Deputy Prime Minister and Minister for Workplace Relations, Julia Gillard, made the following speech on 11 November 2008. The full speech is reproduced here as the Minister mentions several quotes from employer associations and places the Labor Party’s OHS reforms in the context of the actions of the Howard Government.

Labor went to the last election with a workplace relations plan that got the balance right between prosperity and fairness.

It was also a policy agenda that provided certainty and simplicity for those businesses, large and small, that operate across State borders.

Under Labor’s plan, whether an employer operates in Townsville, Tamworth or Traralgon the same workplace laws should apply.

Uniform national workplace laws for the private sector will end the costs and confusions for business of dealing with separate, sometimes conflicting, laws. Our plan is good for business, good for the economy and good for national productivity.

Industry Support for Harmonisation

In a media release of 9 November, Katie Lahey, Chief Executive of the BCA said: “In the current climate business needs every help to get on with the job. The amendments sought by the Senate jeopardise moves to make business operations and employment of workers simpler across our jurisdictions.

The amendments sought by the Senate in the last sitting are inconsistent with the agreement by all governments at COAG to deliver a uniform national system of occupational health and safety (OHS) laws.

The BCA remains strongly of the view that the implementation of a nationally consistent OHS legislative framework is critical to realising the aim of a seamless economy for Australia.”

On 10 November Mr Steve Knott, Chief Executive, Australian Mines and Metals Association (AMMA) called on the Senate to pass the Safe Work Bill without further delay. In its media release AMMA stated; “As with industrial relations legislation, removing OHS duplication and overlap and various inconsistencies between states remains vitally important.

Harmonisation of national OHS legislation will improve OHS outcomes in Australia, reduce the regulatory burden for business and enhance Australia’s productivity performance.

Having consistent laws via simple, understandable and balanced national OHS legislation would reduce unnecessary business compliance costs and complexities. This is more important than ever given the global financial crisis and other associated challenges with running businesses in Australia today.”

Business understands that a critical component of the seamless economy that the Government is committed to is the harmonisation of Australia’s occupational health and safety systems into one national system. Such an outcome is good for businesses, workers and the economy.

Opposition Failures

But unfortunately, those opposite do not get it; they have turned their back on businesses, employees and responsible economic policies.

Yesterday the Opposition in the Senate once again made amendments to the Safe Work

Continued on page 2
Bill that make it inconsistent with the Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety that was agreed to by COAG in July this year

The practical effect of this action by the Senate is a continuation of the OHS arrangements that plagued businesses during the 11 years of the Howard Government.

They want to go back to a structure and a set of arrangements that was all hub and no spoke. They believe you can have a set of institutional arrangements to engage the States and Territories – but then deal them out of the structure.

They thought that yelling from a rooftop in Canberra was the way to get things done. And after twelve years, they achieved nothing in OHS harmonisation.


Then in March 2003 the Howard Government referred the issue of national frameworks for OHS and workers’ compensation to the Productivity Commission. But in response to the Commission’s report nothing happened.

Finally, in February 2006, the former Howard Government (through COAG) asked the ASCC to develop strategies for national OHS standards. But nothing happened.

At the end of its 11 years in Government the Howard Government’s record on harmonisation of national OHS legislation was one of inertia and failure.

They ignored compelling submissions from business including Skilled Engineering, which in its submission to the 2003 Productivity Commission enquiry into National Workers’ Compensation and Occupational Health and Safety Frameworks estimated annual savings in excess of $2.5 million if it operated under national OHS and workers’ compensation rules, or some 15 per cent of the company’s annual costs of OHS and workers’ compensation.

IGA It has been left to the Rudd Labor Government to deliver on these important reforms. And we are. As I mentioned before, in July this year COAG agreed to the Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety.

For the first time, Governments from each State and Territory and the Commonwealth formally committed to the harmonisation of OHS laws.

The amendments proposed by the Opposition in the Senate to the Safe Work Australia legislation is an opportunist effort to prevent harmonisation of national OHS legislation.

For the first time, the States and Territories are signed up to a process and signed up to a new set of institutional arrangements to deliver on it.

The States and Territories continue to support the IGA and the process. At the Workplace Relations Ministers Council (WRMC) last Wednesday (5 November) the States and Territories communiqué said: “Ministers highlighted that Senate amendments to the Safe Work Australia Bill 2008 were inconsistent with the historic commitment of all governments to uniform national OHS legislation as reflected in the inter-governmental agreement on OHS reforms signed by the Council of Australian Governments (COAG) in July 2008.

… Ministers noted with much concern that the amendments threatened the harmonisation of national OHS legislation, thereby delaying a significant and long overdue economic reform which would enhance OHS outcomes, reduce red tape for business and strengthen Australia’s productive capacity.” The Government is sending the Safe Work Bill back to the Senate in the hope that the Liberal Party will understand the importance of OHS harmonisation to safe workplaces, to businesses and the national economy.

