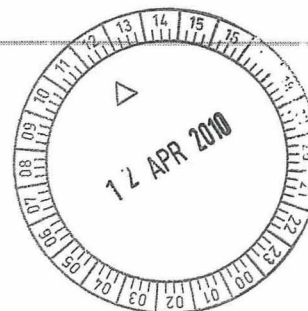


Omar, Linda

**PUBLIC****From:****Sent:** Thursday, 8 April 2010 9:26 AM**To:** Omar, Linda**Subject:** Death of Mr Ward and since then another in a prison van  
The Committee

The Occupational Safety and Health Act is quite clear. I quote:

**“21. Duties of employers and self-employed persons**

- (1) A self-employed person shall take reasonable care to ensure his or her own safety and health at work.
- (2) An employer or self-employed person shall, so far as is practicable, ensure that the safety or health of a person, not being (in the case of an employer) an employee of the employer, is not adversely affected wholly or in part as a result of —
  - (a) work that has been or is being undertaken by —
    - (i) the employer or any employee of the employer; or
    - (ii) the self-employed person;
  - or
  - (b) any hazard that arises from or is increased by —
    - (i) the work referred to in paragraph (a); or
    - (ii) the system of work that has been or is being operated by the employer or the self-employed person.

*[Section 21 inserted by No. 43 of 1987 s. 13; amended by No. 30 of 1995 s. 15 and 47; No. 51 of 2004 s. 6 and 21.]*

**21A. Breaches of section 21**

- (1) If an employer or a self-employed person contravenes section 21(1) or (2) in circumstances of gross negligence, the employer or a self-employed person commits an offence and is liable to a level 4 penalty.
- (2) If —
  - (a) an employer or self-employed person —
    - (i) contravenes section 21(1) or (2); and
    - (ii) by the contravention causes the death of, or serious harm to, a person;
  - and
  - (b) subsection (1) does not apply,

the employer or self-employed person commits an offence and is liable to a level 3 penalty.
- (3) If —
  - (a) an employer or self-employed person contravenes section 21(1) or (2); and
  - (b) neither subsection (1) nor subsection (2) applies,

the employer or self-employed person commits an offence and is liable to a level 2 penalty.
- (4) An employer or self-employed person charged with an offence under —
  - (a) subsection (1) may, instead of being convicted of that offence, be convicted of

an offence under subsection (2) or (3); or

- (b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).

*[Section 21A inserted by No. 51 of 2004 s. 22.]*

There has been no action under this Section over Mr Ward's death, in the two years since. Yet it was reported that the temperature in the van was estimated to have reached 48 degrees C, and that the Department of Corrections knew the air-conditioning was faulty. Pictures of similar vans appear to show metal seating running along the van with no side restraints for a seated person on a long journey and it was reported that Mr Ward suffered burns in addition to fatal thermal stress. Perhaps the metal seats contributed to the burns.

And now there has been another death in a prison van.

Geoff Taylor (Adj. Prof., OHS)