



Workplace Safety Australia

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Dodgy OHS services being offered in Victoria – beware!

Victorian business operators are being urged to be wary of ‘cold callers’ offering health and safety services. WorkSafe’s Executive Director, John Merritt, said the health and safety regulator had no commercial operations nor did it endorse commercial operations, directly test equipment or conduct training:

In recent weeks WorkSafe has received a variety of complaints about people touting for business, including claims that some sales people gave the strong impression that they were WorkSafe Victoria employees. WorkSafe inspectors carry identification cards showing their photograph and signature, the Victorian coat of arms and a contact number by which their credentials can be checked. It is a criminal offence to pose as a WorkSafe inspector.

Other complaints made to WorkSafe include:

- business operators in Melbourne’s south-east have been approached about having electrical testing and tagging done. One business operator told WorkSafe a sales representative said he could be shut down if equipment was not tested.
- business operators have been told that the new OHS Act requires them to have a trained first aider on site. This is not true.
- businesses have been told they will be given a letter saying that they complied with health and safety laws concerning signage. WorkSafe does not recognise such letters.

Merritt stated:

If in doubt about someone’s *bona fides*, or their claims in terms of Occupational Health and Safety requirements, you should seek advice from WorkSafe. Consider what is needed, seek advice if necessary and determine whether what is offered represents value for money. WorkSafe does not recognise certificates or similar documents from safety service suppliers that say a particular business complies with the health and safety laws. Notices issued by WorkSafe Victoria inspectors follow a visit to determine compliance with the law or the need to undertake safety improvement work. It’s hard enough running a business without someone preying on your goodwill or lack of knowledge. Apart from leading to possibly unnecessary spending it undermines legitimate businesses doing their best to improve workplace safety. The old saying ‘let the buyer beware’ should always be at the front of mind when dealing with cold callers. They might be legitimate, but caution is essential.

Workplace Safety Australia is able to verify any OHS requirement in relation to which claims have been made or regarding which subscribers are not clear.

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Needlestick injury leads to successful prosecution for fast food chain

Loading a garbage bag containing a used syringe left a 17-year-old KFC worker with a needlestick injury and three months of uncertainty, a magistrate has heard. WorkSafe Victoria recently gave evidence before the Melbourne Magistrates Court that the 17-year-old was emptying garbage bags into a dumpster at the Vermont KFC outlet when he was pricked in the left forearm in February 2002.

It took three months for test results to confirm the teenager had not contracted a disease as a result of the incident. Kentucky Fried Chicken Pty Ltd was fined \$10,000 and ordered to pay costs of \$20,000. St Mina's Global Restaurants Pty Ltd which operates the Vermont KFC outlet was fined \$10,000 and was ordered to pay costs of \$11,000. St Minas operates 56 franchises in Australia including 22 Pizza Hut outlets and 34 KFC outlets, 14 in Victoria.

Each company pleaded guilty to one charge in laid under the Occupational Health and Safety Act. The Magistrate said while the culpability of both defendants was low, the case highlighted a hazard that ought to be guarded against.

WorkSafe's Executive Director, John Merritt, said that as young people may be inexperienced, franchisers had a clear responsibility to ensure businesses which were part of their undertaking followed health and safety laws. Merritt noted that hundreds of young people were hurt at work each year, many while working part-time.

Fast food chains have considerable ability to create and enforce safety standards including the need to ensure training and supervision is provided. Franchisees have a responsibility to ensure appropriate risk assessment is carried out and that employees are appropriately trained. No matter where you work, young or inexperienced people need to ask workmates or supervisors if they have safety concerns. Just saying 'Is this ok?' or 'Should I do it another way?' could save a life. Encouraging employees to raise concerns about workplace hazards through team meetings and health and safety committee's is another simple step.

In another instance of an injury suffered by a young worker, a Sunshine Coast construction company has been fined \$29,000 after a worker, 17, was injured in a fall at a Noosa Springs residential housing construction site on 15 July 2004.

The employer pleaded guilty in the Noosa Industrial Magistrates Court to breaching sections 24 and 28(3) of the Workplace Health and Safety Act 1995, having failed to ensure the safety of others was not affected by the way it carried out its business. The court was told that on the day of the incident the worker was carrying a plank along the outside perimeter of the upper level of the house when he attempted to manoeuvre around a trestle. The worker slipped and fell 4.1 metres, fracturing an ankle and an elbow.

The workplace health and safety investigation revealed that the upper floor did not have any edge protection and there were no other fall prevention systems in place. The edge protection had been removed earlier that day and no other measures taken to manage the

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risk of falls. As a result of the incident, the company installed perimeter scaffolding incorporating edge protection to manage the exposure to the risk of working at heights.

The Industrial Magistrate hearing the case commented that the offence committed was serious, but took into account the company had no previous convictions, had entered an early plea of guilty and cooperated with authorities. The Magistrate ordered the company to pay investigation costs of \$1,500. No conviction was recorded.

Commissions and Courts are usually particularly critical of employers and others whose failure to meet their statutory OHS duties results in injuries (or worse, death) to young workers, and are generally willing to impose harsher fines and penalties as a result of such incidents. Employers across Australia have a higher duty in relation to young workers than to most others, as it is generally recognized that young workers are usually less experienced and skilled and often less 'responsible' in their work practices.