Source: Minister for Employment and Workplace Relations.
Queensland Parliament debate on The Workplace Health and Safety and Other Legislation Amendment Bill 2008

The Queensland Parliament had a robust debate on The Workplace Health and Safety and Other Legislation Amendment Bill 2008 during the Second and Third Readings of the Bill on 13 November 2008. Hansard for that sitting day is now available and for those who like to look at the politics of workplace safety in Queensland and the relevant political parties. The debate ranges over a variety of topics including the introduction of Provisional Improvement Notices, return-to-work, asbestos, the working conditions of public servants and even touches on industrial manslaughter.


Health and safety changes good for Queensland workplaces

14 November 2008

Queensland’s workplace health and safety laws have been strengthened following legislation passed in the parliament this week. The legislation will strengthen the enforcement of Queensland’s workplace health and safety laws and deter any breaches from those responsible for workplace health and safety.

One of the main components of the legislation will see measures introduced to allow elected workplace health and safety representatives to issue provisional improvement notices (PINs) where there is potential for injury or illness in a workplace. Queensland Council of Unions Assistant General Secretary, Amanda Richards, congratulated the State Government on passing the laws which the QCU and affiliated unions had been lobbying for.

“Unions have been advocating for these changes for years and we are pleased to see the government act on these important issues”

“The issuing of PINs will allow for issues to be dealt with at workplace level in a timely manner between workers via their health and safety representative and the employer”

“This measure would see local-level resolution of health and safety issues as and when they are raised in the workplace”

“The new legislation will also see changes made to the prosecution framework removing protection for the Queensland Government from prosecution for occupational health and safety offences”

“This will mean that all employers, whether they are private or public, will now be subject to the same penalties for breaches of health and safety laws.”

Ms Richards was also pleased to see the government recognise a past omission in relation to latent onset disease sufferers

“The amendments will see the victims and families of latent onset injuries, such as mesothelioma; receive just compensation in a timely way.”

Source: Queensland Council of Unions

Commissioner releases Code of Practice for sexual harassment in the workplace

12 November 2008

Federal Sex Discrimination Commissioner, Elizabeth Broderick, today released resources titled ‘Effectively preventing and responding to sexual harassment: A Code of Practice for employers’ at a forum of employers and business leaders, co-hosted by the Australian Chamber of Commerce and Industry, in Melbourne.

“Our research shows that sexual harassment continues to be a problem in the modern workplace, particularly because there seems to be a significant lack of understanding, among both women and men, about what behaviours constitute sexual harassment.”

Commissioner Broderick said.

The Commissioner said that the Australian Human Rights Commission’s recent Sexual
Harassment National Telephone Survey found that 22 percent of women and 5 percent of men have experienced sexual harassment in Australian workplaces. The survey also found that, of the respondents who said they had not experienced sexual harassment according to the legal definition, when presented with examples of behaviours that are considered to be sexual harassment, one in five said they had experienced one or more of them.

“These findings highlight the serious need for accurate information about sexual harassment in the workplace – not just for employers, but for employees,” Ms Broderick said.

“We will be working together with unions and employer groups to drive down the incidence of sexual harassment in Australian workplaces.”

Commissioner Broderick said that the Code of Practice and its associated Quick Guide were tools for employers that could be used to identify inappropriate behaviours and to assist them in taking preventative steps.

“These resources are a practical guide to the law, as well as a set of tips for employers on developing and implementing sexual harassment policies and grievance procedures.” the Commissioner said.

Both the Code of Practice and the Quick Guide can be downloaded from the Australian Human Rights Commission website at: www.humanrights.gov.au/sexualharassment/employers_code

Source: Australian Human Rights Commission

 Builders Awarded Safety Excellence 14 November 2008
Statement by Mr Wilhelm Harnisch, Chief Executive Officer
Master Builders Australia, in conjunction with the Federal Safety Commissioner, announced the 2008 winner of the National Federal Safety Commissioner’s Award for Excellence in Occupational Health and Safety at Master Builders’ National Awards presentation held in Canberra.

The winner was John Holland for their Reliance Rail Maintenance Facility Project in New South Wales.

The judges chose to present the Federal Safety Commissioner’s award to this project because it revealed excellent levels of communication where all of the parties associated with the conduct of an active railway system were consulted. Due to the project’s location, size and complexity, risks and opportunities for safety management arose which the project team comprehensively addressed. This led to a project with no lost time injuries. The project was reviewed for potential safety risks during design and prior to construction commencing. The project was complex with high hazard profiles including a live railway line, overhead wires, contaminated land and all of the competing forces associated with the undertaking of construction work at an active site.

Mr Wilhelm Harnisch, Chief Executive Officer of Master Builders Australia said, “The safety of workers in the building and construction industry is of paramount importance to our members.”

In congratulating John Holland, Mr Harnisch said, “Master Builders Australia is proud to offer this award in conjunction with the Federal Safety Commissioner.”

