

Workers' Compensation Business Essentials Seminar



28 March 2017



Seminar Format

- Committed to getting you out on time
- Save questions for the panel discussion
- Speakers will be available at the end



Common Mistakes in Workers' Compensation

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Aegis Risk Management Services

March 2017

Common Mistakes:

1. Failing to keep track of legislative changes
2. Not Understanding what Constitutes Remuneration
3. Failing to review their business Activity
4. Not understanding who is covered
5. Not understanding contractor arrangements
6. Not making appropriate contractor deductions

Legislative Changes

Legislative Changes:

- Are rarely advertised
- Can significantly alter your obligations
- Can lead to substantial penalties

Trust distributions and company dividends

As a general rule, trust distributions (whether income or capital) and company dividends do not constitute rateable remuneration for premium purposes when paid to beneficiaries or shareholders, even if they are also employees of the business.

Trust distributions and company dividends will however, constitute rateable remuneration where their true character is payment for work performed or services provided by an employee and are paid in lieu of wages (either wholly or in part).

Rateable Remuneration (Wages)

Rateable Remuneration:

- Complex
- 39 items that need to be considered

Rateable Remuneration



Workers' Compensation - Remuneration Summary



Description	WA	ACT	Tas	Vic	NSW	NT	Qld	SA
Annual leave (including loadings) and public holidays								
Accommodation allowance (Award allowances) ¹								
Board and lodging (where subject to FBT)								
Bonuses								
Car allowances and/or expenses (pre-tax benefit only) ²								
Car parking (where subject to FBT)								
Clothing allowances/expenses								
Commission(s)								
Company car (private use) ⁴								
Company house (rental value) ^{3,4}								
Construction allowances								
Director's fees (non-working)								
Directors - payments to working directors ^{4,7}								
Dirt money								
Distributions and Dividends ⁵								
Early retirement benefits								
Entertainment allowance (subject to FBT)								
Fringe benefits (at taxable or grossed up value)								
Fringe benefits exemptions								
Honorariums								
Housing loans (part of salary package)								
Laundry allowance								
Living away from home allowance (where subject to FBT)								

Rateable Remuneration

Long service leave (lump sum payment)								
Lump sum payments in lieu of holiday, sick leave, etc								
Meal allowance								
Over award payments								
Overtime payments								
Parental / Paternity / Adoption Leave (when funded by the Employer)								
Payments in lieu of notice								
Payroll tax								
Penalty rates								
Profit sharing schemes (bonus in lieu of wages)								
Profit sharing schemes (not subject to income tax or FBT)								
Redundancy payments (ex-gratia payments)								
Redundancy payments (accrued leave, etc)								
Reimbursement of work related expenses paid by the worker								
Retrenchments / Severance payments								
Royalties								
Salary								
Salary packaging								
Shift allowance								
Sick leave								
Site allowance								
Staff discounts								
Superannuation contributions (superannuation guarantee/employer contribution)								
Superannuation contributions (employee contributions)								
Telephone allowance or expenses (subject to FBT)								
Termination payments (accrued benefits)								
Termination payments (compensation for termination)								
Third party remuneration (eg. school fees)								
Tool allowance								

Rateable Remuneration

Travel allowance (subject to FBT)								
Travel allowance (discounted or free)								
Workers' Compensation payments ⁶								

Why is accurate declaration important:

- If you are declaring too much:
 - Paying too much in premium
 - Can have additional premium refunded
 - Up to four prior years

Why is accurate declaration important:

- If you are declaring too little:
 - Not paying enough premium
 - Subject to additional premium and associated penalties
 - Up to four prior years

Business Activity & Associated Industry Classification

Industry Classification:

- Victoria Utilises:
 - Australian and New Zealand Standard Industrial Classification (ANZSIC), 2006

Why is your classification important:

- Determines your risk, which
- Determines your rate

Why is your classification important:

- If your classification is incorrect:
 - May be paying too much in premium
 - Can have additional premium refunded
 - Up to four prior years

Why is your classification important:

- If your classification is incorrect:
 - May not be paying enough in premium
 - Subject to premium owed and associated penalties
 - Up to four prior years

Who is covered under your policy?

Who does a policy cover:

- Individuals defined as Workers

You must take out WorkCover insurance if

- you expect to pay more than \$7,500 a financial year in rateable remuneration, or
- you have any apprentices or trainees.

This applies even if you're a small company with only one worker.

Therefore a policy does not cover:

- Individuals who do not meet the definition of a worker

Sole traders and partnerships

You're not recognised as a worker of your own business for WorkCover purposes if:

- you're an **individual** and running a business as a sole trader or sole proprietor
- a **partner** in a partnership
- the **trustee** of a trust.

This means that you can't register for WorkCover insurance to cover yourself. You can only register for WorkCover insurance if you have workers working for your business.

Why is knowing who is covered important:

- Ensure everyone who should be covered is
- Ensure those who aren't have appropriate cover in place

Recent Case

Who is Covered?

John Barker will discuss options later

CONTRACTORS

What is a Contractor?

