

Supervision Risk Management and the Law

Art or Black Magic?

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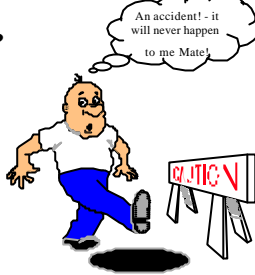
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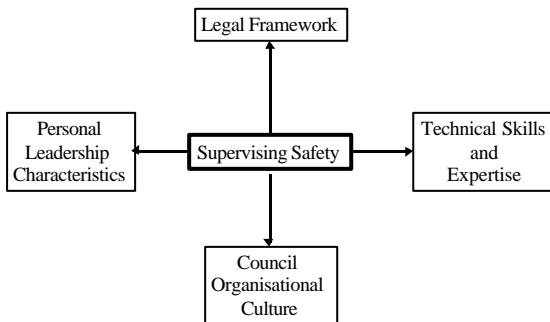
Supervising
Safety
Overview of
Presentation
Themes



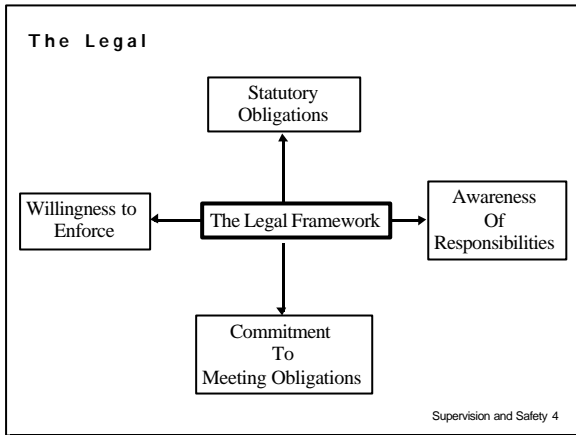
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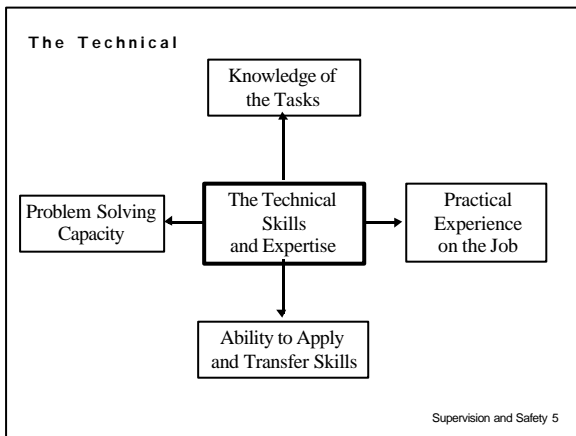
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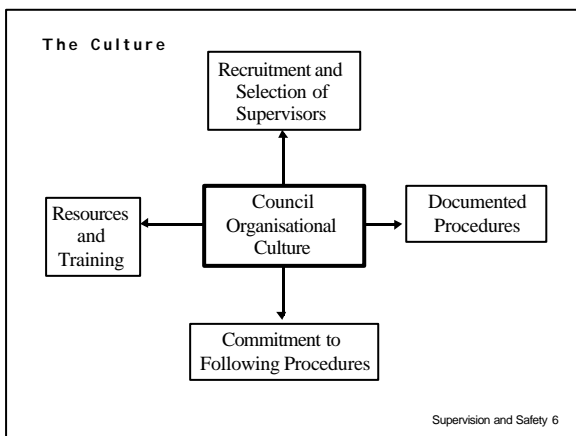
Model for Workplace Safety Supervision

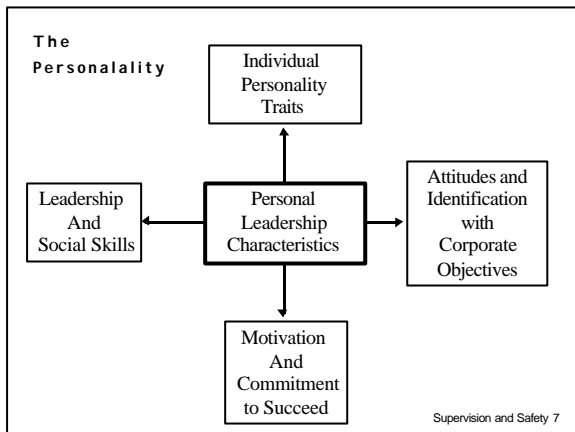


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Supervision - Risks and the Law

➤ **Increasing burden of regulation**

- ❖ workplace safety(OHS Act 2000 and OHS Regulation 2001)
- ❖ Environmental protection(POEO Act 1997 Native Vegetation Act)

➤ **Imposes obligations on the front line supervisor**

➤ **Obligations increase the paper trail**

➤ **The additional workload is not always appreciated**

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Safety and The Supervisor

➤ **The naïve Supervisor**

- *Workplace accident- mate it will never happen to me!*

➤ **Importance of identifying potential adverse outcomes**

➤ **Role of risk Management**

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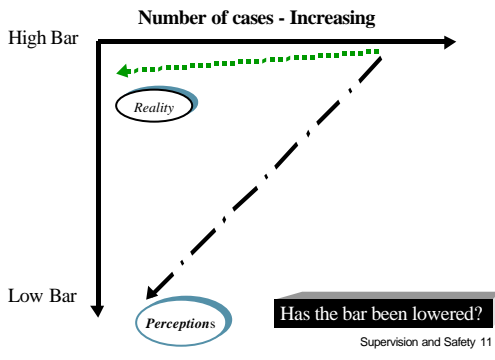
Common law – Vs – Statute Law