Source: Master Builders Australia

Coastal communities need to think about workplace safety too 14 November 2008
New WorkSafe figures have prompted a warning to businesses in Victoria’s coastal
communities to take simple steps to improve safety and keep your eye on the ball.

In the past five financial years the cost of treating more than 13,500 work-related injuries in Victoria’s coastal communities more than $217.23-million (see table for specific municipalities) in treatment and rehabilitation costs.

WorkSafe’s Executive Director (Health and Safety) John Merritt said there was an undercurrent of risk-taking in coastal communities.

“These areas do not typically produce high-profile deaths and serious injuries people see in the media, however, they contain sectors that provide scope for people to be badly hurt.

“Just because some people are in holiday-mode, you can’t afford to lose concentration if you’re working. The lure of going fishing, the beach or a barbeque can have serious consequences if shortcuts creep into the working day. Fatigue can also be a problem.”

Mr Merritt said the trades, agriculture, retail and hospitality sectors all produce serious and permanent injuries in coastal areas, and the risk of injury would increase as things got busier.

“And with many young people being hired now for short-term work to meet summer demand it’s essential that they understand what’s expected of them and that they are encouraged to ask questions.

“Young people take risks and they’re often very enthusiastic, but they may feel embarrassed about asking questions particularly if they’ve already been shown how to do something.

“Employers need to be confident that they know the worker can work independently and is not at risk.”

Mr Merritt said some businesses only opened for the summer months and these operators need to ensure equipment is in good condition and has been properly maintained.

“No business operator can afford to lose time at a busy period to deal with the consequences of things that should have been sorted-out earlier.

“The tragedy is not just that people are seriously hurt or killed at work, but it’s that the risks are almost always apparent, yet nothing was done about them until it was too late.

“We have often seen machine guards made on site with available materials for less than $30 while inspectors are looking into the incidents in which people have lost fingers or hands.

“In other cases, simply moving flammable spray-cans away from heat sources in kitchens, replacing frayed power cords or getting a trolley to reduce the need to carry heavy items makes a real difference to someone’s quality of life and business viability.”

“So often people say they’ve done a lot of work and spent a fortune to make safety improvements since the ‘accident’, ” Mr Merritt said.

“But by then, it’s too late.”

* These figures relate to employees who were off work for 10 days or more and / or who had medical costs exceeding $500. Does not generally include self-employed people.

Source: WorkSafe Victoria

<table>
<thead>
<tr>
<th>Municipal area</th>
<th>Number of workers compensation claims July 2003 to end June 2008</th>
<th>Treatment and rehabilitation costs</th>
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</thead>
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<tr>
<td>Glenelg</td>
<td>594</td>
<td>$12.62m</td>
</tr>
<tr>
<td>Moyne</td>
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</tr>
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<td>Warrnambool</td>
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</tr>
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<td>Corangamite</td>
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<td>Colac Otway</td>
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</tr>
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<tr>
<td><strong>Total</strong></td>
<td><strong>15,549</strong></td>
<td><strong>+$217.23m</strong></td>
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</table>

continued on page 4

SAFETY: putting together the pieces
A Jigsaw of Fun and Games - That was the year that was… where did it go??!

Date: 28 November 2008
Time: 6.30pm for a 7.00pm
Venue: Citigate Central, Thomas Street, Haymarket

Cost: $20.00 per member
$30.00 per member + one guest
$50.00 per Non Member

NOTE: all prices include (GST)

Help us close it off with our Christmas get-together on Friday 28 November 2008, start to a side-show of the weird & wacky… Fun for the non-safety associate, as well as the aplique of piquing for the safety professional’s interest… Put together some pieces of the safety jigsaw… and – maybe – win a prize or two… followed by a chance to schmooze with your associates over drinks and snacks, with undercurrents of the smooth, sweet sounds of live music with performers from ‘Aqualash’ and ‘Blue velvet Jazz Trio.

Please contact Stephanie at the NSW secretariat for more information:

e-mail: nsw.secretariat@sia.org.au or phone: 02 9622 4414

SAFETY:  putting together the pieces
A Jigsaw of Fun and Games - That was the year that was… where did it go??!
National campaign aims to reduce loading and unloading injuries

Australia’s workplace safety authorities are joining forces to tackle the injury rate of workers in the retail, wholesale, transport and storage industries.

Queensland Minister for Employment and Industrial Relations John Mickel said the 18-month campaign by the Heads of Workplace Safety Authorities (HWSA) aimed to reduce injury rates from manual tasks such as loading and unloading vehicles.

Mr Mickel said Workplace Health and Safety Queensland would take part in the nationwide campaign which will examine the road freight industry and its relationship to retail, wholesale and storage industries.

“The road freight industry contributes significantly to workers’ compensation claims for muscular stress injuries,” he said. “Injuries from manual tasks and moving objects are a considerable financial burden to workers and to industry.

“This campaign will help us to identify why this is the case and ultimately help to safeguard workers from injury and reduce workers’ compensation costs to employers.”

