

October 2020

DO YOU NEED TO FENCE YOUR DAM OR POND?

- 
- Choosing the Right Respirator for Employees.
 - Can we Enforce Temperature Checks?
 - Do I Have to Guard Unused Equipment or Areas?
 - Penalties Survey.

What's New in October?

Welcome to the October Safety News.

As Summer approaches, our minds turn to safety around water and whether dams and ponds require the same fencing rules as pools.

Enter our Penalties Survey on page 5 to be in the draw to win a prize! We will announce the winner at our next webinar on the 13th October (registration below).

Due to COVID-19 many workplace's are conducting temperature checks on entry and we look into whether it can be enforced, as well as how to choose the right respirator to keep your employees safe.



Andrea Rowe

Stay Safe!

Safety Webinar – 13th October 10am

We invite you to join us at **10am on Tuesday 13th October** for our free monthly webinars to keep you up to date on workplace health and safety. Gary and the team present short informal sessions of only 20 to 30 minutes on topical issues and to answer your questions.

[Register here](#)

Missed our last webinar? View them [here](#)

SAFETY ACTION TEAM



Gary



Stephen



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Sarah



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Do I Need to Fence My Dam or Pond?

Have you noticed there are strict rules on safety fences for pools, but no apparent controls for access to rivers, lakes, dams, ponds and the ocean for that matter?



If there is a risk of children or adults drowning surely, we should apply similar rules to all bodies of water? However, most jurisdictions mandate pool safety fences if the pool, spa or pond is deeper than 30cm, and the fence needs to be at least 1.2m high with no foot holds eg prevent climbing.



Children swimming in a dam

Typically, dams and similar bodies of water, particularly if open to the public, should be fenced if swimming or water sports including fishing is allowed or encouraged. However, if appropriate signage is displayed prohibiting swimming and associated activities then fencing is not required.

Safety fences are not compulsory for dams not intended for swimming



Typical signage to warn of deep water and prohibit swimming or fishing

What is Correct Height for a Safety Fence?

The anomalies with the correct height of safety fences go beyond water hazards, per previous article, and includes the standards for machinery hazards and fall hazards. Strangely, the required height of a safety fence depends upon the purpose. For example:

1. **1.6m Machinery barriers** per AS 4024
2. **1.5m Construction sites temporary fencing** per AS 4687
3. **1m Falls handrails** per Building Regs & AS 1567
4. **1.2m Swimming pools** per Building Regs

Do I Need a Licence to Operate a Chainsaw?

Clearly, chainsaws are potentially dangerous, and their use has resulted in many serious and fatal accidents.

So, should I have a licence to operate a chainsaw?

There is no category within the workplace safety regulations specifically for chainsaws and therefore no licence is required or available. However, licences are required for a number of specific items of plant and include:

- Scaffolding
- Boom elevator work platform
- Lifts, crane and hoist operation (as specified)
- Dogman and riggers
- Forklift & order picking fork truck
- Concrete placing boom



So how do we control the safety of our workers using potentially hazardous equipment like chainsaws, or other power tools with no licence category?

The answer is for each company to set a training and competency standard. This could include sending workers to recognised TAFE or other training courses, or training personnel in-house.

We recommend a skills matrix be maintained for all licensed and hazardous un-licensed plant use. [Click here](#) for a Sample Skills Matrix.

Survey on Penalties for Negligence

This month we are conducting a reader survey to determine what penalty should apply for a given scenario.

Let's put aside the unfortunate Covid situation in Victoria and think what penalty should apply if a large business failed to ensure a simple safety precaution was in place and maintained, like hotel quarantine, but failed to do so and as a result over 700 people died.

For the purpose of this survey the evidence shows the directors and senior managers:

- i) Knew about the risk and the potential for fatal consequences, as evidenced by their frequent statements ***"everyone must follow the safety rules or people will die"***.
- ii) Did not allocate clear responsibilities and roles for the serious risk.
- iii) Did not make any enquiries to confirm the critical safety precautions were in place, properly resourced and maintained.
- iv) Did not confirm adequate training and supervision was provided for the staff tasked with the day-to-day control of the serious risk.
- v) Did not confirm a risk assessment was conducted to quantify the hazards and rank the importance of each control.
- vi) Did not commission an independent audit to confirm safety and compliance of this important matter.

