

## News & views from Summit Systems Spring 2018



Photo is sunset on Israeli beach

Below is real short cut

### **FOR SHORTCUTS YOU MUST BE EXTREMELY CAREFUL**

We know that there are thousands of people who proclaim that you do not need proper systems. This reminds us of the OSH Officers of the 1990s who continually told clients not to waste their time and money on big books.

Most of the naysayers do not even know that there are international standards for the establishment of management systems to comply with the laws. For example, the Building Act 2004 requires a compliance folder that matches the systems of the building/s with the Building Code chapters and features. In a similar manner Judge Mazzone J of Boston made it clear to all and sundry that he and other judges would measure the compliance performance in relationship to Environmental laws and "if they do not have proper systems and proof of audit. we will simply give them the stick".

We urge all of our readers to try and rationalise the following: Would a Judge or Jury be more likely to give credence to a proper system that is constructed in accordance with International Standards or to a few forms selected to minimise the amount of time required but happen to give some impression of due diligence. In Australia NZ there is AS 3806 which is the standard for building a compliance system. There is also AS/NZS 4360 which is means and measurement for risk management.

In our decades of experience, there are only two things that will work in a court or law if you wish to try and rely on the most basic of formats. They are:  
**FIRSTLY** there must be qualified and certificated Safety Officers that are capable of carrying out the work of the responsible Safety Manager or PCBU. The ratio required is 1 per 5 workers or 1 per small team.  
**SECONDLY** there must be Job Task Analysis for all of the important tasks, functions, jobs and machines that are or may be involved at the site or in association with the site operations.



### **THE WHISTLEBLOWER IS SOUNDING ONCE AGAIN**

A Citigroup executive repeatedly tried to warn top management about risks accumulating on the bank's mortgage books in 2006 and 2007, but the warnings were largely ignored until it was too late.

That whistleblower, Richard Bowen, told the Financial Crisis Inquiry Commission on Wednesday that he told his superiors as early as mid-2006 that he believed there were significant unrecognized financial losses at Citi related to its business of buying loans and bundling them into bonds to sell to investors. He e-mailed his concerns to a Citigroup director, Robert Rubin, on Nov. 3, 2007. That happened to be one day before former Citi Chief Executive Charles Prince resigned amid the subprime lending crisis that would quickly engulf Citi, Merrill Lynch, Lehman Brothers and the rest of Wall Street.

"I have been agonizing for some time over these issues," Bowen told Rubin in the e-mail, which was published along with his written testimony. In it he detailed how Citi purchased tens of billions of mortgages from third-party lenders to package and resell but that by 2006 more than half of those loans violated Citi's own underwriting standards. Bowen was in charge of the unit that was supposed to make sure the loans they purchased did conform to Citi's lending standards.

For those who have ears to hear, the great unlock will stop and fix the clever cowboys (buybacks) yet again as after 1929. <http://rooseveltinstitute.org/stock-buybacks-corporate-executive-cashouts-and-end-safe-harbor-rule/>.



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**Rom 8:11** But if the Spirit of Him who raised Jesus from the dead dwells in you, He who raised Christ from the dead will also give life to your mortal bodies through His Spirit who dwells in you.

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## 2.

### **CONTRACTS AND COMMERCIAL LAW ACT 2017 SEC 5**

#### Contracts

(2) **Part 2** relates to contracts, including matters relating to—

- (a) **contractual privity** (provisions that permit a person who is not a party to a deed or contract to enforce a promise made in it for the benefit of that person) (see **subpart 1**);
- (b) **contractual mistakes** (see **subpart 2**);
- (c) **contractual remedies** (in particular, provisions relating to damages for misrepresentation and to cancellation) (see **subpart 3**);
- (d) **frustrated contracts** (see **subpart 4**);
- (e) **illegal contracts** (see **subpart 5**);
- (f) **contracts entered into by minors** (persons under the age of 18 years) (see **subpart 6**);
- (g) **certain stipulations in contracts not being of the essence of contracts** (**subpart 7**).

