

The HandL Helpline

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ACCA NEWS

The decision to incorporate the Australian Cleaning Contractors' Association as a fully competitive body with the BSCAA has proven to be one of our better moves.

The old, proven and still remembered ACCA has been brought into the new century with the enthusiastic backing of you people and has already been instrumental in attracting a number of new members.

Many potential clients were interested in what HandL had been doing but were still slightly apprehensive of joining a privately owned and run organisation. With the advent of ACCA they saw that this was a truly representative organisation, one which was aiming to look after the needs and aspirations of small to medium sized companies.

The NSW Industrial Registrar, on 22 March 2004, approved our Application for Inclusion on the Register of Participants for the Cleaning and Building Services Contractor' (State) Award in NSW and that puts us on an even keel with the other employer organisations so that the Union and BSCAA can no longer ignore us but will have to give serious consideration to our proposals.

We now have our newest, largest client member on board and are happily promoting our services in Queensland, Victoria and Western Australia.

Our sponsors, JohnsonDiversey, who were our first supplier have renewed their sponsorship for a further twelve months and we again recommend their products to you. This company joined us when we only had a few members and are now with us when we have the largest number of members in NSW. They will still be with us when we become the dominant Association representing the cleaning industry in Australia.

In order to assist with ensuring our service remains at the highest level we held a meeting with **Employers First** last week (they are the former Employers' Federation) and have agreed to form an alliance to pursue the continued improvement of services to our members. This alliance will also give us much needed clout when it comes to industrial negotiations, it will also help us in locating regional offices in the future.

We have also decided to take the next step in our technological evolution and, from this issue onwards, will be delivering the Newsletter by email rather than hard copy (to those with such facilities). This means you will be sent a copy of the Newsletter which will be opened by using Adobe Software. If you do not have Adobe Software you can download a free copy by clicking on the link included in the email. For those who do not have email facilities we will continue to send you a hard copy via normal mail. Hard copies will also be held in the office for those who wish but you will be able to print off as many copies as you wish internally by this method.

All of our past Newsletters can now be accessed via our updated website www.cleaningcontractors.com.au and each new release will be loaded onto the web site one month after general issue.

Our Tufftasks supply service is slowly beginning to take off and we are happy to expand the range of products available for purchase if you let us know what it is you require. Please continue to fax your orders to us for quick turnaround.

Finally, thank you to all who have supported us and we trust you remain happy with our service. If we slip up please let us know so that we can do something about it. We are inclined to get a little inward looking in this type of work and tend to think everything is okay when it is not.



**"Play
To
Win"**



Cavers Corner

Court Decisions Reveal Anomalies in Negligence & OHS Laws

This month I wish to deal with problems that companies have with payments of Work Related Allowances in their Award.

Most of these allowances are paid as a Weekly Allowance although some are paid per day or per shift. Lets look at some examples.

- In most Awards there is a Leading Hand rate of around \$17.00 per week for Part Timers looking after 1-5 employees. This payment applies whether the person works 1 day or 5 days (I bet you pay it only as a rate per day worked), so even if the person only works, say, Monday & Tuesday and is off sick for the rest of the week, he is entitled to the full allowance of \$17.00. You are then forced to decide whether to replace the Leading hand and pay another \$17.00 or try to get by with no Leading Hand. This rule also applies to other weekly allowances in the relevant Award, i.e. no pro rata payment allowed.
- The two most common daily allowances are the Toilet and Refuse Disposal allowances. Outside of NSW, an employee must clean toilets for the majority of his/her shift before becoming entitled to the allowance. In NSW the allowance is payable when the cleaner cleans just one toilet bowl. Also, in NSW again, there is a two tiered system for toilet cleaning. The cleaning of 1–10 toilets allows for payment of \$1.94 per day and more than 10 requires a payment of \$2.60 per day.
- If an employee cleans toilets at more than one site each day they are not entitled to two toilet allowances but you would charge your clients at both sites (your BONUS!!!!). Furthermore, the allowance is not payable when the cleaner is only doing periodic checks of toilets, floor mopping, replenishing supplies etc. The person must actually clean a toilet bowl or urinal to become entitled to the allowance.
- Remember that the daily allowance is payable for each of the seven days whereas the weekly allowance is just that, i.e. whether the cleaner is a Leading Hand for 2, 4, 6, or 7 days the weekly amount is the same.

