

Senate Standing Committee on Education Employment and Workplace Relations

**QUESTIONS ON NOTICE
Budget Estimates 2010-2011**

Agency - Comcare

DEEWR Question No.EW0244_11

Senator Marshall asked on 1/06/2010, Hansard page 29.

Question

BREACHES OF THE OHS ACT 20

CHAIR—Maybe on notice you could just give me a breakdown on who they were, and what the fines were? Mr Kibble—Yes.

Answer

Comcare has provided the following response

Comcare has initiated a total of sixteen civil court-based proceedings since 2004 for alleged breaches of the *Occupational Health and Safety Act 1991* (the OHS Act).

These proceedings are initiated within a graduated framework of regulatory response, from education through mandatory improvement notices to court-based enforcement. It is likely that this will be the tempo of court action for the foreseeable future. Before amendments to the OHS Act in 2004, Comcare was statute barred from taking any civil court actions against the Commonwealth for breaches of the OHS Act.

Ten of the sixteen matters have been finalised, either through a successful application by Comcare to the Court or through the acceptance of a Court enforceable undertaking. Further details of each matter finalised are outlined below.

Employer	Incident	Status
Commonwealth of Australia (Australian Army)	A trooper died in November 2004 in the Northern Territory as a result of heat stress sustained while on an Army promotional training course.	Court judgment 4 May 2007. Declaration of contravention obtained and pecuniary penalty imposed \$198,000.
National Gallery of Australia	On 14 February 2005, a temporary display wall fell in the course of a temporary exhibition being set up at the National Gallery of Australia. One contractor employee was injured.	Court judgment 2 October 2007. Declaration of contravention obtained and pecuniary penalty imposed \$20,000.
Post Logistics Australasia Pty Ltd	A contracted store person working at the Wetherill Park, New South Wales facilities of	Court judgment 4 May 2007.

	Post Logistics was killed in a workplace accident involving a forklift in May 2006.	Declaration of contravention obtained and pecuniary penalty imposed \$198,000.
Commonwealth of Australia (Australian Army)	In March 2007, an Australian Army Cadet (AAC) died as a result of a severe peanut allergy. He was participating in a Scotch College Army Cadet Unit bivouac in the Wombat State Forest, Victoria at the time. The Comcare investigation also found that a number of AACs became lost during the bivouac (the 'lost section').	The judgment was handed down June 2009. Declaration of contravention obtained and pecuniary penalty imposed \$210,100. Comcare also accepted an enforceable undertaking in relation to the 'lost section'.
John Holland Rail Pty Ltd	An employee suffered serious burn injuries (whilst using a friction saw) in an accident that occurred in November 2007 near Kalgoorlie, Western Australia.	The judgment was handed down July 2009. Declaration of contravention obtained and pecuniary penalty imposed \$124,960.
John Holland Rail Pty Ltd	In August 2007, an apprentice boilermaker was involved in an incident which resulted in crush injuries to his left index finger at a John Holland Rail facility located at Kewdale, Western Australia.	On 22 August 2008, Comcare filed proceedings in the Federal Court seeking a declaration of contravention of s16(1) of the Act and the imposition of a pecuniary penalty. Comcare accepted an enforceable undertaking on 28 August 2009. No court proceedings have been advertised.
Asciano Services Pty Ltd	Comcare investigated a November 2007 incident where a 76 tonne Vulcan mobile crane tipped over at the Adelaide Freight Terminal. No worker was injured as a result of this occurrence.	On 23 February 2009, Comcare filed proceedings in the Federal Court seeking a declaration of contravention of s16(1) of the Act and the imposition of a pecuniary penalty. Comcare accepted an enforceable undertaking on 4 September 2009. No court proceedings have been advertised.
John Holland Pty Ltd	An employee died at the Dalrymple Bay Coal Terminal in Queensland in May 2008. The employee was run over by the wheels of a jinker after getting his foot trapped under wooden scaffolding planks of a jetty.	Court judgment 17 December 2008. Declaration of contravention obtained and pecuniary penalty imposed \$180,000.
K&S Freighters Pty Ltd	In December 2007, an employee suffered a serious personal injury (severe crush injuries to pelvis and both legs) at a K&S Freighters stock yard in Chullora NSW as a result of an accident involving a forklift.	Comcare filed civil proceedings in June 2009 seeking a declaration of contravention and the imposition of a pecuniary penalty for an alleged breach of s16(1) of the OHS Act. Comcare accepted an enforceable undertaking on 26 February 2010.

		court proceedings have been ad
Linfox Australia Pty Ltd	A Linfox employee suffered a serious personal injury (severe crush injuries to both legs and left arm). This followed a forklift incident in December 2007 at a Linfox container yard at Welshpool, Western Australia.	Court orders handed down on 2 2010. Declaration of contravention obt and pecuniary penalty imposed \$150,000.