

# WORKSTREAMS NEWS

October 2006

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## Safe Work Australia Week

Employers and employees have been encouraged to give extra recognition to health and safety in the workplace for Safe Work Australia Week.

The annual event was celebrated nationally last week from 22-28 October and was designed to encourage more attention on OHS issues. Federal workplace relations minister Kevin Andrews said the week brought into focus “the confronting toll of work-related deaths, injuries and disease on the community”.



“The estimated cost of work-related injuries and disease each year in Australia is \$34.3 billion,” Mr Andrews said. “Not to mention the cost of pain and suffering for the injured, their families, the workplace and the community.”

## Firms fined for breaches

Last week two Ballarat companies involved in the construction of accommodation units were fined \$67,500 for failing to ensure the safety of their workers. Ballarat Magistrates Court heard 5 Lal Lal St and Interline Ballarat were caught without scaffolding and fall protection on November 2 last year - less than two weeks after a WorkCover inspector issued them with a notice for the same offence.

The court heard 5 Lal Lal St, which was building 25 student accommodation units for the University of Ballarat, was the principal contractor and occupier of the site, while Interline employed workers to undertake roofing work.

Victorian WorkCover Authority prosecutor, Niki Andriopoulos said the

inspector observed three employees working about 7m above ground level, without fall protection on November 2. She said 5 Lal Lal St had been responsible for the hire, provision and erection of scaffolding, which had been returned to Palmer Hire on October 30.

In sentencing, Magistrate Bernard Coburn said it appeared 5 Lal Lal St had been trying to save costs during the project. “Interline employees were left unprotected purely as a cost saving measure.” He fined 5 Lal Lal St \$45,000 after it pleaded guilty to one count each of failing to provide a safe work environment and failing to comply with a prohibition notice.

Interline Ballarat, which pleaded guilty to two counts of failing to provide

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a safe work environment, was fined \$22,500. Defence lawyer for 5 Lal Lal St Ian Munro said the company apologised for the breaches and regretted that they occurred. Defence lawyer

for Interline Ballarat Kim Cunningham said the company had never experienced such problems in 28 years of business.

## CSR fine increased for machine guarding incidents

An appeal court has more than doubled a manufacturer’s fine for two workplace incidents that injured employees’ arms after finding the original penalty to be inadequate.

At CSR Ltd in Yarraville, a worker’s arm was dragged into the rollers of a machine on 3 February 2004 after it was caught at an unguarded nip point while he was removing debris from a running conveyor belt. He was able to return to work a few hours later although his forearm was numb and weak.

On 3 June 2004, a woman’s arm was broken when it was dragged into the rollers of another machine at the same site. She had been inspecting the rollers to find the source of imperfections in the plasterboard manufactured and reached under the conveyor belt to feel if there was a build-up of plaster.

CSR Ltd was prosecuted for two breaches of section 21(1) and 21(2)(a) of the Occupational Health

and Safety Act 1985 (Vic) and pleaded guilty. The machines had clearly been inadequately guarded. In the Magistrate’s Court, this week, the company was fined \$15,000 but was not convicted.

The Director of Public Prosecutions appealed on the basis that the fine of \$15,000 had been manifestly inadequate. In the County Court of Victoria, Judge Susan Cohen agreed with the DPP. She imposed fines totalling \$40,000 and also convicted CSR Ltd.

WorkSafe Victoria’s Executive Director, John Merritt, said inadequate machine guarding remained a significant cause of workplace injury.

“Ensuring your workplace is safe is not hard. Workers and employers are required to consult on matters affecting safety. Ensuring machines have the right guarding is a basic legal responsibility.”

## MEMBERS ALERT: Federal Awards and Accident Make Up pay

### Alert for members employing staff under a Federal Award or Common Rule Award.

Under the Workplace Relations Amendment Act 2005, Make-Up pay provisions are Non Allowable matters and, therefore, are no longer enforceable. This means that if your employees are not covered by AWA, certified agreements, collective agreements and notional agreements preserving state awards you are no longer required to pay make up pay.

EXAMPLE OF PAYMENT TO A WORKER RECEIVING WORKCOVER BENEFITS

PRE WORKCHOICES ACT 2005		POST WORKCHOICES ACT 2005	
Week 1 to 12 of Compensation		Week 1 to 12 of Compensation	
Workers Weekly Base Pay Rate	\$680,00	Workers Weekly Base Pay Rate	\$680,00
Compensation Payment @ 95%	\$646,00	Compensation Payment @ 95%	\$646,00
Make Up Pay	\$34,00	Make Up Pay	\$34,00
13 Week Reduction of Compensation			
Compensation Payment @75%	\$510,00	Compensation Payment @75%	\$510,00
Make Up Pay	\$170,00	Make Up Pay	NIL

Based on the above example with a make up period of 39 weeks, an employer would reduce their payroll costs by \$4,828.00. For further clarification please do not hesitate to call us on **9349 4800**.