National 2005/06 injury statistics show the rate of muscular stress claims for road freight transport and road freight forwarding was 10.6 workers per 1000 compared to 7 workers per 1000 across the combined retail, wholesale, transport and storage industries.

Back and shoulder injuries due to lifting, carrying, putting down or handling objects are common injuries in the retail, wholesale, transport and storage industries.

The campaign aims to build on preliminary studies by WorkSafe Victoria which indicate the industry itself believes that loading and unloading vehicles in particular is a significant safety and health issue that needs to be addressed.

It will include a survey of transport industry workers and employers in November 2008. The results will be used to develop practical information tools and products. An education campaign involving site visits and workshops will be conducted in early 2009 to provide industry with the skills to manage manual task risks. Following the education campaign, workplace audits will be conducted late in 2009, with the results of the campaign expected to be released in the first quarter of 2010.

Source: Q’ld Minister for Transport, Trade, Employment and Industrial Relations

National manual handling campaign underway

Workplace safety and health authorities across Australia are joining forces in an effort to reduce manual handling injuries in the retail, wholesale, transport and storage industries.

An 18-month long campaign will examine manual handling in all industries involved in the supply chain.

WorkSafe WA Commissioner Nina Lyhne said today that manual handling was a priority focus area across Australia because it accounted for a large number of work-related injuries, typically sprains and strains.

“More than 1400 Western Australians in the wholesale, retail, transport and storage sectors sustain manual handling injuries each year — many serious and long-lasting,” Ms Lyhne said. “This campaign aims to build on preliminary studies done in Victoria that suggest that the loading and unloading of vehicles in particular is a significant safety and health issue that needs to be addressed.

“The objective of the campaign is to identify the hazards that exist throughout the supply chain and assist employers to find solutions that will lessen the risk of injury.”

The campaign has several phases, and is currently in the phase of consulting with stakeholders in the target industries across Australia as part of developing the education component of the campaign.

Beginning this month, transport industry workers and employers are being surveyed to aid in developing appropriate information and education products to be used in the target industries.

SIA Events

If you have a Safety Institute event that you would like to be brought to the attention of your members and the readers of SafetyWeek, please forward their event details to the Editor, Kevin Jones, at kjones@sia.org.au or phone 03 9478 9484

Victoria Division Professionals Engagement Sessions

Date: 3 December 2008
Time: 8:30 - 13:00
Location: The Naval & Military Club (the Monash & Blamey Room), 27 Little Collins Street MELBOURNE

Last year WorkSafe formed the Health and Safety Professionals Alliance (HaSPA) with Australia’s leading universities and health and safety organisations (including SIA) to make Victorian companies safer.

Since the formation of HaSPA, several major milestones have been reached. In particular the Code of Ethics and Minimum Service standards for members of OHS Associations was launched in May.

Now is the time to find out what HaSPA developments mean to you and what opportunities this offers you. WorkSafe and the SIA would like to invite you to a half day SIA member engagement session.

This half day session will cover: What the Code of Ethics and Standards...
The next phase – to begin early next year – is an education phase involving workshops and one-to-one visits that aim to assist the target industries to manage the risks involved in manual handling.

Inspectors are due to begin their workplace audits late next year for a three-month period.

The primary objective of these proactive campaigns is to provide employers with information on how to comply with the laws, but if inspectors find breaches of these laws, they will take enforcement action.

Ms Lyhne said that national projects such as this were an important means of ensuring national consistency in workplace safety and health.

“These national campaigns are aimed at protecting workers by ensuring employers are aware of their responsibility under the laws to minimise the risk of injury. They are also excellent examples of cooperation between the States.

“In the end, everybody gains from a higher level of awareness of workplace hazards and how to avoid injuries, particularly manual handling injuries. Western Australia has a comprehensive Code of Practice on Manual Handling, and I encourage all workplaces that may have concerns about manual handling hazards to have a copy of the code readily available at the workplace.”

Further information on manual handling can be obtained at [www.worksafe.wa.gov.au](http://www.worksafe.wa.gov.au)

Groundbreaking mine safety research rewarded

Three University of South Australia (UniSA) researchers are part of the team to be awarded this year’s IEA/Liberty Mutual Medal in Occupational Safety and Ergonomics for Digging Deeper, the largest study of occupational health and safety in the Australian mining industry.

Associate Professor Verna Blewett, Dr Sally Ferguson and Professor Drew Dawson from UniSA’s Centre for Sleep Research were among the international team of OHS researchers, led by Andrea Shaw, who conducted the study for the NSW Mine Safety Advisory Council.

The President of the International Ergonomics Association, Adjunct Professor David Caple, will present the medal – the most prestigious international award of its kind in the field of occupational ergonomics and safety – and US$10,000 prize money at the 44th annual conference of the Human Factors and Ergonomics Society of Australia in November.

