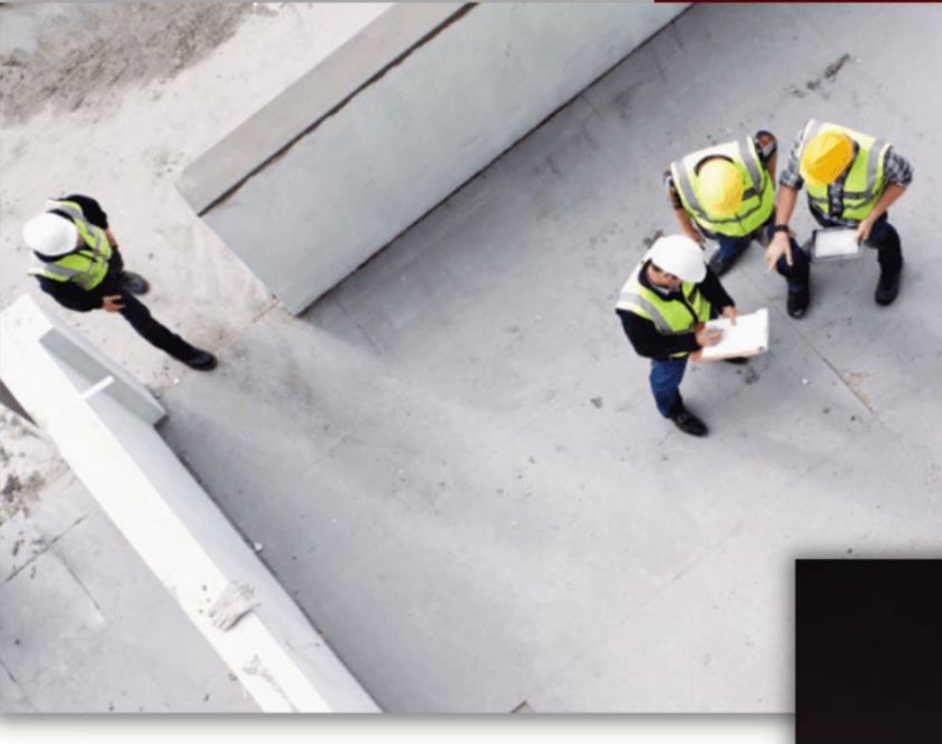


Workplace Death Leads to \$2 Million Fine: Synergy Scaffolding Services



Newsletter

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The scaffolding apprentice who was killed, as well as the collapse of the scaffold at a residential building site was the subject of much media in 2019. Synergy Scaffolding Services was a subcontractor to a Contractor who itself was part of the Ganellen Group. The site was known as “Lachlan’s Line”, a mixed use residential and commercial development in Macquarie Park. Over several months the scaffolding structure tied to Building 1 had been gradually dismantled but as of 1 April 2019 most, if not all, of the ties to Building B1 had been removed. The scaffold remained in use. The scaffold was greatly overloaded. Many other workers not employed by Synergy Scaffolding Services had removed ties to do their own work and were unauthorised and unqualified to do so.²

The scaffold design was by Synergy Scaffolding Services. It was a requirement of the Subcontract that the design needed to include a 2 Tonne scaffold loading Bridge. The plans by Synergy Scaffolding Services were wholly inadequate. (In particular as to load ratings for each level). Other egregious faults included: inadequate SWMs, alterations to scaffold by scaffolders, no safety walks or inspections of the scaffold despite it being known the scaffold was being tampered (reports of tampering identifying the scaffold ties had been removed and not replaced), the receipt of an independent engineers report about observed “bowing” of the scaffold with the report identifying insufficient ties for the load, and the scaffold pre-loaded with bricks and no vertical bracing and the removal of transoms from the base of the scaffold. At the time of the scaffolds collapse it was overloaded and lacked lateral restraints.³

The Court emphasised that: “The community is entitled to expect that both small and large businesses will comply with safety requirements”.⁴

Despite Synergy Scaffolding Services not having any previous convictions, having made a plea of guilty and been cooperative with SafeWork NSW the Court found that “The steps taken by the offender to improve its safety systems... are rudimentary and unconvincing”⁵ and “As a large business in the industry the offender has failed to investigate and/or

¹ *SafeWork NSW v Synergy Scaffolding Services Pty Ltd* [2022] NSWDC 584.

² *Ibid* [3].

³ *Ibid* [22]-[43].

⁴ *Ibid* [108]

⁵ *Ibid* [109]

implement higher level engineering controls...".⁶ Hence imposing "an appropriate fine of \$2 million".⁷

The judgement is damning of the company's callous failings to protect the safety of its own and other workers at "Lachlan's Line". It's a salutary reminder of the obligations on directors and officers to ensure the safety of the company's employees. It must also be recognised the egregious failure of the Ganellen Group company to act to protect workers at the site.

Interestingly the Judge in *Synergy Scaffolding Services* was also responsible for the Judgement in *Hetherington*.⁸ The Hetherington Judgement relevantly emphasised the twin obligations on directors and officers of managing risks and exercising due diligence. The Court there saying (as to s17): "The risk should be identified with sufficient precision to determine if it was reasonably practicable to eliminate it, or minimise it."⁹ And "The steps to be taken in performance of the duty are those reasonably practicable for the duty holder to achieve...".¹⁰ As to the due diligence to be exercised (in discharge of the s27 "obligation"): "... require proactive steps by the officer for compliance by the company with the duties of care placed on the company".¹¹ Continuing that, due diligence requires the implementation of systems that are subject to review and audit to ensure that compliance with the policies occurred.¹²

The failure to manage the evident risks and lack of due diligence by both the Subcontractor and Contractor is patent. For all Contractors it's a salutary reminder that obtaining a "SWMS" and bullying a trade is not sufficient to discharge your "WHS" Act obligations. That's even before the "brand" damage of negative media about an "unsafe" site is recognised.

It remains troubling why worked deaths still continue. Perhaps *Synergy Scaffolding Services* was an example when the appropriate action was the gaoling of its Directors.

⁶ Ibid [112].

⁷ Ibid [121]-[122].

⁸ *SafeWork NSW v Neville George Hetherington* [2019] NSWDC 11.

⁹ Ibid [28].

¹⁰ Ibid [33].

¹¹ Ibid [38].

¹² Ibid [39]-[44].