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NOHSC announces new exposure standards

NOHSC has declared 31 national exposure standards that took effect from 31 August. These national exposure standards have been sourced from both the British Health and Safety Executive (HSE) and recommendations from National Industrial Chemical Notification and Assessment Scheme (NICNAS) Priority Existing Chemical reports. These amendments include both new and revised national exposure standards.

The declaration of the *Amendments to the Adopted National Exposure Standards for Atmospheric Contaminants in the Occupational Environment [NOHSC:1003(1995)] Source A Updates 2005* will align Australian standards with international standards. The revised and new standards (based on a time-weighted average over eight hours) include can be found at;

<http://www.nohsc.gov.au/PDF/Standards/AmendmentInstrument-SourceA2005.pdf>

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Reckless worker denied compensation after injury on break

The appellant, Anthony May, was employed by the respondent, ICM Farm Products Pty Ltd, as a slaughterman/labourer at its Yarrowonga meat processing works. On 27 January 1999, he was injured when his motorcycle collided with a motorcar at the intersection of the Murray Valley Highway and White's Road, Yarrowonga. The collision occurred during his lunch break, and whilst he was riding home.

The employer denied the payment on the basis that the worker's driving of the motorcycle was serious and willful misconduct. The employee was driving a motorcycle when he was unlicensed and disqualified from so driving. Further, the employee was traveling "at a speed excessive in all the circumstances and failed to give way at an intersection."

In the County Court the judge who heard the case stated that "...the dispute between the parties is in respect of whether that temporary absence was during an authorised recess and whether or not during that absence the plaintiff voluntarily subjected himself to any abnormal risk of injury..." The County Court Judge found in favour of the employer. Specifically;

- The appellant had been injured whilst temporarily absent from his place of employment during an authorized recess. It mattered not that injury had been suffered, as it turned out, in the course of a journey between place of employment and place of residence, injury in the course of such a journey being no longer compensable in terms;
- The injury was not rendered non-compensable by reason of the fact that the employment had not been a significant contributing factor to such injury.
- The critical question was whether the appellant had established – that is, he carrying the onus – that he had not voluntarily subjected himself to an abnormal risk of injury.

In summary the Judge concluded;

The manner in which the appellant rode his motorcycle at and across the intersection equated to 'Russian roulette'. It 'constituted a total indifference to his own safety and the safety of others'. It did not involve just an error of judgment. It was 'far more' than such an error. The appellant had voluntarily subjected himself to abnormal risk of injury because, though being familiar with the intersection and the presence of the Give Way sign, he 'rode his motorcycle at an excessive speed straight into the intersection while his vision was obscured both to left and right'. His knowledge of the intersection and other circumstances revealed deliberation and intention in respect of the risk which he assumed.

The Supreme Court refused to overturn the worker's appeal.

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Fat build up in WA Butcher's Meat Smoking Machine leads to fire

A fire occurred in an electric smoking oven in a butcher shop. Fat and meat residue had built up along the inside of the oven door and was ignited by the use of a temperature setting of 180 degrees Celsius. Fire broke out but the proprietor was able to control it with a fire extinguisher located on the premises.

The proprietor had not referred to the operator's manual for comprehensive cleaning instructions. He cleaned the visible walls of the smoking oven but was not aware that the invisible walls were accessible and required regular cleaning as well (every 300-400 hours as recommended by the operator's manual).

During the smoking and curing process, meat drippings are deposited on the false sides of the oven. They accumulate in bends and folds in the metal false walls and in the doors of the smoker. A fire is likely to occur if drippings accumulate to the extent that droplets make contact with the open flame in a gas fired oven or the electrical elements in an electrically powered oven, or if an unusually high temperature acts as an ignition source.

In reviewing the circumstances surrounding the incident WA WorkSafe suggested the following "Factors to be Considered" ...

- Use of cooking temperatures appropriate for the safe use of the smoking oven.
- Lack of regular cleaning and removal of meat dripping residue from inside the smoking oven.
- Operation of smoking oven in accordance with manufacturer's operating instructions.

WorkSafe suggested;

1. Meat retailers should ensure that smoking ovens/machines are regularly inspected for build-up of meat fat and drippings, particularly during seasonal periods of increased usage.
2. Meat retailers are advised to develop and document a cleaning schedule for all machinery and equipment including meat smoking ovens, and a safe system of work for general operations.
3. Routine cleaning and maintenance should be carried out in accordance with the manufacturer's instructions contained within the operator's manual.
4. Purchasers of machinery and equipment including smoking ovens should ensure they receive an operator's manual from the supplier before the equipment is put into operation.

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5. Purchasers of smoking ovens should ensure an appropriate fire extinguisher is provided and regularly maintained, and is located in close proximity to the oven.

Yours Faithfully,

Workplace Safety Australia Pty Ltd.

Important Note

The information contained in this Safety Alert is in general terms only and does not constitute legal advice or other professional advice. The information contained in this Safety Alert should not be relied upon and is no substitute for seeking legal or other professional advice as appropriate to any facts, circumstances and materials that might be necessary for you to provide to a professional advisor. While all reasonable care is taken in producing Safety Alerts, Workplace Safety Australia, its consultants and all others involved in providing this Safety Alert All expressly disclaim all and any liability for the results of any actions or failure to act taken on the basis of this Safety Alert, and for any error or omission arising therefrom. Should you wish to discuss this further, please contact Workplace Safety Australia on 02 9387 1248.

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