Prof Blewett said the major outcome of Digging Deeper is the Platinum Rules, 10 key action areas to guide the NSW mining industry in managing OHS more effectively.

“These rules have the potential to change mine safety and conditions the world over,” Prof Blewett said. “It is a great honour that the team’s work on Digging Deeper has been recognised with this distinguished prize.”

Source: UniSA

[Editor:] I had the pleasure of hearing Professor Blewett and Andrea Shaw present a paper based on the Digging Deeper research at the recent Safety Conference in Sydney. It is an impressive work and the “10 Platinum Rules” are well worth following.
Continued from page 7

The difference in these rules is that they are based on research and evidence rather than just experience. They deserve the attention they are receiving.

**Crucial High Court Decision on OHS Appeal**  
13 November 2008

The High Court, sitting in Adelaide, has effectively allowed two high profile prosecutions to proceed, by refusing leave to appeal in a matter concerning a key element of workplace safety prosecutions in SA.

After hearing submissions today, the Chief Justice Robert French and Justice Kenneth Hayne refused to grant special leave to appeal to Santos Limited and Diemould Tooling Services Pty Ltd.

Both parties had earlier lost appeals in the South Australian Industrial Relations Court and the Supreme Court. Today's High Court decision closed their last avenue for appeal.

Each has been charged with breaches of the Occupational Health, Safety and Welfare Act 1986, and is yet to plead. However, they appealed jointly on a legal technicality, based on the way in which the prosecution had drafted the charges in the complaints filed against them.

Today's High Court decision means that the charges pending against both Santos and Diemould can now proceed before an Industrial Magistrate.

It is expected these will be listed as part of court business as soon as is practicable.

Diemould faces one charge of breaching section 19(1) of the Occupational Health, Safety and Welfare Act 1986 over the death of 18 year old apprentice, Daniel Madeley in June 2004. Mr. Madeley was fatally injured when caught in the spinning shaft of a horizontal borer at the company's Edwardstown premises.

Santos faces 8 counts of breaching section 19(1) and 5 counts of breaching section 22(2) of the Act following the Moomba gas facility incident on 1 January 2004. Santos also faces a charge under the Dangerous Substances Act 1979 as a result of this incident.

SafeWork SA Executive Director, Michele Patterson said today's decision finally confirms a significant element about the system for prosecuting breaches of workplace safety laws.

"This lengthy appeal process had caused considerable doubt and delay in the industrial court system.

"SafeWork SA is pleased that the highest legal authority in Australia chose not to interfere with the decision made by the SA Supreme Court.

"We look forward to resolving these and a number of other matters before the court more promptly as a result of today's important decision," Ms. Patterson said.

Source: SafeWork SA

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**Forklift fun comes at a cost**  
13 November 2008

Dangerous forklift driving has cost a young worker his job, his forklift licence and earned him 50 hours of community work and an order to do a 5-day health and safety course.

WorkSafe today prosecuted 20-year-old Seymour man Matthew Garry Ward after posting on YouTube a video of him doing stunts on a forklift.

The video, which has now been removed, showed him deliberately crashing into concrete pipes, doing burnouts and overloading the machine so he could do wheelies.

Seymour Magistrate Caitlin English convicted Mr. Ward, ordered him to do 50 hours of unpaid community work complete a five-day Occupational Health and Safety course and pay WorkSafe’s court costs of $1200.

The court was told that Mr. Ward was employed by Australasian Pipeline & Pre-Cast Pty Ltd which makes reinforced concrete pipes at Kilmore.

The clip was on YouTube for nearly two months when it was seen by his boss in July last year. Mr. Ward was later sacked for misconduct.

WorkSafe told the court Mr. Ward was not wearing a seatbelt and put him at risk of serious injury or death.

Source: SafeWork SA

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**In Brief**

**Leyburn – machinery and harvest fire**  
15 November 2008

About 15 hectares of land as well as farm machinery was destroyed in a fire on a property at Leyburn this afternoon. The fire which began about midday is believed to have started on the machinery at the property between Allora and Warwick on Strathane Rd. Auxiliary and Rural firefighters from Clifton extinguished the blaze.

Source: QLD Department of Emergency Services

**Toowoomba – grinder injury**  
15 November 2008

A 45-year-old man has been airlifted to the Princess Alexandra Hospital after sustaining a serious wound while operating machinery at a residence in Toowoomba. The incident happened about 10.30 am in Edmond St. The man, who was believed to have been operating a grinder when the incident occurred, was initially taken to Toowoomba Base hospital in a critical condition with a severe upper leg injury before being airlifted to Brisbane.

Source: QLD Department of Emergency Services

**Pialba (Hervey Bay) – shopping centre evacuation**  
12 November 2008

The Eli Waters Shopping Centre on Ibis Boulevard, Pialba was evacuated at about 9.30am following a gas leak from a kebab shop in the complex. Three people were transported to Torquay Hospital after being overcome by fumes. Shoppers and centre staff were given the all clear to return to the shopping centre just after 10am.