In mitigation the court heard the directors and senior managers:

- i) Appear to be good corporate citizens and did not intend the unfortunate accident to occur; and
- ii) Were under a lot pressure at the time and possibly received an over-load of information, some of it conflicting or confusing for them as non-technical people.

Select the penalty you believe should apply to the directors and senior managers:

- a) **No Charges laid** eg we understand you didn't mean for it to happen.
- b) **Breach of general duty of care** eg small fine.
- c) **Reckless endangerment** eg possible 5 years jail or fine up to \$600,000.
- d) **Workplace manslaughter** eg possible 20 years jail and \$1.6m fines each.

Click [here](#) to send your survey monkey response (eg a, b, c or d) to us by 5th October to be included in the survey results and the draw for a prize.

We will include the survey results in our webinar on 13th October and next newsletter.

Can We Enforce Temperature Checks?

There is growing debate on what employers can or cannot do to manage safety at work during the COVID pandemic.

Sometimes this gets complicated because the disease is new and the way it spreads and the best way to manage it is still not fully understood. Hence increasing the difficulty and complexity in choosing the correct approach to manage it in the workplace.



One of such case is the right of mandating temperature checks on entry to workplaces.

Can my boss require us to undergo temperature checks?

The short answer to this question is almost certainly "yes", if implemented correctly.

It would be widely regarded as a "**reasonable**" precaution, particularly during current pandemic, to ensure no person with a high temperature (e.g. fever) enters the workplace.

***High Temperature
may or may not
indicate COVID-19***

A person with COVID-19 may or may not have a high temperature, but in any event **a person with a high temperature is unwell and should not be at work** eg they could be a risk to themselves or spreading cold or flu to co-workers.

Some businesses have been enforcing temperature checks long before COVID-19 eg entry to pharmaceutical facilities where even cold or flu symptoms are unacceptable.

Employers have a legal obligation to protect the health and safety of their workers and others in workplaces, and workers have a duty to follow reasonable instructions from their employer eg where necessary to ensure a safe and healthy workplace.

A precautionary protocol like temperature checks on entry is not invasive, time consuming, or threaten privacy, so would almost certainly be deemed **reasonable**. There is also clear evidence of this action being beneficial in helping reduce the risk of unwell people infect others, whether with minor or more serious health concerns.

It is still important to consult your workers prior to the implementation of any new safety controls in the workplace, including temperature checks, and to provide information and instructions for those affected by the implementation of the new controls.

For more information on this topic or a quote for a COVID-19 review give us a call on 03 8544 4300 or [email](#).

Do I Have to Guard Unused Equipment or Areas?

A reader has asked do I have to barricade off dis-used areas and guard unused equipment?

I recall conducting an accident investigation at a timber mill in Gippsland some years ago and after inspecting the equipment involved in the accident, I walked around the site.

I came across a large cross-cut saw with exposed blade in long grass. To my surprise, when we flicked the power switch it roared into life scaring me and my colleague. It had been left unprotected at the back of the site with the power still connected.



Here was a company being investigated for alleged inadequate guarding of their operational plant and we find totally exposed hazardous equipment that had not been properly isolated or de-commissioned.

Another example could involve the top of a dis-used silo with unlocked hatch and little or no handrails. In this case the managers know the silo is not in use and therefore believe they don't need to spend money or time on it to ensure it is safe.

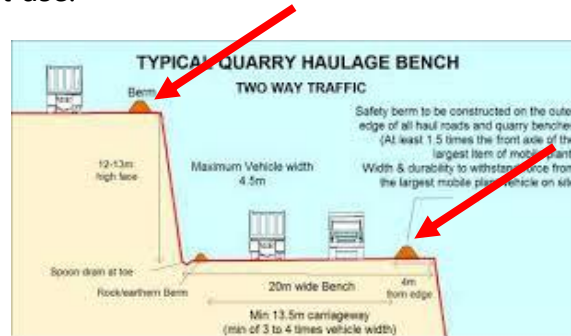
But what if a worker, visitor, or trespasser accessed the top of the silo and fell off or suffocated inside the confined space?

The answer to this question was eloquently provided in a recent case put before the Victorian Court of Appeal eg Keilor Melton Quarries v The Queen VSCA June 2020.

