the

²⁰ [2010] VSC 436 (*Lindsay-Field*).

²¹ [2010] VSC 436, [102].

definition of 'hazardous manual handling' in reg 13(2) of the *Occupational Health and Safety (Manual Handling) Regulations 1999* (Vic).²²

- (b) *Secondly*, and in consequence, Warren CJ and Ashley JA's comment at [149] of the reasons (AB ##) constituted no more than a passing observation and was not a necessary part of the decision. The *ratio decidendi* appears at [145] (AB ##).

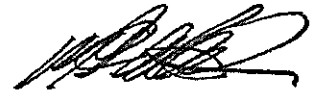
PART VII – NOTICE OF CONTENTION:

35. The respondent abandons the notice of contention.

PART VIII – ORAL ARGUMENT:

- 10 36. The respondent estimates that he will require one hour for the presentation of oral argument.

DATED: 19 February 2016



Michael Wheelahan
Aickin Chambers
Tel: (03) 9225 8475

Email: mfvheelahan@vicbar.com.au

20



Shaun Gladman
Owen Dixon Chambers
Tel: (03) 9225 6638

Email: sgladman@vicbar.com.au

30

²² The definition of 'hazardous manual handling' in reg 13(2) of the *Occupational Health and Safety (Manual Handling) Regulations 1999* (Vic) was materially the same as the definition of that expression in reg 1.1.5 of the *Occupational Health and Safety Regulations 2007* (Vic).

Annexure A

Legislation referred to at [7]

PART 3—GENERAL DUTIES RELATING TO HEALTH AND SAFETY

Division 1—The concept of ensuring health and safety

20 The concept of ensuring health and safety

- (1) To avoid doubt, a duty imposed on a person by this Part or the regulations to ensure, so far as is reasonably practicable, health and safety requires the person—
 - (a) to eliminate risks to health and safety so far as is reasonably practicable; and
 - (b) if it is not reasonably practicable to eliminate risks to health and safety, to reduce those risks so far as is reasonably practicable.
- (2) To avoid doubt, for the purposes of this Part and the regulations, regard must be had to the following matters in determining what is (or was at a particular time) reasonably practicable in relation to ensuring health and safety—
 - (a) the likelihood of the hazard or risk concerned eventuating;
 - (b) the degree of harm that would result if the hazard or risk eventuated;
 - (c) what the person concerned knows, or ought reasonably to know, about the hazard or risk and any ways of eliminating or reducing the hazard or risk;
 - (d) the availability and suitability of ways to eliminate or reduce the hazard or risk;

Occupational Health and Safety Act 2004
No. 107 of 2004

Part 3—General Duties Relating to Health and Safety

s. 21

-
- (e) the cost of eliminating or reducing the hazard or risk.

Division 2—Main duties of employers

21 Duties of employers to employees

- (1) An employer must, so far as is reasonably practicable, provide and maintain for employees of the employer a working environment that is safe and without risks to health.
- Penalty: 1800 penalty units for a natural person;
9000 penalty units for a body corporate.
- (2) Without limiting subsection (1), an employer contravenes that subsection if the employer fails to do any of the following—
- (a) provide or maintain plant or systems of work that are, so far as is reasonably practicable, safe and without risks to health;
 - (b) make arrangements for ensuring, so far as is reasonably practicable, safety and the absence of risks to health in connection with the use, handling, storage or transport of plant or substances;
 - (c) maintain, so far as is reasonably practicable, each workplace under the employer's management and control in a condition that is safe and without risks to health;
 - (d) provide, so far as is reasonably practicable, adequate facilities for the welfare of employees at any workplace under the management and control of the employer;

Occupational Health and Safety Act 2004
No. 107 of 2004
Part 3—General Duties Relating to Health and Safety

s. 22

-
- (e) provide such information, instruction, training or supervision to employees of the employer as is necessary to enable those persons to perform their work in a way that is safe and without risks to health.
- (3) For the purposes of subsections (1) and (2)—
- (a) a reference to an employee includes a reference to an independent contractor engaged by an employer and any employees of the independent contractor; and
 - (b) the duties of an employer under those subsections extend to an independent contractor engaged by the employer, and any employees of the independent contractor, in relation to matters over which the employer has control or would have control if not for any agreement purporting to limit or remove that control.
- (4) An offence against subsection (1) is an indictable offence.