Source: QLD Department of Emergency Services

Continued on page 9
New WorkSafe Victoria Prosecution Reports

Rapid Roller Co Pty Ltd
Summary: unguarded plant, fatality

Raymond Leslie Tough
Summary: Unguarded plant, fatality

Increase in on-the-spot fines

In the Queensland Legislative Assembly, Mr Mickel, Minister for Employment and Industrial Relations, said that on-the-spot fines will increase from $1200 to $1600.


**Furniture company fined more than $40,000 over lift truck rollover**

A Malaga furniture company has been fined $40,750 over an incident in which a lift truck rolled over and seriously injured two men.

T E Wang Pty Ltd – trading as New Idea Furniture – pleaded guilty to three charges and was fined in the Perth Magistrates Court yesterday.

The court was told Mr Ward's suspended forklift licence would be cancelled after today's guilty plea.

Source: WorkSafe Victoria

Continued from page 8

WorkSafe's Executive Director (Health and Safety) John Merritt, said forklifts were among the most dangerous pieces of equipment in Victorian workplaces accounting for 56 lives since 1985. Of these 19 were forklift drivers.

Mr Merritt said unless forklifts were used correctly the consequences were often serious especially if a seatbelt was not used and the machine tipped.

"In this case, the young man has put himself at risk, and while he suffered no physical injury has had to face legal and other consequences which had ongoing consequences."

"With WorkSafe currently running a campaign targeting young workers our message continues to be "Don't take unnecessary risks."

"You might think you're in control of the situation, but when something goes wrong, it will happen quickly, with little warning, often with permanent consequences."

"Posting stunts like this on YouTube encourages other people to do the same thing, putting them at risk as well."

The court was told Mr Ward's suspended forklift licence would be cancelled after today's guilty plea.

Source: WorkSafe Victoria

56 reported fatalities involving forklift trucks – 1 Jan 1985 to 13 November 2008

- Operator crushed by unexpected movement of forklift (7)
- Operator crushed by forklift in tipover/rollover (11)
- Pedestrian struck by travelling forklift (7)
- Pedestrian crushed by manoeuvring forklift (7)
- Operator overcome by exhaust fumes (1)
- Pedestrian crushed by falling loads (15)
- Operator crushed by forklift forks or load (8)
- Pedestrian crushed by falling load (15)

The company faced two charges of failing to provide and maintain a safe workplace for an employee and a contractor who were injured when a lift truck they were using overturned, for which it was fined $40,000.

The third charge was for failing to provide evidence that the operator of the lift truck was a competent operator, for which the company was fined $750.

In February 2005, a painter was engaged on a contract basis to paint the external walls of the company's warehouse and showroom, which were 5.5 to 6 metres high.

Continued on page 10
It was agreed that a scaffold would be provided, but one was not available for several days. In order to get the work started, the painter was provided with a Crown Lift Truck, a type of elevating work platform (EWP), from which to reach the high panels.

The EWP had tines that could be elevated, as well as an operator's platform with edge protection on three sides which also elevated with the tines.

The painter was informed that an employee of the company would operate the EWP while he worked from a work platform which had been placed on the tines. He was also supplied with a safety harness.

The two men carried out the painting job for some time, but at around 2.15pm when the two men were working with the EWP at close to its maximum extension height, it became unstable and overbalanced away from the building.

The EWP was being operated on the sloping surface of a car park contrary to clear instructions on the machine to use it only on hard level surfaces.

The painter was thrown out onto the bitumen, while the EWP operator remained in the operator's box throughout the fall. Both men were seriously injured.

WorkSafe WA Commissioner Nina Lyhne said today that the case should serve as a reminder that machinery should only be used for its intended purpose, and that operators must be properly licensed or trained.

"The machine itself has clearly-displayed instructions for its use, and these were disregarded for the sake of convenience," Ms Lyhne said.

"The operator’s manual clearly stated how the machine should be used and its limitations, but the employer did not have a copy of the manufacturer's instructions available for use by employees.

"In addition, the employer did not have any evidence that the operator he instructed to do the job was a competent operator of the machine.

"This case illustrates once again the extreme importance of ensuring that employees are properly trained and/or licensed to operate plant in the workplace, and that the manufacturer’s instructions are strictly adhered to at all times.

"If this had been the case at this workplace, two men would have avoided a great deal of pain and suffering, and the company would have avoided a sizeable fine and damage to its reputation."

Further information on safe use of machinery and employee training and licensing can be obtained at www.worksafe.wa.gov.au.

WorkSafe investigates death of worker at West Perth

11 November, 2008

WorkSafe is investigating the work-related death of a 29-year-old worker at a construction site in West Perth this afternoon.

The man was believed to have been taking down scaffolding at the site in Hay Street when he fell around 4.5 metres to the ground.

Inspectors are currently on site and will interview witnesses and investigate the circumstances. No further information is available at this stage.