Workers' Compensation Exposure

Is not about whether or not a person is a Contractor

It is about whether or not a person is a Worker

Two Separate Issues:

1. Do I need to declare their wages
2. Can they claim against me



Let's get a few things straight:

1. A contract can be defined or implied
2. A contract can be verbal or in writing
3. A person cannot contract out of their Legislative Entitlements

Let's get a few things straight:

1. It is the actuality of the relationship that will determine the relationship, not the labels you put on it
2. The true relationship is revealed by the facts and/or behaviours of the parties
3. Contracts that claim to define a contractor relationship cannot alter the true nature of the relationship

Individuals labelled as Contractors:

1. May in fact be Workers:
 1. As defined by the legislation and/or
 2. At common law

2. May be entitled to compensation



There are four tests to determine a Worker:

1. The Control Test
2. The Integration Test
3. The Results Test
4. The Risk Test

These tests must be looked at jointly

Contractor Deductions

Applying Contractor Deductions:

- Will reduce the amount of declared wages
- Will reduce your premium

When will a hirer be entitled to use a prescribed deduction?

A hirer will be entitled to use a prescribed deduction where the VWA is satisfied that all of these conditions are satisfied –

- the hirer has entered into a contractual arrangement with a contractor and for a relevant period, an individual is deemed to be a worker of the hirer for that period under the general contractor provisions;
- the contractor provides their own materials, goods or equipment during the relevant period which have not been purchased from the hirer;
- the amounts paid or payable to the contractor for the relevant period includes amounts in respect of those materials or equipment; and
- the services provided by the contractor under the contractual arrangement are included in the professions/trades listed below.

Contractor Deductions

Type of contractor	Prescribed deduction from gross payments to contractor
Architects	5%
Bricklayers	30%
Building Supervisors (who provide their own vehicles and are required to supervise and inspect more than six different building sites each 7 day period)	25%
Cabinet makers	25%
Carpenters	25%
Carpet layers	25%
Computer programmers	5%
Draftspersons	5%
Driving instructors who provide their own vehicles	30%
Electricians	25%
Engineers	5%
Fencing contractors	25%
Painters	15%

Contractor Deductions

Vehicle Supplied	Standard Deduction (D)
Prime Movers	60 per cent
Motor vehicles at least 10 tonnes GVM (excluding Prime Movers)	50 per cent
Motor vehicles from 3 tonnes GVM to less than 10 tonnes GVM	40 per cent
Couriers – motor vehicles less than 3 tonnes GVM	30 per cent
Couriers – motor cycles	10 per cent

What is Life or Risk Insurance Cover?



John Barker

Director

Concord Financial Group Pty Ltd



4 Broad Categories

1. Life insurance or death insurance
– the same thing
2. Total and Permanent Disability (TPD)
3. Trauma/Critical Illness – the same thing
4. Income Protection or Salary Continuance
– similar covers



Like all insurances, it becomes very, very important when something happens.

Up until then for many people it's a grudge purchase.



If you have superannuation, and most people do these days, you should think about an appropriate level of Life cover and TPD to protect against an event occurring which triggers a claim and puts yours and your loved one's financial future at risk.



If you are concerned about a critical illness such as cancer/heart attack or stroke which may not trigger a Life or TPD claim, then you look at Trauma cover.

BUT...



If you are an employee you have cover whilst working, under Workers' Compensation - that will take care of 40 hours per week.



If you are a sole trader or contractor you will not be covered.

Where does this leave you?

There are 168 hours a week. Take away working hours and that still leaves most of the week uncovered.



Your income protection cover is your family financial engine. Once the money stops, a lot of things 'hang off' off this, mortgage payment, car payment, food, education, clothing.....

Income Protection insurance is designed to pay out a monthly income to the person making the claim and to pay this until they recover or reach the age of 65 whichever occurs first. It does not cover medical costs.

Once the cover has been accepted, insurers can only cancel the cover if you do not pay. You must notify them if you move address or if your credit card or bank details change. This is a way insurers can cancel your valuable cover.



Non-Cancellable

So if you put on weight, take up smoking, start rock climbing or deep sea diving or your medical history changes for the worse, insurers cannot load or alter your premium. They are stuck with you.

If you are sick or injured, 24 hours a day, 7 days a week, worldwide insurers will pay - after the excess/waiting period usually 30 or 90 days and for the entire benefit period, i.e. commonly age 65 but can be 2 years through to age 70.



Benefit Period

This benefit period will vary.

The less hazardous the job the more likely you will get a longer benefit period and a lower premium.

Roof plumbers and Queensland abalone divers will struggle to get a long benefit period . . .



What is the worst thing you can do?

. . . do nothing

It won't happen . . .
she'll be right . . .



CASE STUDIES



Case Studies

In the past three years I have had two persons for whom I have provided quotes.

They have said 'thanks – I will get back to you when I get back from holiday or let me think about it'.