Note

However, the offence may be heard and determined summarily (see section 53 of, and Schedule 4 to, the **Magistrates' Court Act 1989**).

22 Duties of employers to monitor health and conditions etc.

- (1) An employer must, so far as is reasonably practicable—
- (a) monitor the health of employees of the employer; and
 - (b) monitor conditions at any workplace under the employer's management and control; and
 - (c) provide information to employees of the employer (in such other languages as appropriate) concerning health and safety at
-

Occupational Health and Safety Regulations 2007
S.R. No. 54/2007
Part 1.1—Introductory Matters

r.1.1.7

- (g) a determination of evidence of a specified class for the purpose of the definition of *recognised evidence of construction induction training*;
- (h) a determination of a specified RTO or a class of RTOs for the purpose of the definition of *statement of attainment*.

Note

See Division 2 of Part 7.1 (Administrative Matters).

1.1.7 Act compliance notes

If a note at the foot of a provision of these Regulations states "Act compliance" followed by a reference to a section number, the regulation provision sets out the way in which a person's duty or obligation under that section of the Act is to be performed in relation to the matters and to the extent set out in the regulation provision.

Note

A failure to comply with a duty or obligation under a section of the Act referred to in an "Act compliance" note is an offence to which a penalty applies.

1.1.8 Independent contractors

- (1) A provision of these Regulations that sets out a way that an employer complies with a duty under section 21 or 35 of the Act in relation to employees extends to the employer's duty under that section to an independent contractor engaged by the employer and any employees of the independent contractor.
- (2) If a provision of these Regulations (other than subregulation (1)) provides that an employer's duty under another provision of these Regulations extends to an independent contractor—

Annexure B

Table referred to at [15]

TABLE OF VICTORIAN PROVISIONS AND CORRESPONDING PROVISIONS IN OTHER AUSTRALIAN JURISDICTIONS

Victorian provision	Commonwealth provision	NSW provision	Queensland provision	SA provision	Tasmanian provision	ACT provision	NT provision
Occupational Health and Safety Act 2004	Work Health and Safety Act 2011	Work Health and Safety Act 2011	Work Health and Safety Act 2011	Work Health and Safety Act 2012	Work Health and Safety Act 2012	Work Health and Safety Act 2011	Work Health and Safety (National Uniform Legislation) Act 2011
Section 20	Section 18	Section 18	Section 18	Section 18	Section 18	Section 18	Section 18
Section 21	Section 19	Section 19	Section 19	Section 19	Section 19	Section 19	Section 19
Occupational Health and Safety Regulations 2007	Work Health and Safety Regulations 2011	Work Health and Safety Regulation 2011	Work Health and Safety Regulation 2011	Work Health and Safety Regulations 2012	Work Health and Safety Regulations 2012	Work Health and Safety Regulation 2011	Work Health and Safety (National Uniform Legislation) Regulations 2011
Regulation 1.1.5 ('musculoskeletal disorder')	Regulation 5 ('musculoskeletal disorder')	Regulation 5 ('musculoskeletal disorder')	Regulation 5, sch 19 ('musculoskeletal disorder')	Regulation 5 ('musculoskeletal disorder')	Regulation 5 ('musculoskeletal disorder')	Section 5, dictionary ('musculoskeletal disorder')	Regulation 5 ('musculoskeletal disorder')
Regulation 1.1.5 ('hazardous manual handling')	Regulation 5 ('hazardous manual task')	Regulation 5 ('hazardous manual task')	Regulation 5, sch 19 ('hazardous manual task')	Regulation 5 ('hazardous manual task')	Regulation 5 ('hazardous manual task')	Section 5, dictionary ('hazardous manual task')	Regulation 5 ('hazardous manual task')
Regulation 1.1.7	Regulation 9	Regulation 9	Regulation 9	Regulation 9	Regulation 9	Section 9	Regulation 9
Regulations 3.1.1–3.1.3	Regulation 60; pt 3.1	Regulation 60; pt 3.1	Regulation 60; pt 3.1	Regulation 60; ch 3 pt 1	Regulation 60; pt 3.1	Section 60; pt 3.1	Regulation 60; pt 3.1