



## SCAFFOLDING COMPANY FINED \$2 MILLION FOR COLLAPSE THAT KILLED APPRENTICE TRADIE

***SafeWork NSW v Synergy Scaffolding* – A reminder that, in addition to the often-tragic personal impact on those involved in safety incidents, there are serious legal and financial consequences imposed on contractors.**

### Introduction

In the recent decision of *SafeWork NSW v Synergy Scaffolding Services Pty Ltd* [2022] NSWDC 584, Synergy Scaffolding Services (**Synergy**) was fined \$2 million for breaching the *Work Health and Safety Act 2011* (NSW) (**Act**) after Christopher Cassaniti died after a 30-metre-high scaffolding structure weighing nearly 18 tonnes collapsed and crushed him.

This case should serve as a stark reminder of just how important it is for contractors and subcontractors have strong leadership that embeds organisation wide commitment to the health and safety of its people. For those organisations that do not, they will continue to put their staff at personal risk, in addition to exposing their company and its officers to legal and financial consequences.

### Facts

Synergy was contracted by GN Residential Construction Pty Ltd (**GN**) to design, protect, maintain, and then dismantle scaffolding for the “Lachlan’s Line” construction project in Macquarie Park, NSW (**Site**).

Synergy’s duties included monthly inspections of the scaffolding tied to Building L1 (**Scaffold**) and to issue a handover certificate thereafter to certify that the Scaffold would be safe to use.

In October 2018, GN discovered that the Scaffold had been tampered with and consequently directed Synergy to perform weekly inspections of the Scaffold.

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In the months leading up to 1 April 2019, the Scaffold was gradually dismantled under the directions of Synergy and the GN. In at least three weeks leading up to the incident however, no inspections were performed. On 1 April 2019 at approximately 12:00pm, the Scaffold collapsed, which at the time was 30 metres high and bore a minimum live load of 17,905 kilograms consisting of bricks, formwork, and other stored material.

Mr Cassaniti, a first-year form worker at the Site was tragically killed when the Scaffold crushed him. Mr Whebe, a co-worker, was trapped underneath the Scaffold and sustained debilitating crush injuries.

Expert investigations concluded that:

- (a) the ties adjoining the Scaffold to Building L1 were not in use at the time;
- (b) a live load of 17,905kg was in gross excess of the maximum 675-kilogram heavy duty weight-bearing capacity;
- (c) an inspection of the Scaffold prior to the removal of five vertical transoms should have been performed;
- (d) had the inspections and structural analysis of the Scaffold been performed, it would have been identified that the Scaffold was at a significant risk of collapse; and
- (e) if it had been vertically braced, the Scaffold would not have been at risk of collapse.

On 21 July 2022 Synergy pled guilty to gross negligence or reckless conduct that exposes an individual whom a health and safety duty is owed to a risk of death or serious injury.

On 25 November 2022, the District Court imposed the fine of \$2 million to reflect the severity of the breaches.

## Current statistics surrounding work site injuries

According to the Key WHS Statistics of 2022 (the Statistics) the incidence rate of serious injury in the construction industry has increased since 2020 and now constitutes 12% of all serious injury claims in Australia, with:

- (a) the 4<sup>th</sup> highest incidence rate of fatality, at 2.1 fatalities per 100,000 workers; and
- (b) the 4<sup>th</sup> highest incidence rate of serious injury at 16.9 claims per 1,000 employees.

In fact, 3 out of the 4 occupations most affected by serious injury in the workplace are directly related to the construction industry, with specific trades outlined below:

- (c) Labourers – incidence rate of 30.5 per 1,000 employees;
- (d) Machinery Operators and Drivers – incidence rate of 21.8 per 1,000 employees;
- (e) Technicians and Trade Workers – incidence rate of 14.5 per 1,000 employees.

The Statistics also identified the mechanisms of incidents most responsible for serious work-related injuries, all of which commonly occur on construction sites:

- (a) Body stressing – accounts for 37% of serious injuries
- (b) Falls, trips and slips of a person – accounts for 23% of serious injuries
- (c) Being hit by moving objects – accounts for 16% of serious injuries
- (d) Hitting objects with a part of the body – accounts for 7% of serious injuries
- (e) Vehicle incidents and other – accounts for 5% of serious injuries

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## Practical Steps to Achieve a WHS Compliant Workplace

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### Legal Duties

The Act imposes a duty on a PCBU (“person conducting a business or undertaking”) to ensure the health and safety of its employees and to prevent other individuals from being put at risk by their work. This means that:

- (a) Employers should ensure they are familiar with WHS regulations and inform employees of their responsibilities in maintaining a safe workplace;
- (b) Officers (anyone who makes significant decisions in the workplace) must ensure the PCBU complies with the duty of care as prescribed by the Act;
- (c) Employees should take reasonable care for their personal health and safety and ensure their conduct does not place others at risk of injury or harm.

### Risk Management

In light of the above-mentioned case, cutting corners on important risk management procedures may expose an individual to a significant risk of injury or harm. As a result:

- (a) Employers and Officers should undertake continuous risk management procedures to assess health and safety risks in the workplace. In response, control measures should be implemented and adapted depending on the nature and likelihood of the risk.
- (b) Employees should ensure they understand and abide by the PCBU’s risk management procedures and report any misconduct or concerns to higher authority.

*For further information about understanding about your legal obligations regarding the Act, contact the team at **Construction Legal**.*

### Contact