

DUTY OF CARE OWED TO CONTRACTORS & SUB-CONTRACTORS

The common law of Australia, and Victorian Occupational Health and Safety legislation, impose obligations on Victorian Municipalities to ensure the safety of contractors or sub-contractors undertaking work on behalf of Municipalities.

For some time, the extent to which Municipalities were/are required to ensure the safety of contractors or sub-contractors has been unclear.

On 2/9/2009, the High Court of Australia, unanimously ruled the common law duty owed on this issue, is narrower, than what was previously believed.

See Leighton & Another - v – Fox www.austril.edu.au/au/cases/cth/hca/2009/35.html

The salient facts of the above case were that Leighton (“L”) was the principal contractor of the development of the Sydney Hilton Hotel.

L contracted with “D” to undertake concreting at the site. D engaged “S and C” to undertake this work. S and C, in turn, engaged Fox, a sub-contractor, to do some of this work. On 7/3/2003, because of the negligence of S and C on site, Fox was severely injured.

Fox sued L, D and, S and C.

In the NSW District Court, S and C were found liable. However, L and D were exonerated.

Because S and C had been deregistered and did not have any insurance, Fox failed.

Fox appealed to the NSW Court of Appeal.

The NSW Court of Appeal found against L and D on the basis both had failed to provide the required on-site safety induction training to Fox. Liability was also found because NSW OH&S legislation required L to effect induction training of Fox, which it did not do.

L and D appealed to the High Court of Australia.

L argued although it owed a duty to take reasonable care to ensure the safety of contractors and sub-contractors on site, because it did not have detailed knowledge of the specialist work which led to Fox’s injuries, it had no duty to provide training and/or safe work methods for this specialized activity .

Unanimously, the High Court agreed with L.

While NSW OH&S legislation imposed a statutory duty on L to undertake induction training of contractors and sub-contractors, this statutory obligation was satisfied by L forming the view all trades on site had undergone general work activity based OH&S induction training. This statutory duty could be discharged by obtaining a copy of the trade’s statement of completion of training in their area of speciality.

D also escaped liability.

The High Court found D was not required to provide induction training of other specialists trades coming on the site either. Provided it had contracted with specialist trades, its obligations had been discharged along the same lines outlined above in relation to L.

IMPLICATIONS

While Municipalities may not act as principal contractors but rather, as principals, in the engaging of contractors, the Leighton decision very much narrows the common law duty owed to such contractors.

Therefore, Municipal tenders, contractual terms and importantly, inductions practises should all be reviewed in light of the Leighton decision.

While the Leighton decision did not specifically apply to an OH&S prosecution, it is now clear this decision, and available Tort Reforms, may now be used to defend, and defeat, WorkSafe prosecutions.