#### Sale of goods

(3) **Part 3** relates to the sale of goods, including matters relating to—

- (a) **the formation of a contract of sale** (see **sections 120 to 130**);
- (b) **conditions and warranties** (for example, implied conditions or warranties as to quality or fitness for a particular purpose) (see **sections 131 to 142**);
- (c) **when ownership of the goods is transferred** (see **subpart 2**);
- (d) **the duties of the seller and the buyer and the delivery of the goods** (see **subpart 3**);
- (e) **the rights of an unpaid seller** (see **subpart 4**);
- (f) **remedies for a breach of a contract, including a remedy for a breach of warranty** (see **subpart 5**);
- (g) **supplementary matters, including an exclusion where the Consumer Guarantees Act 1993 applies** (see **subpart 6**);
- (h) **giving effect to the United Nations Convention on Contracts for the International Sale of Goods** (see **subpart 7**).

#### Electronic transactions

(4) **Part 4** relates to electronic transactions, including matters relating to—

- (a) **improving certainty in relation to electronic information and electronic communications** (see **subpart 2**);
- (b) **how legal requirements apply to electronic transactions** (for example, requirements to give information in writing and to provide access to information) (see **subpart 3**).

**NB: Any client that considers his or her business has an issue with a matter that may relate to this law should contact our officer to access a Commercial Barrister.**



## 3.

### **ACC FEEDBACK LEVIES 2020**

You may be interested to know that you can check up on what is likely or probable to happen visit [www.shapeyouracc.co.nz](http://www.shapeyouracc.co.nz)

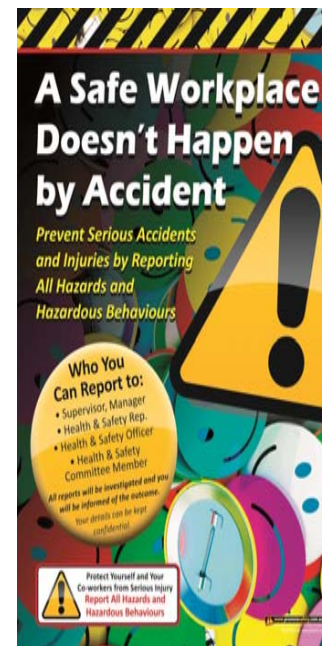
Feedback has closed but it is now in hands of Minister for approval and will be published end September 2018 for public consultation.

#### PRODUCT A

1. Simplified base levy pricing
2. Enhanced performance rating
3. Lead indicators

#### PRODUCT B BUSINESSES

Show strong, existing health & safety performance  
Drive continuous improvement in workplace safety  
Have finance resources & strength – injury prevention  
Manage successful workplace rehab/claims for workers  
Deliver positive experiences for their workers  
Involve workers in both injury prevention and recovery  
Deliver great rehab & claims management for ACC



### **CONSTRUCTION CONTRACTS ACT UPDATE 2015**

1. The amendments ensure the CCAA provides:  
Protection of retention money withheld under construction contracts a fair, balanced and appropriate payment regime access to fast and cost-effective dispute resolution cost-effective & timely enforcement of rights and obligations.
2. Changes relating to retention money  
The CCAA as amended by the Regulatory Systems (Commercial Matters) Amendment Act 2017 contains new requirements for protecting retention money.
3. From 31 March 2017, retention money withheld under commercial construction contracts must be held on trust in the form of cash or other liquid assets readily converted into cash, unless a complying instrument is obtained.
4. The retention money requirements only apply to contracts entered into, or renewed, on or after 31 March 2017.
  - a) Payers (e.g. developers and head contractors) who choose to withhold retention money have two options:
  - b) holding retention money on trust in the form of cash or other liquid assets readily converted into cash [the default option], or obtaining a financial instrument, such as insurance or a payment bond, to provide third-party protection of retention money (a 'complying instrument' under the CCAA).