WorkSafe thoroughly investigates serious work-related injuries and deaths in WA with a view to preventing future incidents of a similar nature.

WorkSafe WA Commissioner Nina Lyhne said any work-related death was a tragedy, and relayed her sincere condolences to the man’s family.

Extended Hours For Help And Early Intervention Centre

11 November 2008

From this weekend, Safework SA will extend the opening hours of its Help and Early Intervention Centre on a trial basis.

The extension is part of the Service Innovation Trials being run during Public Sector
Other Safety Events
This time last year, the Institute proudly supported the successful conduct of Greenskies 2007. This and other important environment/climate change events subsequently resulted in the establishment of an Environment Special Interest Group on the new SIA website.
Accordingly, we are pleased to support Greenskies 2008: Aviation & Climate Change Conference, which is planned to be conducted at the Four Points by Sheraton, Darling Harbour, Sydney, from 8-9 December 2008 inclusive.
Please note that the early bird rate is still available and SIA members who register will be eligible to receive one Continuing Professional Development (CPD) point per day of the conference.


Gary Lawson-Smith
Chief Executive Officer

Monday 8 – Tuesday 9 December 2008
Four Points by Sheraton, Darling Harbour, Sydney

Tony Jones – Master of Ceremonies
Walkley Award Winning Journalist and Presenter with ABC’s Lateline.

Currently, no issue is of more pressing interest and importance to our industry than the environment, specifically, aircraft carbon emissions and their consequences.


Conference enquiries to e-Kiddna Event Management on +617 5548 6199 or info@e-kiddna.com.au

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When good times turn bad:
The interaction between OHS policies, grievance procedures and contracts of employment

By Cameron Hannebery, Senior Associate, Deacons and Kathryn Bion, Lawyer, Deacons

All employers are aware of the criminal liability that they are exposed to if a breach of state safety law occurs at their workplace. In addition to this, employers can be exposed to civil liability through breach of the contract of employment if they breach their Occupational Health and Safety (OHS) obligations to an employee. The implementation of grievance procedures can be a crucial step in avoiding civil liability in such circumstances.

How can civil liability arise?

Two recent cases have required courts to examine the impact of an employer’s OHS obligations on the terms of a contract of employment. In both Goldman Sachs JBWere Services Pty Ltd v Nikolich and McDonald v State of South Australia the employer was found to have breached the OHS terms of a contract of employment. In both cases the breach of contract resulted in the employee receiving significant damages in excess of $400,000 for loss of past and future earning capacity. Given the amount of damages awarded it is important for employers to turn their mind to their contractual OHS obligations.

Goldman Sachs JBWere Services Pty Ltd v Nikolich

Terms of the contract of employment

In this case when the employee, Mr Nikolich, accepted Goldman Sachs JBWere’s offer of employment he had been provided a policy document entitled, “Working With Us” (WWU). The WWU was over 100 pages and contained information and policies in relation to workplace issues. The court held that certain terms of WWU were in fact terms of the contract of employment. Of particular relevance was the term relating to OHS, which stated that the employer “will take every practicable step to provide and maintain a safe and healthy work environment for all people”. Whether the terms of the WWU were to be considered contractual depended on whether a reasonable person in the position of the employee would conclude that the employer intended to be contractually bound by a particular statement. This is an objective test and turns upon the context and language of the particular term.

The employer argued that the statement within the WWU was merely aspirational and not contractual in nature. However, the court found that through the WWU the employer was viewed as holding itself out as having a commitment to provide a caring and safe environment. In this context the fact that the language used was slightly aspirational did not detract from the fact the statement was promissory in nature and therefore a term of the contract of employment. The court noted in this case that even though the term was found to be contractual it did not impose a much greater duty on the employer than the implied term, which applies to all contracts of employment. The implied term that the court was referring to is that an employer will take reasonable care to provide a safe place of work and a safe system of work.

Breach of the contract of employment

Having established that it was a term in the contract that the employer “will take every practicable step to provide and maintain a safe and healthy work environment for all people” it was necessary for the employee to show there had been a breach of that term. Mr Nikolich’s supervisor made an unfavourable decision against Mr Nikolich concerning the reallocation of clients. The supervisor then engaged in intimidating and threatening behaviour towards Mr Nikolich on two occasions, which distressed Mr Nikolich. Mr Nikolich made a formal written complaint to the human resource department and whilst the situation was discussed separately with those involved there was no resolution of the situation for nearly four months. The court found that the employer’s failure to deal promptly with this serious issue in the workplace was a breach of their contractual duty to take every practicable step to provide and maintain a safe and healthy work environment. In particular, the employer breached their duty by allowing Mr Nikolich to continue working in a small office managed by a person with

Continued on page 13
whom he had come into serious conflict, whose actions he had found extremely intimidating and threatening and with whom he was no longer on speaking terms. This breach of their contractual obligation was found to be the cause of Mr Nikolich’s psychiatric injury and therefore, damages for loss of past and future earning capacity were payable by the employer.

