

Olivia Collard
Coroner's Registrar
Coroners Court of Victoria
65 Kavanagh Street
Southbank VIC 3006

Coroners Court Ref: 2020 000482

By email: cpuresponses@coronerscourt.vic.gov.au

Dear Ms Collard

Finding without inquest into the death of Matthew Duncan Gordge

I refer to the findings and recommendation made by Coroner Ryan in relation to the above fatality, received by WorkSafe Victoria (**WorkSafe**) on 17 August 2022. I note that His Honour recommended:

'WorkSafe Victoria consider the viability of including a provision in the Industry Standard – Elevating work platforms that requires all EWPs to be fitted with secondary guarding technology'.

The *Occupational Health and Safety Regulations 2017 (the Regulations)* do not specifically require elevated work platforms (**EWPs**) to be fitted with secondary guarding. WorkSafe is unable to require actions in the *'Industry Standard – Elevating Work Platforms'* dated April 2021 (**the Standard**) that are not required in the Regulations.

While WorkSafe could amend the Regulations, this type of prescriptive requirement would be inconsistent with the performance-based nature of the legislation. The Regulations were drafted in a performance-based manner not only to enable the selection and application of the most effective risk controls within infinitely variable circumstances, but also to provide for the means of compliance to evolve as industry practice develops and improves to involve safer methods of undertaking work. If prescriptive duties (such as installation of secondary guarding) were set out in the Regulations, this could result in duty holders being compelled to employ less effective risk controls for the circumstances they encounter and would need to be changed each time industry practice evolved.

However, in response to the His Honour's recommendation WorkSafe has included stronger (albeit not mandatory) language in the section of the Standard regarding the installation of secondary guarding.

In the section of the Standard titled 'Secondary guarding', in the first sentence at the top of page 36,

which previously read - *'Where there is a risk of crushing against a fixed structure, an effective operator protective device should be fitted.'*, the word 'should' has been replaced with the phrase 'needs to' and the phrase 'so far as is reasonably practicable' has been inserted at the end of the sentence. This sentence now reads - *'Where there is a risk of crushing against a fixed structure, an effective operator protective device needs to be fitted, so far as is reasonably practicable.'*

The change in wording from 'should' to 'must' is significant because the word 'should' is used in the Standard to indicate a recommended optional course of action, whereas the phrase 'needs to' is used to indicate a recommended course of action.

The addition of the phrase 'so far as is reasonably practicable' is necessary, given the use of this stronger wording, because there are circumstances where fitting secondary guarding is not a reasonably practicable course of action and would not be recommended by WorkSafe. Such circumstances include where the risk of crush injury is low and the installation of secondary guarding would undermine the purpose for which the EWP is used and introduce additional risks, or where secondary guarding is not available for the particular EWP.

For example, in the case of an 'Orchard Picking' EWP, where an operator is using the EWP to pick fruit, there is arguably a low risk of a crush injury and the operator would need to lean across the controls and get close to the fruit trees to pick fruit. In these circumstances, secondary guarding, in the form of a cage placed on top of the EWP platform railing, an operator position sensing device, or an EWP hazard sensing device, would clearly inhibit the ability of the fruit picker to do their job and increase the risk of the operator getting tangled in the tree branches.

Similarly, in the example of an 'Insulated Truck Mounted' EWP, an operator is using the EWP to work on powerlines and would need to lean across the controls and get close to the powerlines to work on them. In these circumstances, secondary guarding in the form of a (metal) cage placed on top the EWP platform railing, would limit the operator's access to the power lines and increase the risk of electrocution. Additionally, an operator position or hazard sensing device could not be installed on such EWPs because, to reduce the risk of electrocution, there is no electricity provided to the platform of the EWP.

Similarly, in the case of an 'Insulated Truck Mounted' EWP, an operator is using the EWP to work on powerlines and would need to lean across the controls and get close to the powerlines to work on them. In these circumstances, secondary guarding in the form of a (metal) cage placed on top the EWP platform railing, would limit the operator's access to the power lines and increase the risk of electrocution. Additionally, an operator location or hazard sensing device could not be installed on such EWPs because, to reduce the risk of electrocution, there is no electricity provided to the platform of the EWP.

Additionally, WorkSafe intends to further explore the comments made by His Honour in the finding, to determine the extent to which these suggestions can be incorporated into the safety framework regarding EWPs.

If you require any further information, please do not hesitate to contact Coronial Lawyer, Alex Hillgrove, on [REDACTED] or coronerscourt@worksafe.vic.gov.au.

Yours sincerely



Narelle Beer
Executive Director, Health and Safety
WorkSafe Victoria

16 November 2022