Case Studies

Example One:

Nick

Cycling tour of France



Case Studies



Case Studies



Case Studies



Case Studies

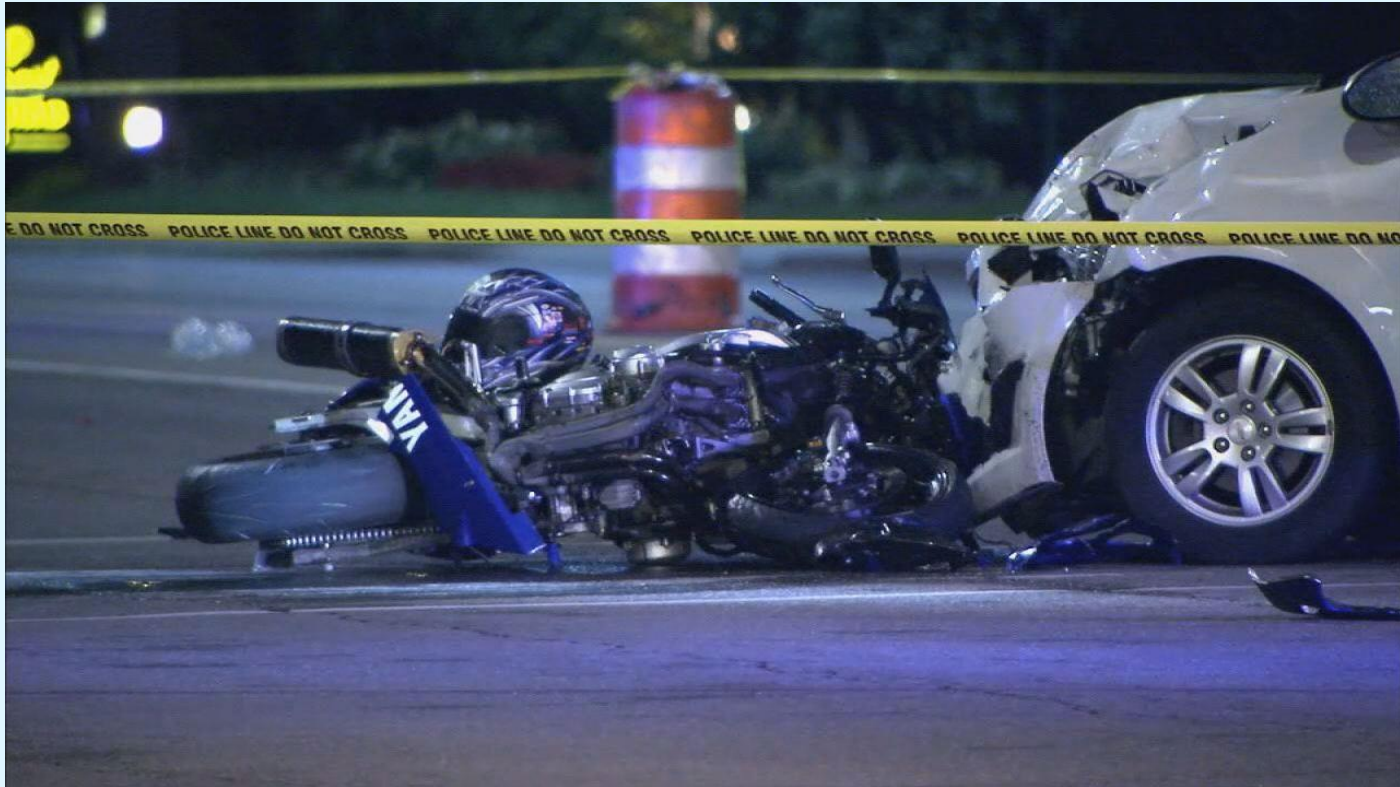
Example Two:

Greg

Motor Bike



Case Studies



Case Studies

**Or the accident can
happen on holiday . . .**



Case Studies



Case Studies



Case Studies



Case Studies

Or around the house . . .



Case Studies



Case Studies



Case Studies

**Or at work and you have
no WorkCover . . .**



Case Studies



Case Studies



Case Studies

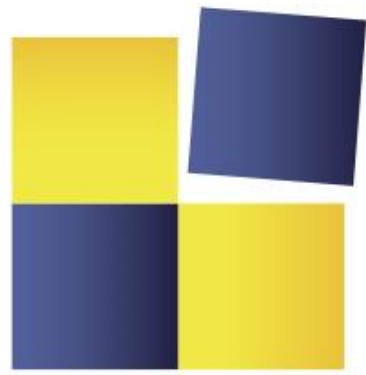


Case Studies



Case Studies





ACTION
OHS CONSULTING

Will understanding the past support for a safer future?