**How could a breach have been avoided?**

Had the employer dealt with Mr Nikolich’s formal complaint more efficiently and effectively then it is likely that there would not have been a breach of the term because the employer would be seen to have taken every practicable step. The court also found that an employer could not be taken to promise that harassment or bullying would not occur within the workplace and that a ‘commitment’ to grievance procedures was not contractually binding. Therefore, the sections of the WWU dealing with harassment and grievance procedures were found to be descriptive in nature and not terms of the contract of employment. This only strengthens the view that had Mr Nikolich’s grievance been dealt with in a timely and appropriate manner the breach of contract would have been avoided.

**McDonald v State of South Australia**

In this case the employer was found to have breached the contract of employment in two ways. The employer breached the implied term that the employer would take reasonable care to provide a safe place of work and a safe system of work. In addition the employer had breached the implied term of mutual trust and confidence. Based upon these two breaches the employee was entitled to treat the contract of employment as repudiated and that he had been constructively dismissed.

**The implied term to provide a safe place of work and a safe system of work**

The employee, Mr McDonald, was employed to fill a vacancy for Year 12 computing teaching and Year 11 Maths teaching. His appointment coincided with a rapid expansion of the computer technology at the school. The demands for Mr McDonald’s time increased and he was working long hours. His role extended to cover management and administration of the computer network, which he was neither qualified nor trained for. He had no past experience in rolling-out new computer systems or hardware. Mr McDonald needed to work overtime and out of hours to keep up with the work. Mr McDonald made written complaints regarding his workload and requesting clarification of the nature and tenure of his position.

The court found that the employer breached its duty of care to provide a safe system of work and to provide for Mr McDonald’s safety and welfare in the workplace in the following ways: asking Mr McDonald to manage the IT network without any training and without management; failing to undertake proper planning for the roll-out of new IT; failing to manage Mr McDonald when his workload became too onerous; failing to have a system of line management and proper directions; failing to take Mr McDonald’s complaints seriously; and allowing Mr McDonald to shoulder the responsibility for repairing and maintaining a vast computer network in a very large school without any positive instructions as to where his job started and finished. It was clear on the facts of the case that the employer had failed to put any system in place for the roll-out of the new IT network and had allowed Mr McDonald to undertake the roll-out without any support, guidance or training, resulting in Mr McDonald’s stress and anxiety related injury.

**The implied term of mutual trust and confidence**

In addition to having an inadequate system of work in place the employer also failed to implement an appropriate grievance procedure in response to complaints made by Mr McDonald. Mr McDonald first complained in January 2001, and whilst senior management met with Mr McDonald in response they failed to implement any practical changes within the workplace to address the substance of the complaints. In fact, in late 2001 and early 2002 a series of events occurred which discriminated against Mr McDonald, undermined his position and involved harassment and bullying from senior staff.

Mr McDonald then lodged another formal complaint in mid 2002, which the court found still remained unresolved at the time that Mr McDonald’s employment ended in April 2004.

The court found that the response of the employer to Mr McDonald’s complaints was entirely inadequate and that this amounted to a breach of the implied term of mutual trust and confidence. The employer’s assertion that Mr McDonald had failed to use the correct procedures to lodge a formal grievance was found to be irrelevant because the employer was clearly on notice that there were issues in relation to Mr McDonald’s employment, which needed to be resolved.

The employer effectively chose to ignore Mr McDonald’s complaints in the hope that they would go away and whilst the employer had detailed policies regarding grievance resolution, these were not implemented.
How could a breach have been avoided?

Had the employer followed its own detailed policies regarding the resolution of grievances it is likely that the breach of the implied term of mutual trust and confidence could have been avoided. Whilst the breach in relation to safety could only have been avoided by having a safe system of work in place, it is likely that the escalation of the situation was largely a consequence of the failure to deal with Mr McDonald’s early complaints. Had his initial complaint relating to his work load, job description and tenure been dealt with appropriately it is likely that the stress and anxiety he would have experienced would have been minimal, there would have been no breach of mutual trust and confidence and any liability for damages payable would have been greatly reduced.

What should employers do in response to these cases?

- Review all policy documents that are provided to potential and existing employees as the terms of these documents may be considered terms of the contract of employment if their language is contractual in nature. In particular, consider sections relating to occupational health and safety, harassment and grievance procedures.

- Ensure there is a detailed policy in effect in relation to grievance procedures and that this policy provides for timely resolution of serious grievances.

- Ensure that employees who are required to implement the grievance procedures (i.e. human resources and senior management) are familiar with the procedures and understand the importance to employees’ health and safety.

- In the event that a complaint is received do not rely on the form of the complaint, instead look to the substance of the complaint and determine whether it should be treated as a formal grievance under the grievance procedures.

- Implement grievance procedures when a grievance arises.


This article is intended to provide a general summary only and should not be relied on as a substitute for legal advice.

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