## Workplace injury count still too high: Tasmania

More than 10,000 employees were injured in Tasmanian workplaces during 2005/06 — a rate of 27 a day. The figure is 230 less than the previous year but the Tasmanian Government said it was still unacceptable.

**The main injuries reported during the year were:**

- injuries to muscles, tendons and ligaments (3,572)
- wounds, lacerations, amputations and internal organ damage (2,593)
- trauma to muscles and tendons (868)
- fractures (539).

The main causes of the injuries were body strain, being hit by a moving object and falls, trips and slips. They mostly occurred in manufacturing, health and community services, retail trade and construction. Tasmania is presently holding Workplace Safe week, which runs from 22–28 October and is part of the national Safe Work Australia Week.

## Sexual Harassment in the workplace may get you somewhere....

A confessed dirty jokes queen labeled lewd and crude will pocket a \$6000 sexual harassment payout. Court security officer Robyn Ward suggested staff play strip poker, offered to take a workmate home and “make a man of him”, pinched men’s bottoms and made vulgar remarks, a tribunal heard. But when a workmate allegedly touched her breast and constantly pulled her head towards his groin over several months last year, she took legal action.

“Dirty jokes is one thing. Touching is another,” Ms Ward said. Ms Ward, who joined other policing Melbourne Magistrate’s Court in regular smutty banter, was awarded compensation despite being described as sex-obsessed. Victorian Civil and Administrative Tribunal senior member Noreen Megay noted the work climate was rife with innuendo, but ruled the groin incidents and breast touching were unwelcome and offensive.

## Buyers Beware

Some of our members have rung us to ask whether it is true that hiring labour hire personnel to perform general duties at the workplace means that they don’t have to worry about safety regulations. The answer is ABSOLUTELY UNTRUE.

Under the Occupational Health and Safety Act 2004 (OHS Act), both the labour hire agency and the host employer must provide a working environment that is safe and without risks to health, so far as is reasonably practicable. Both the agency and the host employer share this duty, and it cannot be shifted from one contract into another.

The OHS Act also sets out ways for workers to be represented and raise issues in relation to health and safety at work. In short, you have the same legal duties and responsibilities regarding the health and safety at work of your “guest” employees as any other of your employees, including:

- the obligation to provide a healthy and safe workplace;
- the obligation to consult your guest employees in relation to health and safety;

**In addition your guest employee have:**

- the right to refuse to perform unsafe work; and
- the right to be protected from discrimination when they raise a health and safety issue or concern.



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## ASCC releases the national statistics for 2003-2004

The Australian Safety and Compensation Council has released the national statistic relative to the 2003-2004 period. The preliminary number of new work-related compensation claims reported in Australia for 2003-04, was 137 550.

Almost one-quarter of claims (24%) reported in 2003-04 were attributed to Nonpowered handtools, appliances and equipment. Within this category, the two most common sub-categories were Fastening, packing and packaging equipment (8% of all claims) and Furniture and fittings (5% of all claims).

Employees in the Manufacturing industry had the highest number of claims, 27 940, or 20% of all claims. The next three industries ranked on the number of claims were Health and Community Services (16 650 claims, or 12% of all claims); Construction (14 125 claims, or 10% of all claims) and Retail trade (13 430 claims, or 10% of all claims). These four industries together represented just over half of all claims.

The Manufacturing industry and Transport and storage Industry, each with 16 claims per million hours worked, had the highest frequency rates. They were followed by the Agriculture, Forestry and Fishing Industry and the Construction Industry (both with 15 claims per million hours worked). These four industries were well above the national frequency rate of 10 claims per million hours worked.

Just over one-quarter (26%) of all new claims (35 480 claims) were made by employees in the Labourers and Related Workers occupation category. Tradespersons and related workers accounted for 19% of claims (26 135 claims) and Intermediate Production and Transport Workers 18% (24 240 claims). Advanced clerical and service workers had the smallest number of claims of any occupation group (1215, or 1% of all new claims).

The frequency rate generally increased with age. The highest frequency rate (12 claims per million hours worked) was recorded by the oldest employees, those aged 55 years and over, and the lowest frequency rate (8 claims per million hours worked), was recorded by employees aged 25-29 years.

## Part B: Compensated fatalities in 2003-04

Preliminary data show that in 2003-04 there were 189 compensated work-related fatality claims. This is equivalent to an incidence rate of 2.3 compensated fatalities per 100 000 Australian employees. Of these fatalities, 177 were male employees (94%), and 12 were female employees (6%).

Of the 189 compensated fatalities, 17% (32 fatalities) were recorded among employees in the Construction Industry; three-quarters of these fatalities were recorded in the Construction trade services sub-division (primarily related to the building trades, such as tiling, electrical or plumbing services).

The second highest proportion, 16%, was recorded among employees in the Transport and Storage Industry (30 fatalities); and of these, 83% (25 fatalities) occurred in the Road Transport sub-division. The Agriculture, Forestry and Fishing Industry (with 21 fatalities) and the Manufacturing Industry (with 20 fatalities) experienced the third and fourth highest number of fatalities.