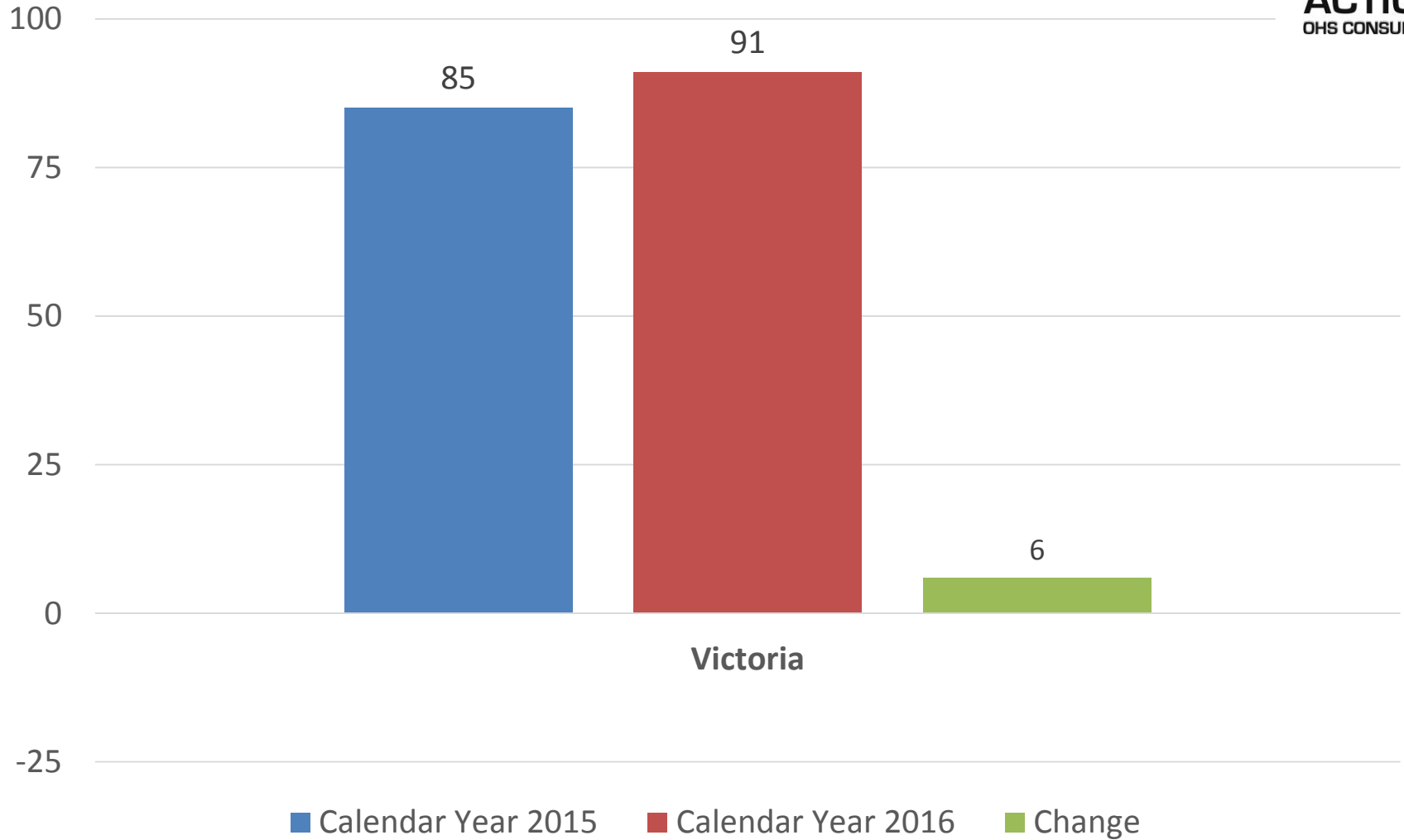
OHS Prosecutions 2016 Summary for Victoria

28 March 2017 | Version 1

During 2016, over \$6,000,000 in fines were issued to businesses and workers in Victoria following breaches to health and safety legislation.