The dilemmas faced by employers in living up to their duty to provide a safe workplace have been highlighted by two recent decisions that reveal serious anomalies in the law.

The cases illustrate the tensions existing between an employer's common law duty of care towards employees and others at work and the statutory obligations imposed by the OHS Act 2000 and the NSW OHS Regulation 2001.

By undermining the concept of reasonableness, there is the danger of losing sight of true responsibility and of abandoning common sense in favor of formality. This could have the effect of exacerbating workplace safety and turning employers into convenient scapegoats – while absolving employees and their union representatives from all reasonable responsibility in that regard.

The two cases in question highlight the tensions between the two legal approaches to which employers are subject.

A PALLET ON THE HEAD

A pallet manufacturing company devised a method of work for the loading and unloading of trucks at the work site. In order to minimise risk of injury at such times, it banned forklift drivers from operating their forklifts in the process if the truck driver was in the general vicinity of the truck. The company produced a safety manual that specifically addressed the risk and gave clear instructions to all parties about the method that was to be followed. It also trained staff in complying with the procedure and monitored compliance through systems specially designed for that purpose.

Despite these meticulous and specific actions by the employer, an incident occurred resulting in injury. A visiting truck driver, who was employed by a separate company, stood near his truck and was hit on the head by a falling pallet when a forklift driver proceeded to load the truck contrary to company policy. The driver suffered serious head injuries resulting in a variety of subsequent disorders.

When the pallet company was prosecuted for breach of the NSW OHS laws, it pleaded guilty and relied on its efforts and its good record. The NSW Industrial Relations Commission acknowledged that the company has an impressive view to safety; has identified a risk; has devised a policy which, if adhered to, would have prevented the risk from materialising; has trained its staff in the work and the applicable safety policy and has also monitored compliance with the policy."

But this was not enough – because the accident actually happened. This fact alone was sufficient to prove a breach. The Commission took into account also that the company went even further after the accident; by making it mandatory for all truck drivers to leave the area where loading and unloading was taking place. However, this was simply an indication that not enough had been done in the first place.

Despite all the efforts at complying with the onerous risk assessment approach, the company had to pay for the mistake of an inattentive forklift driver who didn't follow company instructions. It was fined \$78,000. (**Inspector West v Brambles Australia Ltd**)

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A BOX ON THE WALL

A cleaner brought a common law damages claim against her employer after suffering an injury while engaged in a major spring clean in a North Sydney office building. The Saturday shift of the special weekend job was coming to a close, and the woman was down on her knees in a corner using a flexible hose to vacuum fluff out of the crevice between the carpet and the skirting board. As she stood up upon completion of the job, she hit her head on a small white box protruding by about 50 mm from the wall next to her. The box was a door release switch about 1 metre from the floor. The woman agreed that she had seen the box during her work in the office. However, she argued that the accident would not have happened if she had simply been given different vacuuming equipment that did not require her to get down on the floor.

At an arbitration hearing, she was awarded \$157,000 in damages for her injuries. The employer appealed against the arbitrator's decision. At the hearing of her case, a District Court judge found that her employer had done nothing wrong. By relying on well-established common law principles, the judge declared that:

"An employer is not required, by law, to ensure its employee's safety. The duty of care is governed by the law of reasonableness. The question is whether the (employer), in the circumstances, exposed the (cleaner) to unreasonable risk by requiring her to work on her knees in the vicinity of the protruding box, and/or by failing to provide her with what (she) claims would have been more appropriate equipment"

When the woman appealed to three judges in the Court of Appeal, they took the same view as the trial judge. Despite expressing sympathy for the cleaner and the way the accident happened, they said that just because a risk may be reasonably foreseeable does not necessarily mean that a finding of negligence must follow. The common law says that in order to hold someone as being negligent you must also consider:

To next column

- the consequences of the risk
- the probability of its occurrence
- the cost, expense and inconvenience of eliminating the risk.

