

COVID – the Good, the Bad and the Ugly

FINLAYSONS
LAWYERS

Will Snow

Partner, Employment and Workplace Safety

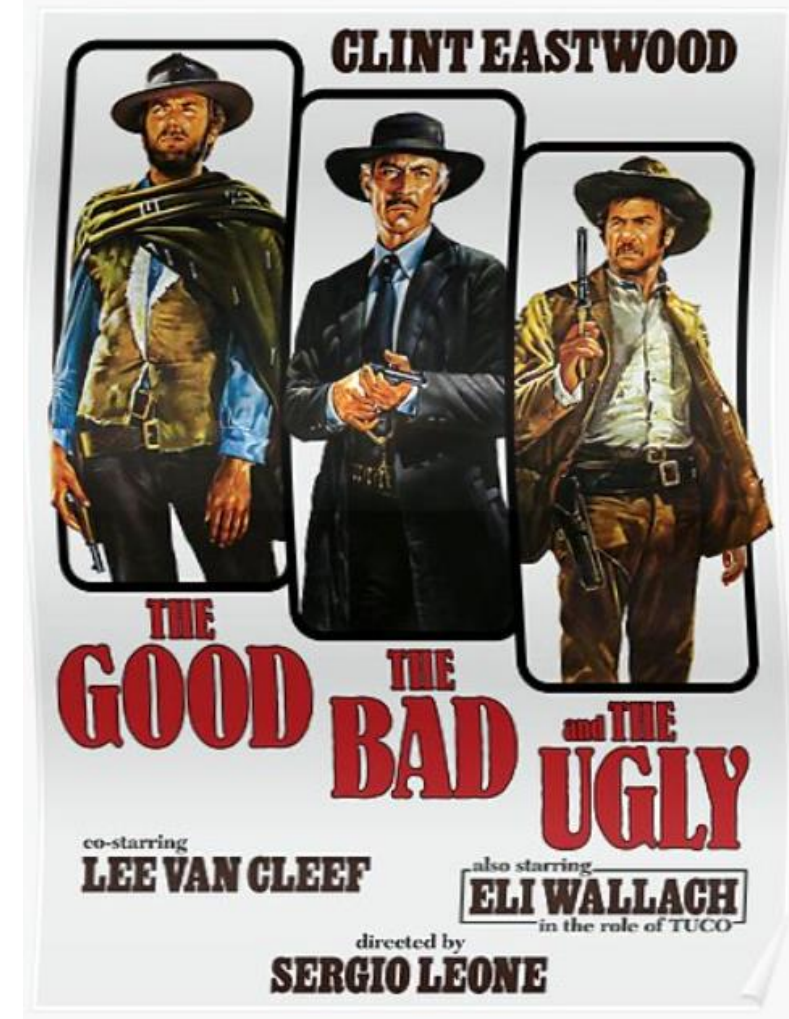
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AGENDA

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1. Recap on safety duties
2. Working from home
3. COVID case law
4. Challenges for 2021

Work Health and Safety

- > Ensure the safety of **workers**, so far as reasonably practicable
- > Create and maintain **safe systems of work**
- > **The Board must exercise due diligence**
 - > Knowledge ✓
 - > Action ✓

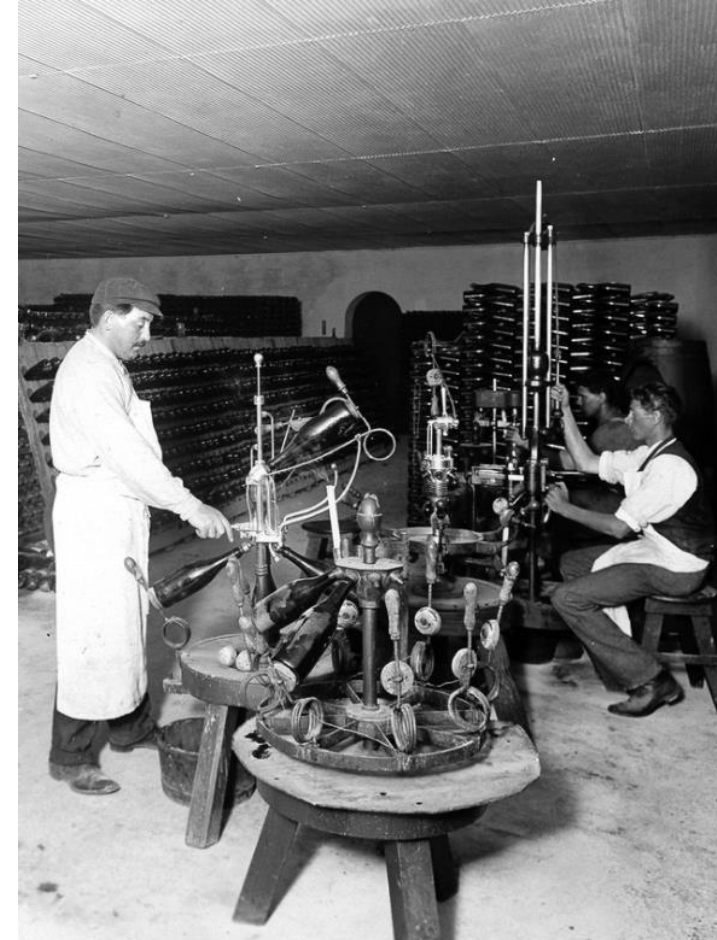


A wine shed at Reynella, South Australia: State Library of South Australia [PRG 280/1/40/302]

WORKING FROM HOME

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LAWYERS

- > The employer's duty of care in the home workplace
- > Isolation from colleagues and impact on wellbeing
- > Emerging issues



Bottling champagne at Auldana Vineyards

State Library of South Australia [B 62609]

Nominal Insurer v Hill

- > NSW Court of Appeal
- > Found death due to DV arose from WFH
- > Established case law but unique facts

ABC NEWS

Sam's mum was killed while working from home. He hopes his workers compensation win will help others facing family violence

ABC Radio National / By [Nick Wiggins](#) and [Damien Carrick](#) for Law Report

Posted Wed 5 Aug 2020 at 8:30pm, updated Wed 5 Aug 2020 at 3:51am



The NSW Court of Appeal found Kate's death was connected with her work. (Getty: Roos Koole)

McKean v Red Energy (FWC)

- > Employee resigned after a desk not provided to WFH and then refused to WFH
- > Made unfair dismissal claim
- > FWC found **no dismissal**

Peterson v Kizuri Capital (FWC)

- > Employee summarily dismissed due to performance issues
- > March / April 2020 period (20% salary reduction, increased responsibilities)
- > FWC found **unfair dismissal**

Challenges for 2021

- > Great flexibility – informal discussions, trust and mutual interest (cutting through the **red tape**)
- > The route back to compliance while retaining those massive positives



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