Total Health and Safety Prosecutions

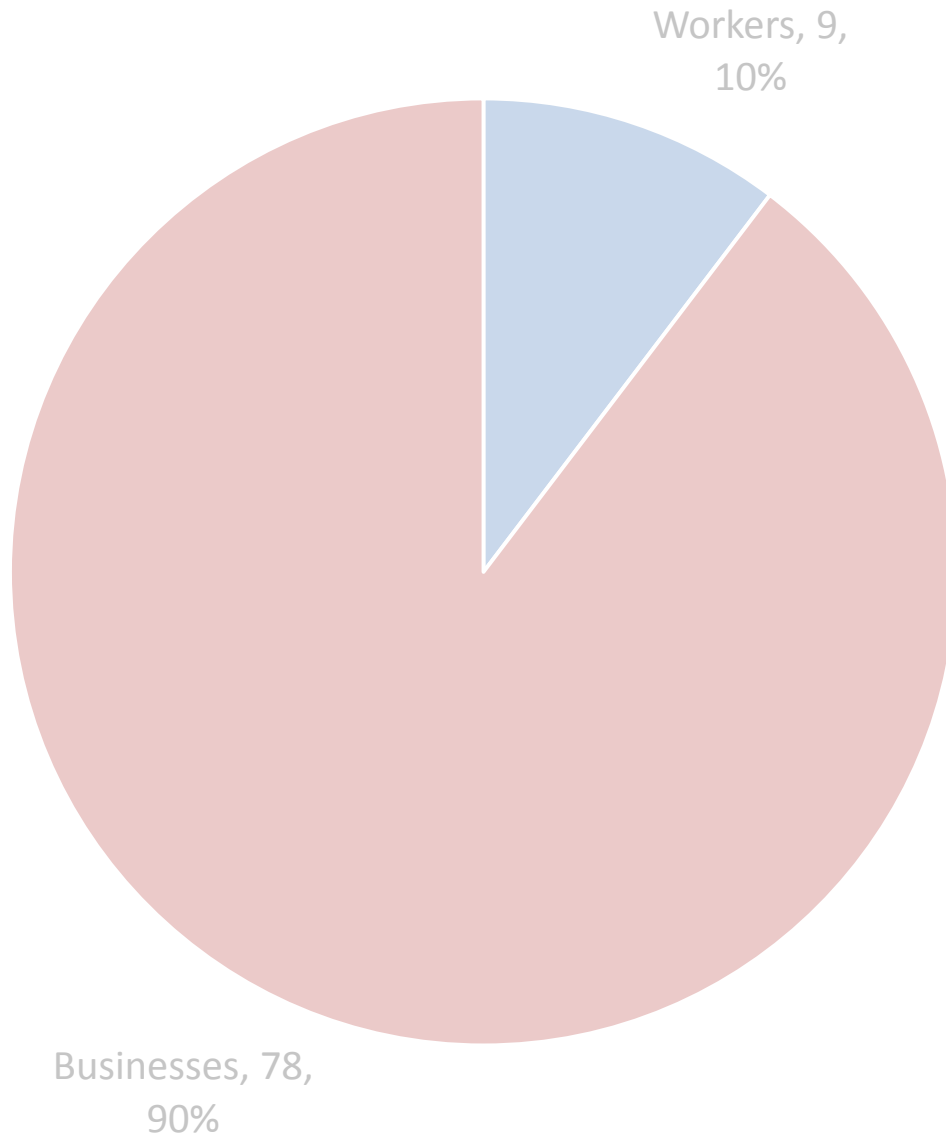
This does not include Workers Compensation Prosecutions



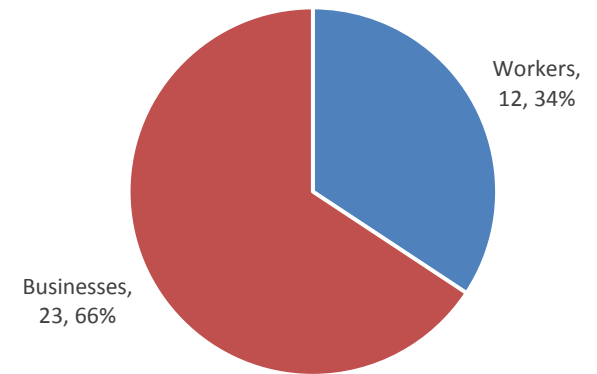
Sections of the Act Associated with Prosecutions 2016

- **Section 21(1) [57%]**
 - An employer must, so far as is reasonably practicable, provide and maintain for employees of the employer a working environment that is safe and without risks to health.
- **Section 21(2)(a) [47%]**
 - if the employer fails to provide or maintain plant or systems of work that are, so far as is reasonably practicable, safe and without risks to health.
- **Section 21(2)(e) [14%]**
 - if the employer fails to provide such information, instruction, training or supervision to employees of the employer as is necessary to enable those persons to perform their work in a way that is safe and without risks to health.
- **Section 23(1) [12%]**
 - An employer must ensure, so far as is reasonably practicable, that persons other than employees of the employer are not exposed to risks to their health or safety arising from the conduct of the undertaking of the employer.

