



Courtenell

Work Health & Safety Training and Consulting

02 **9516 1499**
train@courtenell.com.au



\$900,000 Reckless Conduct: Why the PCBU was Prosecuted

In a tragic accident a woman was fatally electrocuted in the shower of the cottage in which she lived that was 200 metres away from an open-cut limestone mine. The company that operated the mine was fined \$900,000 for reckless conduct and a worker was fined \$48,000 for breaching his duty of care.

This article looks at why the PCBU was prosecuted for the category one offence of reckless conduct (section 31 WHS Act), and why a worker was prosecuted for breaching his duty of care (section 28 WHS Act)

Why the electrocution occurred

The cottage depended upon the mine for its electricity supply. On the day of the fatal incident an electrical fault occurred in equipment at the mine that resulted in electrical charge travelling through the earth to the cottage and charging all metal components in the cottage that were connected to the earth.

The judge concluded that; *“Ms Liehr’s death was caused by electrocution when she came into contact with the metallic flexible shower hose, whilst standing on the metallic waste drain in the shower recess. Dangerous electrical voltage was present in the metallic fixtures of the Cottage as a result of a fault in the low voltage system of the Mine.”*

Why the PCBU was prosecuted for reckless conduct

The Judge listed 7 reasonably practicable steps the PCBU could have taken but did not take, to eliminate or minimise the risk of injury to the occupants of the cottage.

In addition he pointed out that; *“The direction of an unqualified person to install the switchboard to save costs was an act devoid of social utility, so that the foresight of the possibility of the risk of serious injury or death arising was sufficient to constitute recklessness.”*

In addition, the recklessness of the PCBU was aggravated by the history of electrical safety issues that were identified over a number of years and not properly rectified.

The PCBU *“was on notice through those interactions of the importance to design, install and maintain electrical plant to minimise the potential for electric shock, the need for regular inspection and testing of electrical installations, the importance of retaining qualified electricians to inspect and maintain electrical equipment and the risks associated with inadequately maintained electrical cables.”*

Why the Worker was prosecuted

The Worker who carried out the electrical work at the mine though unqualified to do so was prosecuted because he had breached his duty of care by failing; *“to take reasonable care that his acts or omissions did not adversely affect the health and safety”* of other persons.

“The risk posed by undertaking unqualified electrical work was obvious. The Worker “could have simply refused to do the work”.

Note:

1. You can read the full judgement at this link.

Stephen James Orr v Cudal Lime Products Pty Ltd; Stephen James Orr v Simon Shannon [2018] NSWDC 27

2. In addition to their fines the PCBU and the worker have to pay the costs of the prosecution.