In other words, the law has for a very long time held that you don't just ask whether an accident could happen (or even less whether it simply did happen) but also look at the whole circumstances and what could reasonably have been done to eliminate the risk.

In this case, the appeal judges said the employer would have been justified in thinking that a reasonable employee would have seen the box on the wall (as the woman did). Then, it would also have been justified in thinking:

"...why should we have to vary our work system to deal with the possibility that an employee might inadvertently stand up quickly and hit her head on some protuberance from the wall?"

The woman's appeal was dismissed with costs. (*Vukelic v Glad Cleaning Service*)

THE AFTERTASTE

What these cases reveal is that there is a clear conflict and tension between the common law duty of care and the statutory duty of care imposed by the NSW OHS laws. Reasonableness has been deleted from the state's laws and replaced by an almost strict liability test. Why was one employer fined heavily (allowing the truck driver an easier road to common law damages) when the cleaner's employer was given the thumbs up? It will be increasingly difficult for employers to have a clear view of what they have to do to meet the legal standards required of them. Not only will compliance suffer, by increasingly blaming one party while absolving the other of any duty, but also respect for the law may suffer as well. Could employers be excused for thinking that the OHS laws are simply a cynical exercise in industrial power and revenue raising, rather than a common sense approach to workplace health and safety?

We are on the web:
www.cleaningcontractors.com.au

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WEBSITES

As you know by now there are a number of websites which can be of use.

www.johnsondiversey.com.au/msds www.agar.com.au
www.cleantec.com.au www.research-products.com.au
www.truebluechemicals.com.au www.whiteley.com.au
www.tenders.nsw.gov.au www.incleanmag.com.au
www.market.fairfax.com.au/tenders/smh.html

OUR MISSION STATEMENT

Our aim is to provide a range of services specifically designed to meet the needs and aspirations of the small to medium sized companies operating in the Property Services Industry. We know and understand just how difficult it is to operate in such a competitive market and we aim to supply services which will assist in achieving your aims and in doing that part of your job which you do best.

John Cavers is available to assist with any Industrial problem from Unfair Dismissal to Award Interpretation and you can get him at the office or on 0417 251200. John Laws can help with Tenders, Costing, Documentation, QA, OHS & IM, Cleaning Software etc.

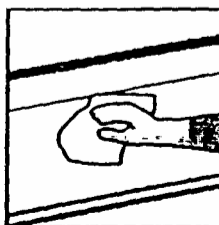
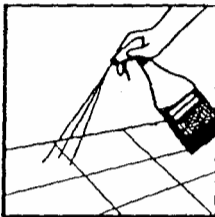
Get him on 0418225180 to come and help.



TECHNICAL FILES

Issue 6

WASHROOM CLEANING



CHEMICALS:

FUTURE SC diluted 1:30

EQUIPMENT: Personal Protective Equipment (goggles, gloves)

Spray Bottle, Clean Cloth, Lint Free Cloth

PROCEDURES:

STEPS

1. Assemble equipment
2. If the cleaner is not automatically dispensed, mix according to label directions with water.
3. Using a spray bottle, filled with cleaner solution. Apply as a fine mist to the hard surface to be cleaned.
4. Use a clean cloth rub surface to remove soiling. Stubborn soils may need further application of the cleaner. Allow the surface to dry.
5. No rinsing is required. Some surfaces may need to be polished dry with a clean lint free cloth.

KEY POINTS

1. See above.
2. Wear appropriate safety equipment when handling chemicals. See wall chart or MSD for details.
3. Spray bottle must be labeled with the correct product name before filling. Some surfaces may be sensitive to chemicals, test new surfaces before use.
4. Work from the top down on vertical surfaces.
5. Lint free paper towel can also be used so no streaking is left on surface.

"It's what you learn after you know it all that counts."

Ethel Barrymore