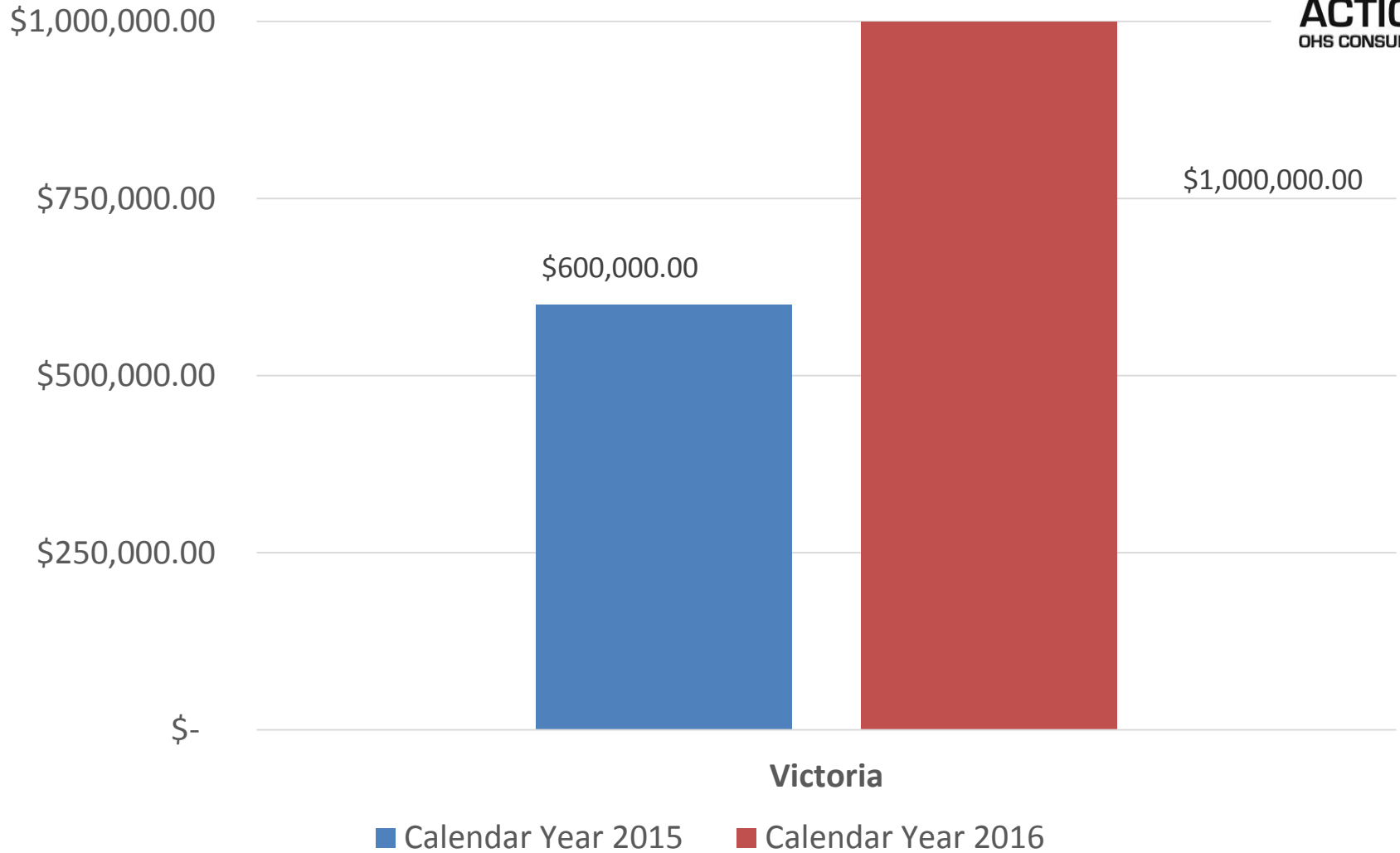
Victoria - Distribution of OHS Prosecutions