In this case a business (KMQ) held the extractive industry licence for the quarry, but contracted another business to operate the site on their behalf.

In May 2016, an ANL contract driver was reversing his truck to the edge of the top of a stockpile, with the intention of releasing his load of stone, when the truck flipped over the edge and slid down, killing the driver.

The court heard a “bund / berm” (protective barrier of earth typically half wheel height) was previously maintained along the stockpile edge to prevent this type of accident, but the bund had fallen away over time as the stockpile had not been used since 2015, and was not in current use.



Berms near edge of quarry (arrowed)

The quarry owner appealed against its conviction against Vic OHS Act S.26 eg duty of those with control of the workplace, asserting:

- a) The stockpile was not intended to be used (eg unused since December 2015) and therefore it didn't need to maintain the safety barrier (bund); and
- b) The truck driver contravened an instruction not to dump loads on that stockpile; and
- c) The contract firm ANL had control of the site.

The court found the quarry owner held the extractive quarry licence and had the ability and legal duty to maintain a safe site.

It also stated that safety duties extend to protecting workers from their own inattention or carelessness. Acknowledging that the truck driver had been verbally told not to dump stones from the top of the stockpile.

The court concluded a simple barrier with signage prohibiting any truck from entering the top of the stockpile would have prevented the accident.

In summary, yes you do have to protect unused areas and equipment. By:

1. Install barriers (eg temporary construction site fences to AS 4687) to prevent physical access to potentially hazardous areas, whether in use or not.
2. Fully isolate and lock and tag out-of-service any unused equipment, or properly dispose of it.



If you would like an independent review of the risks and how well your business secures unused plant or dis-used areas then [email](mailto:info@safetyaction.com.au) or call us on 03 8544 4300

Choosing the Right Respirator for Employees: Half Face vs Full Face Respirators



Issue

Most employers struggle to select the appropriate respirator to assign to their employees to perform a work task. Different work environments are likely to contain specific airborne contaminants and a failure to assign the correct and suitable respirator inadvertently exposes the worker to the airborne contaminant and causes them harm.

Legislation

In all Australian states and territories employers are required by law to ensure that their workers are provided with a safe workplace, have a safe system of work and given information and training to work safely.

Factors to Consider in Choosing a Respirator

- Identify the hazard or combination of hazard in the work environment.
- After the air-borne contaminant(s) has been identified the likely exposure levels of the airborne contaminant with an area should be determined. For example, air monitoring can be used to determine the amount of contaminant in an environment.
- Determine if respiratory protection is required. This can be verified by testing to see if the exposure level of airborne contaminant in the work environment exceeds the exposure limit as designated by the Safety Authority e.g. Safe Work Australia.
- If the exposure limit is exceeded the respirator should be chosen taking into consideration the following:
 - Nature of the hazard e.g. is it dust vapour or gas
 - The environment in which the respirator will be worn. For example, is it oxygen deficient environment? If it is
 - Duration of work and other personal protective equipment to be worn along with the respirator. This will help the employer ensure that their employees are safe, comfort and mobility requirements considered. In assigning respirators to

employees their medical restrictions should also be considered. For example, some workers with respiratory health issues may be exempt from wearing respirators.

- Prior to procuring a respirator ensure that your workers are **fit tested**. Quantitative fit testing helps to ensure that the respirator selected is a proper fit and provides the required seal around the face of the worker to prevent the airborne contaminant from being inhaled by the worker.
- Use only respirators certified by reputable bodies e.g. NIOSH. Certified masks have undergone vigorous testing and the level of protection they provide scientifically determined.
- Ensure that the respirator selected has an Assigned Protective Factor (APF). The APF is the workplace level of respiratory protection that a class of respirator is expected to provide.



For Respirator Fit Testing, contact us on 03 8544 4300 or [email](#) for further information and a quote.

October – National Safe Work Month

In Australia, October is National Safe Work Month. Workplaces are encouraged to take time to promote health and safety.

This year's theme, **Work Health and Safety through COVID-19**, acknowledges and reflects the wide-reaching impacts of COVID-19 on Australian businesses, employers and workers.

For details and resources to promote health and safety at your workplace, see the [website](#).

Register for WorkSafe Victoria's Navigating through COVID-19' free webinars [here](#).

