

# Information Sheet

## CORRESPONDENCE FROM WORKSAFE VICTORIA TO THE EWPA REGARDING SECONDARY GUARDING

JUNE 2023

Firstly, there is no prescriptive Victorian legislation that mandates the fitting of secondary guarding to EWP (boom-type or scissor-type as examples). However, state-of-knowledge information can be brought into a prosecution as evidence to demonstrate what the duty holder ought to have reasonably known and subsequently done about controlling the risk.

As you will be already aware, there are duties to identify hazards and control risks, so far as is reasonably practicable.

All EWP manufacturers and hire companies will be aware of secondary guarding systems that can be fitted to scissor type EWPs and there are now thousands of scissor type EWPs that are in circulation that have them fitted. A secondary guarding device should be fitted if there is a risk of crushing as one part of the overall system of work for the safe operation of the EWP. Not every scissor-type EWP supplied to a specific job site, for a specific job, will have the hazard of the operator being crushed present, and therefore secondary guarding will not be required to be fitted to every scissor-type EWP that is in circulation. All hire companies, through direct interaction with WorkSafe representatives, or indirectly through their associations such as the HRIA and EWPA, will be aware of this.

Due to the OH&S legislation in Victoria being performance-based, whether a risk control is determined as being reasonably practicable will change over time. Something that was not reasonably practicable a few years ago may now be reasonably practicable, for example, sequentially interlocked seatbelts on forklifts. Although some secondary guarding devices fitted to scissor-type EWPs were around in 2020 they were not numerous and readily available and therefore were not reasonably practicable at that time. In the first half of 2020 several secondary guarding devices for scissor-type EWPs were developed by manufacturer's and other engineering companies and trialled for a time. Many of these trials were successful and subsequently the secondary guarding devices started to be fitted to scissor-type EWPs. Having just returned from the HIRE23 convention in Sydney I can confirm that over 20 manufacturers of scissor-type EWPs that I spoke to, including all of the major ones, such as JLG, Haulotte, Genie, Skyjack and Snorkel all have secondary guarding able to be fitted as an option to their scissor-type EWPs. One engineering company has now provided over 10,000 secondary guarding devices in Australia for the use on scissor-type EWPs.

At the time of writing the 'WorkSafe - Industry Standard for the safe use of EWPs' many of the secondary guarding devices were still being trialled and there were different devices and methods being proposed. Some of these methods and devices have since been made redundant due to their ineffectiveness. Due to the changing landscape at the time, no images of scissor-type secondary guarding devices were included in the document. However, knowing that the devices were coming, the text in the document made general statements that apply to all EWPs such as 'Use an EWP fitted with secondary guarding'.

WorkSafe Victoria alone have had 11 fatal incidents involving EWPs in 11 years. The last crushing fatality that occurred in January 2020 that involved a scissor-type EWP would have been prevented if secondary guarding had been fitted to the EWP.

If the decision of a duty holder is that, for a given task, access equipment in the form of an elevating work platform is selected to be used, in preference to that of scaffold for instance, then Regulation 98 will apply:

# Information Sheet

## 98 Control of risk

- (1) An employer or self-employed person must, so far as is reasonably practicable, eliminate any risk associated with plant.
- (2) If it is not reasonably practicable to eliminate a risk associated with plant, the employer or self-employed person must reduce the risk so far as is reasonably practicable by—
- (a) substituting the plant with plant that has a lower level of risk; or
  - (b) isolating the plant from persons; or
  - (c) using engineering controls; or
  - (d) combining any of the risk control measures referred to in paragraphs (a), (b) and (c).
- (3) If the employer or self-employed person has complied with subregulations (1) and (2) so far as is reasonably practicable and a risk associated with plant remains, the employer or self-employed person must reduce the risk so far as is reasonably practicable by using administrative controls.
- (4) If the employer or self-employed person has complied with subregulations (1), (2) and (3) so far as is reasonably practicable and a risk associated with plant remains, the employer or self-employed person must reduce the risk so far as is reasonably practicable by providing appropriate personal protective equipment to persons at risk.

If the use of an EWP was assessed as being the most appropriate form of access equipment for the task, and there was a risk of crushing, working towards compliance with the above regulation could include, substituting an EWP that could reach the crushing hazard with one that couldn't, substituting the EWP that does not have secondary guarding fitted with one that does, or using an engineering control in the form of secondary guarding to reduce the risk of crushing by fitting one to the EWP.

If the decision has been taken to use an EWP where there is a risk of crushing present, and the EWP is not fitted with secondary guarding, and it can reach the crushing hazard, the inspector will make enquiries into the system of work at the workplace. The duty holder will need to demonstrate how their system of work achieves an equivalent or higher level of safety than if secondary guarding was fitted to the EWP. If it doesn't, then changes will need to be made to the system of work that may include the use of secondary guarding.

The 'so far as is reasonably practicable' element is part of the duty holders process as to whether to use secondary guarding on scissor-type EWPs as a crushing risk control. Some of the points below may assist:

(a) the likelihood of the hazard or risk concerned eventuating –

This is a known risk and even a single task will require multiple position adjustments / relocations of the EWP, potentially in close proximity to the crushing hazard.

(b) the degree of harm that would result if the hazard or risk eventuated –

Several fatalities have occurred in recent years and many more significant injuries.

(c) what the person concerned knows, or ought reasonably to know, about the hazard or risk and any ways of eliminating or reducing the hazard or risk;

The 'WorkSafe Victoria industry standard for the safe operation of EWPs' currently states that 'where there is a risk of crushing against a fixed structure, an effective operator protective device should be fitted'. The 'Compliance Code for the Prevention of Falls in General Construction' highlights crushing from EWPs as a hazard to consider. 'AS2550.10:2006 – Cranes, hoists & winches – Safe use – Mobile elevating work platforms' highlights travelling into overhead structures as a hazard'. Note that this standard was written in 2006 (17 years ago) and is currently going through the final stages of being re-written. It will now place more emphasis on the crushing risks and include secondary guarding.

(d) the availability and suitability of ways to eliminate or reduce the hazard or risk;

Thousands of scissor-type EWPs are now available that are fitted with secondary guarding. One major hire company already has half of their Victoria scissor fleet fitted with secondary guarding and all scissors will be fitted secondary guarding by 2025. One supplier of a secondary guarding system has provided the system to 7 OEMs and 38 rental companies, over 3000 of these units are fitted to scissor-type EWPs in Victoria.

# Information Sheet

(e) the cost of eliminating or reducing the hazard or risk.

Hire companies may, or may not, pass on the cost of the fitting of secondary guarding to scissor-type EWPs in their hire rate. Systems can be fitted to EWPs for costs ranging from \$1000 - \$1500 which is commensurate to the risk.

It should be noted that secondary guarding does not guarantee that the risk of crushing will be eliminated. Fatal incidents have still occurred with secondary guarding fitted to EWPs, hence why secondary guarding is only part of the crushing risk control and overall system of work and why administrative controls, such as the use of a safety observer, should be part of the overall system.

The fitting of secondary guarding to scissor-type EWPs is not mandatory it depends on the specific task at the specific workplace and their system of work.

For further details from the Victorian Regulators contact WorkSafe Victoria on 1800 136 089.