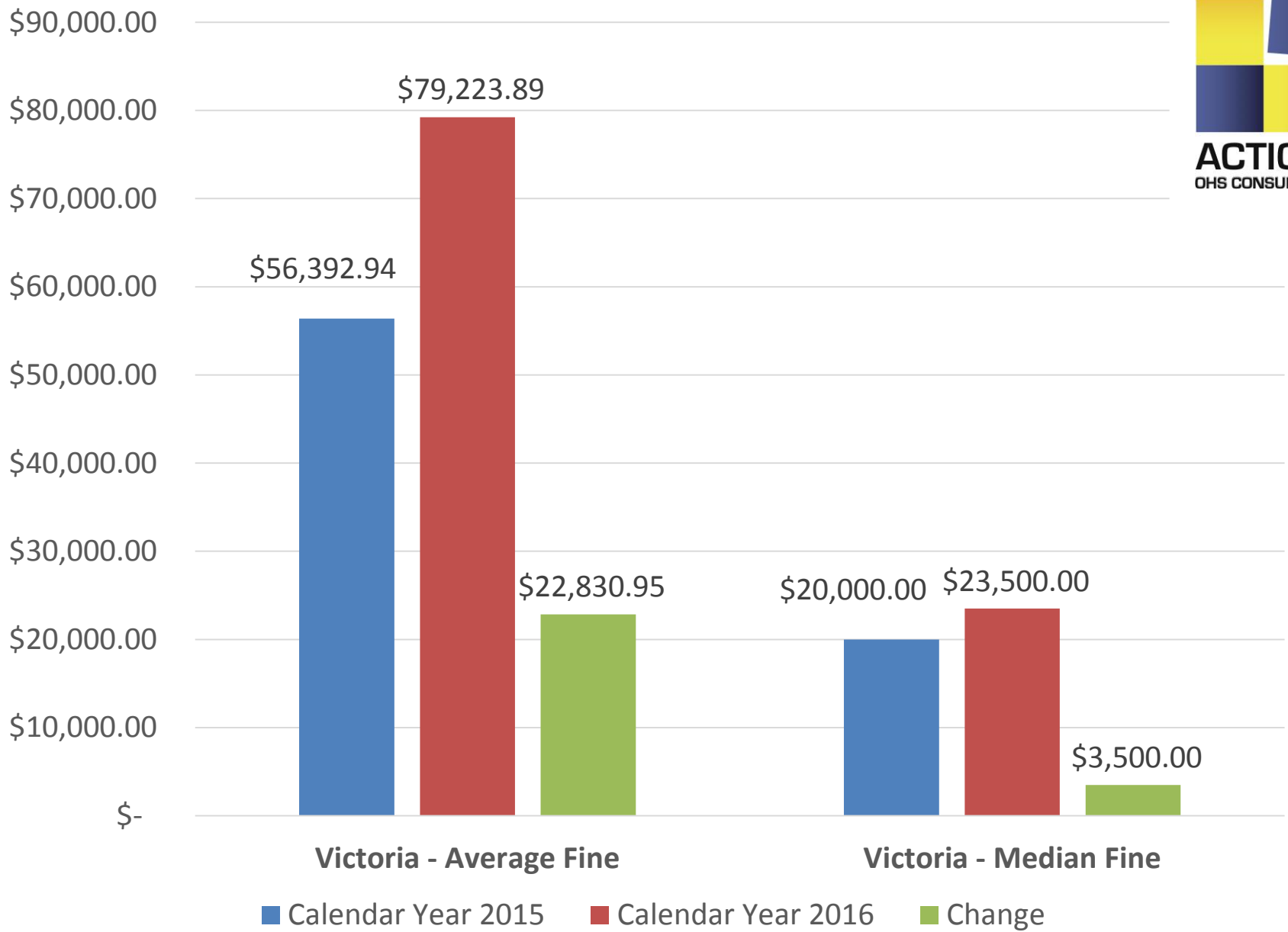


NSW - Distribution of WHS Fines

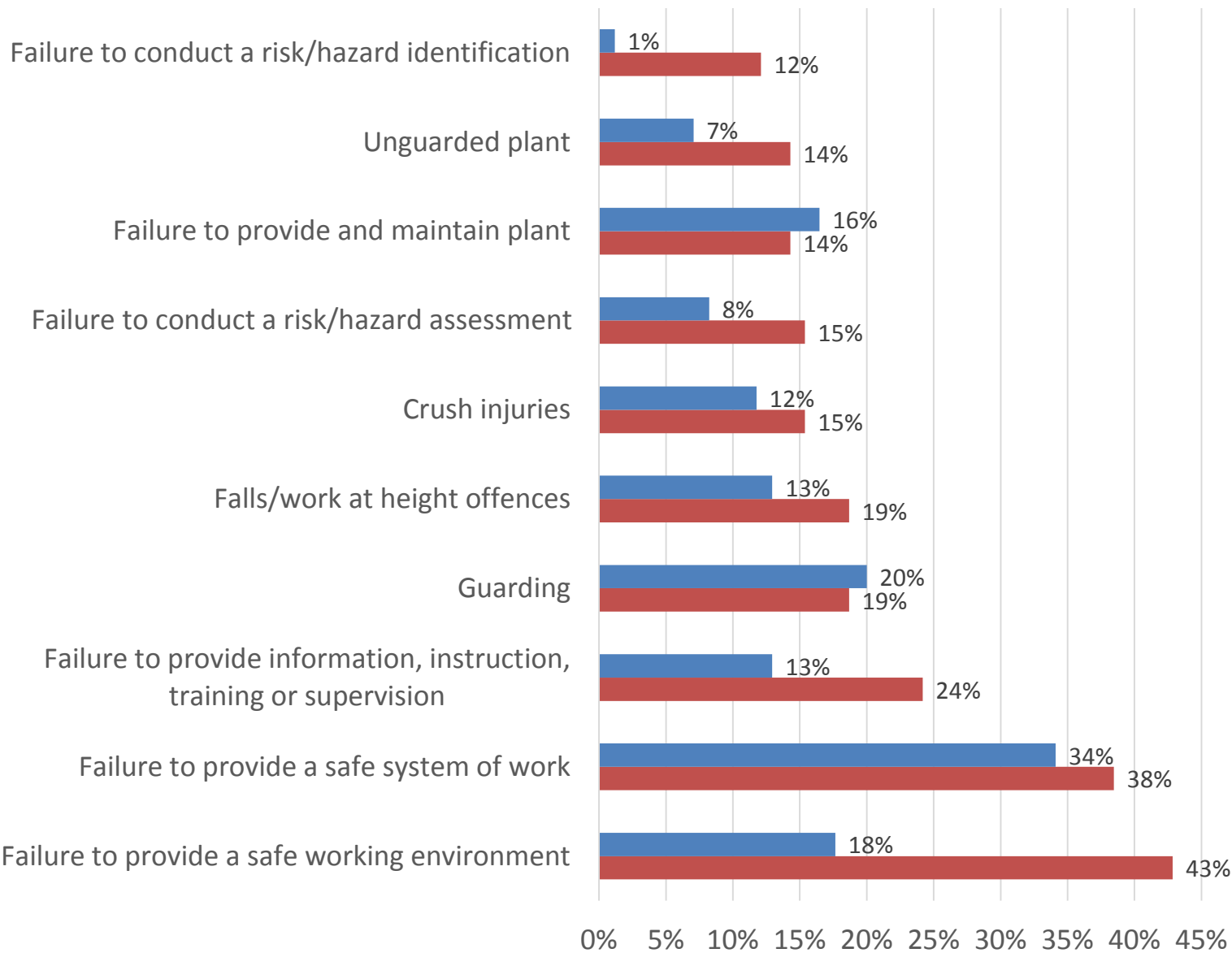


Maximum Fine: Health and Safety Prosecution





■ Calendar Year 2015
■ Calendar Year 2016



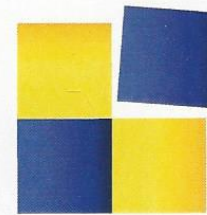
Lessons your Business can Take from these Reported Health and Safety Prosecutions



- ✓ Ensure OHS is visible on senior managements agenda.
 - ✓ Ensure OHS accountabilities have been clearly defined.
 - ✓ Assess your workplace risks.
 - ✓ Consider safety as part of your procurement process.
 - ✓ Establish an induction program.
 - ✓ Consider safety when engaging contractors.
 - ✓ Identify how you will manage implementation.
-



Thank you



ACTION
OHS CONSULTING

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BJS Insurance Brokers Pty Ltd



MANAGEMENT LIABILITY

Creditors
Shareholders
Employees
ASIC
Competitors
Clients
ATO
ACCC
Workplace Health and Safety

Who needs Management Liability Insurance?

You should have a Management Liability policy if your company:

- Employs staff
- Has a director
- Has shareholders
- Handles money on behalf of a third party

What does Management Liability cover?

A Management Liability policy is a cost-effective, tailor-made solution for both private and publicly-listed companies.

In today's litigious and regulatory environment, Directors and Officers are often held personally liable for the management of the affairs of the Company.

What this means to you is that your personal assets could be at risk.



What does Management Liability cover?

Management Liability insurance is designed to protect you and the Company against losses resulting from a “Wrongful Act”, or an alleged “Wrongful Act”, by a Director or Officer, carrying out their duties and obligations.

Insurers will advance the cost to defend such an allegation.



The types of claims faced by your Company can include:

- Employment practices including alleged discrimination, unfair dismissal, sexual harassment or bullying
- Breach of Directors' or Officers' duties
- Defamation

The types of claims faced by your Company can include:

- Breach of the Trade Practices Act and other Statutes
- Occupational Health and Safety proceedings
- Infringement of intellectual property rights
- Breach of confidentiality
- Allegations of illegal or improper conduct

Claims Examples

1. Protection against Employee Practices Liability

Profile: Private company, 111 employees, annual revenue of \$37 million

