

## **MORE POINTS - SAFETY AMENDMENT ACT 2002**

- Employees may legally refuse to do unsafe work
- Safety Reps will be elected, their role is prescribed
- Safety Reps must have access to proper HSE systems
- Information for employees must now be readily available
- Employers must systematically identify and manage hazards
- Employers must now provide all necessary PPE - formerly they could require employees to supply their own
- All employers must now provide opportunities for staff to be involved and participate in safety matters
- The participation system must be adapted to suit a workplace (unions and employees must be consulted)
- Paid leave for staff training in safety now applies. 2 days for 1-5 staff, 6 days for 6-50 staff and over 51 workers, 1 days for every 8.
- Inspectors can issue a compliance order forcing the employer to properly consult with staff.



## **RECENT SAFETY DECISION BY PRIVY COUNCIL**

The Council recently altered the circumstances in which exemplary damages are available in New Zealand. Previously, a Court could only award exemplary damages where a defendant was aware of the risks of his or her conduct and acted deliberately or recklessly in taking those risks.

Now a defendant does not need to be aware of the risks of his or her conduct, the conduct need only be outrageous in the eyes of the Court. The decision confirms that an employee who has suffered work-related harm may in rare cases be awarded exemplary damages, as long as the Court considers the employer's conduct outrageous. The sole function of exemplary damages is to punish the defendant.

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*For Business Qualifications and Risk Management*

## **News & views from Summit Summer 2002**

### **OSH Amendment Act passed into law on 20/12/02 effective 5/5/03**

1. Workplaces means all work sites except homes
2. Definition of employee includes most volunteers
3. Inspectors can issue instant fines up to \$4000
4. The maximum fine is now \$250,000
5. Hazard notices may be issued by Safety Reps
6. Insurance against HSE Act fines is now unlawful
7. Safety Reps must be trained and qualified in Safety Laws
8. If OSH fails to prosecute, a private prosecution may be taken by a victim or by another party. This is a major law change that will require OSH to now enforce the law. (continued on page 4, copy of Act [www.workinfo.govt.nz](http://www.workinfo.govt.nz))



### **ALL GOVT DEPTS UNDER SAFETY LAWS FROM 10 OCTOBER 02**

An another amendment act was passed into law on 10 October 2002 making all Govt and Local Govt employees subject to the Occupational Safety laws. This means that even OSH will be required to have proper systems in place for their legal obligations.



### **PUBLIC HEALTH PERSPECTIVES**

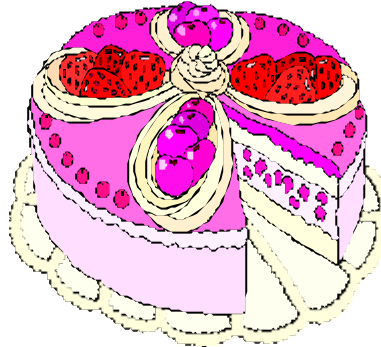
A new discussion paper, Public Health Legislation: Promoting Public Health, Preventing Ill Health and Managing Communicable Disease, was recently released by the Minister of Health. The paper follows up the Govt's decision to replace the Health Act 1956 and the Tuberculosis Act 1948 with a new Public Health Bill. You can obtain a copy from the Ministry of Health Wellington or go to [www.moh.govt.nz](http://www.moh.govt.nz)

## **FOOD SAFETY STANDARDS ARE NOW IN FORCE**

Food Standards were introduced on 20 December 2002 replacing most of New Zealand's Food Regulations. Go to [www.nzfsa.govt.nz](http://www.nzfsa.govt.nz)

We have been informed by officials in the Ministry of Health that there will soon be compulsion for food safety systems and HACCP training. They intend to start with the front end of the food chain - vis eating houses, supermarkets, fast food facilities etc. They will gradually work back to the beginning of the food chain - for example farmers and growers.

**Food Safety systems must be completed within the next 12-18 months. NB there may not be sufficient trained practitioners available to help you. Contact us now.**



## **RISK MANAGEMENT AND CORPORATE GOVERNANCE**

**Why do 94% of businesses fail? Managers cannot make decisions!**

It has often been said that it is much better to make a wrong decision occasionally and operate a proper decision making process. The occasional mistake can be fixed. On the other hand, ineptitude and procrastination are the thieves of success.



Regulatory authorities such as Inland Revenue and the Australian Stock Exchange are now requiring much more accountability from Managers and Directors. This is now called Corporate Governance. Directors and Managers are required to report on a range of risk management information and give assurances to their stakeholders. The stakeholders include staff, shareholders, Govt authorities and the community.

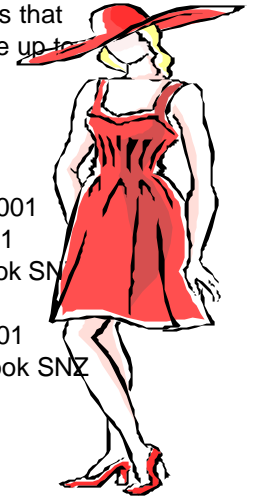
## **MOH SUBSIDIES AND REST HOME AUDITS**

Hospitals, Rest Homes and a range of health care facilities that currently receive Government subsidy are required to come up to risk management standards.

There are several new standards relating to

- Infection control NZS 8142:2000
- Infection Control Audit Workbook SNZ HB 8142:2001
- Restraint Minimization and Safe Practice NZS 8142:2001
- Health and Disability Sector Standards NZS 8134:2001
- Health and Disability Sector Standards Audit Workbook SNZ HB 8134:2001
- National Mental Health Sector Standard NZS 8143:2001
- National Mental Health Sector Standard Audit Workbook SNZ HB 8143:2002

If you require further information, please contact Summit Systems Ltd for assistance.



## **LEGAL CASE NOTES FROM THE COURTS**

**Some statistics reported in Safeguard Magazine Nov/Dec 2002**

Failure to reassess the risk posed by a nearby hazard after the work method was changed led to a worker being severely injured when a mobile scaffold contacted powerlines. **J Mudgway Ltd** was fined \$15,000 under s.16(1)(b) following the incident, which resulted in a contractor's employee losing his left arm above the elbow, suffering burns to many parts of his body, and the amputation of toes on both feet. He was awarded the entire fine (Palmerston North DC 30 May).

**Nelson Dive Centre Ltd**, convicted under s.15 charges in May 2001 and fined a total of \$75,000 had its penalty reduced by \$25,000 following a High Court decision of 4 March. Back in the District Court, the total fine was reduced to \$50,000. The fine was awarded in the same proportion as earlier, so that families of the three deceased received \$10,166. and the three surviving victims received \$6,500 (Nelson DC 29 May).

**Kiwi Dairy Products Ltd** was fined \$10,000 under s.6 after an employee collecting contamination samples at its Hawera milk powder plant lost her balance and fell through a suspended ceiling. There was no edge protection to prevent a person stepping onto it and falling through. The woman was awarded the entire fine. (New Plymouth DC. 7 May 2002).