Scenario: A former employee who was retrenched as part of a company-wide workforce reduction launched legal proceedings against the organisation and two managers alleging sexual harassment, wrongful termination, retaliation and abusive and sexually explicit comments prior to her termination. Managers were also accused of tolerating sexual jokes around the office assuming no one was offended. The employer argued she showed low performance.

Outcome: The company was ordered to pay the former employee \$100,000 plus her legal fees. In addition, the organisation paid \$31,000 in defence costs.

If there had been a policy in place, insurers would have met these costs.

Claims Examples

2. Occupational Health and Safety

Scenario: An employee was killed in the carrying out of his work duties as a result of a live electrical wire in the employer's premises. WorkCover commenced an investigation and later a prosecution of the company and 2 directors for failing to have in place a safe work environment in breach of occupational health and safety legislation and regulations.

Outcome: The policy met the directors' costs of representation for the investigation and prosecution.

Claims Examples

3. Employee Crime

Scenario: The owners of a retail store had suspicions that an employee who worked on the counter was stealing from the takings so they brought in an expert to investigate. The investigator was able to establish who was committing the fraud, how it was conducted and the amount defrauded.

Outcome: The policy indemnified the company for the loss as well as the cost of the investigator.

Claims Examples

4. Protecting Small Businesses from Financial Collapse

Profile: Small Construction Company, <50 Employees

Background: A company was erecting scaffolding at a building site when it collapsed, falling onto a busy road, causing a traffic accident. Both a driver and employee were injured. WorkSafe was immediately on-site and the company was found to have breached the Workplace Health and Safety Act.

Outcome: The Management Liability policy was able to cover both directors and the company for legal costs associated with defending the actions launched by WorkCover.

A Management Liability policy will pay for:

- Cost of legal representation at investigations
- Cost of defending a prosecution
- Legal representation at a coronial inquiry
- Fines, if insurable at law (WorkCover, EPA, etc)

Your BJS Account Manager can offer you premiums that are more competitive than what you may think, while also offering the broadest cover.



PANEL DISCUSSION



Panel Discussion

- Colette Hicks facilitator
- Panel members:
 - Simon Booth, Aegis Risk Management Services
 - Teresa Westgarth, BJS Insurance Brokers
 - John Barker, Concord Financial Services
 - Craig Salter, Action OHS
 - Alex Stratton, Allianz Insurance