> Torts

- ❖ Recent cases
- ❖ Cyclist on Bridge – there were 3 warning notices
- ❖ Balranald Shire – ignored signs, drove through dust into a grader
- ❖ Waverly Council – climbing a cliff (no notices)
- ❖ Home invasion assault – awarded damages
- ❖ Graffiti artist and the SRA (NSW) - failed
- ❖ Numerous examples of slips trips and falls

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Perception of the changes



Reality

- ❖ The bar has been lowered
- ❖ It is only a very slight movement
- ❖ Does not explain the current situation
- ❖ It is the greater number of cases
- ❖ Greater awareness of rights
- ❖ It is easier to persuade potential litigants to pursue court based remedies

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Role of the Legal Profession

On my instruction
Your Honour --



- ❖ The introduction of contingency fees
 - *No-win – no fees*
 - *Aggressive advertising for accident compensation claims*
 - *See recent changes in NSW to Worker's Compensation advertising*
- ❖ *Councils are an easy target*
 - *can the defendant pay the damages and costs ?*
- ❖ *Increase in cases*
 - *More lawyers looking for work?*
 - *Minor injuries can result in major costs*
- ❖ *Availability of class actions*
- ❖ *Taking the law into new areas?* ■

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OHS Law

- ❖ *Rules of engagement changed*
- ❖ *See OHS(NSW) Act 2000, Section 8*
- ❖ *Must ensure a safe workplace without limitation*
- ❖ *Councils to ensure there is a safe system of work*
- ❖ *Safe system of work includes supervision of the adopted risk management procedures*
- ❖ *obligations of GM and Directors –*
 - *OHS Act 2000 see Section 26*
- ❖ *Obligation on supervisors?* ■

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Obligations on Council Employees

- **Distinguish between**
 - ❖ Executive management
 - ❖ Management
 - ❖ Supervisors
 - ❖ The workers
- **In law different obligations**
- **The more senior the higher the obligation**
- **GM and senior officer**

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Duties of employees - OHS Act §20

- (1) An employee must, while at work, take reasonable care for the health and safety of people who are at the employee's place of work and who may be affected by the employee's acts or omissions at work.
- (2) An employee must, while at work, co-operate with his or her employer or other person so far as is necessary to enable compliance with any requirement under this Act or the regulations that is imposed in the interests of health, safety and welfare on the employer or any other person

Note – employees is to report matters to the employer see OHS Regulation Clause 28

§21 Person not to interfere with or misuse things provided for health, safety and welfare "

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Victimisation Protection - OHS Act §23

§23 Unlawful dismissal or other victimisation of employee

- ❖ An employer must not dismiss an employee, injure an employee in his or her employment or alter an employee's position to his or her detriment because the employee:
 - ❖ makes a complaint about a workplace matter that the employee considers is not safe or is a risk to health, or
 - ❖ is a member of an OHS committee or an OHS representative.
- It is not necessary to prove intentions of employer, only the actions!, see §23(2) "

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Person not to hinder aid to injured worker §24



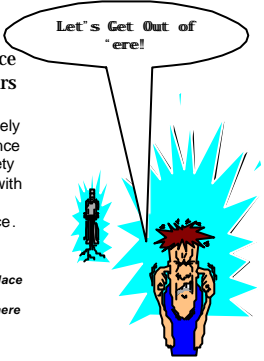
- A person at a place of work must not, to a person at a place of work
- Hinder, obstruct without reasonable excuse, refuse any reasonable request for assistance in the giving or receiving of aid in respect of the illness or injury of a person at work at that place of work
 - Do any thing to prevent a serious risk
 - ❖ Note, there are heavy penalties, up to 750 or 500 Pus for employees

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Person not to disrupt workplace by creating health or safety fears

A person must not, without reasonable excuse, deliberately create a risk (or the appearance of a risk) to the health or safety of people at a place of work with the intention of causing a disruption of work at that place.

- *Would need to be unreasonable*
- *An intention to disrupt the workplace*
- *Would not apply to a situation where there is a genuine safety fear*
- *OHS Act §25*



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Offences by Council—liability of directors and managers §26

- ❖ Offences by the Council pass down the line of management
- ❖ GM and seniors in the firing line
- ❖ Not clear how far down the chain the breach will pass
- ❖ Defences – see §26(a) & (b)
 - Not in a position to influence conduct
 - Used all due diligence

It is an offence to aid abet, counsel by act or omission an offence, see §27

- ❖ Considered to be committed the offence and can face the same penalties

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Offences by corporations—liability of Managers and Supervisors – OHS Act §26

- ❖ Offences by the Council pass down the line of management
- ❖ GM and Directors in the firing line
- ❖ Supervisors responsible for their own acts and omissions – not that of the employer!
- ❖ Not clear how far down the chain the breach will pass



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Penalties for Breaches

PU = Penalty Unit(\$110)

	First Offender	Previous Offender
Corporation	5,000 PUs (\$550,000)	7,500 PUs (\$825,000)
Individual	500 PUs (\$55,000)	750 PUs (\$82,500) Up to 2 years imprisonment

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Defences – see §26(a) & (b) and §28

- Not in a position to influence conduct
- Used all due diligence
- Not practical to do anything else
- Due to circumstances over which no control and not foreseeable
- If defence raised then must prove it - §110

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It wasn't me - see OHS Act §27

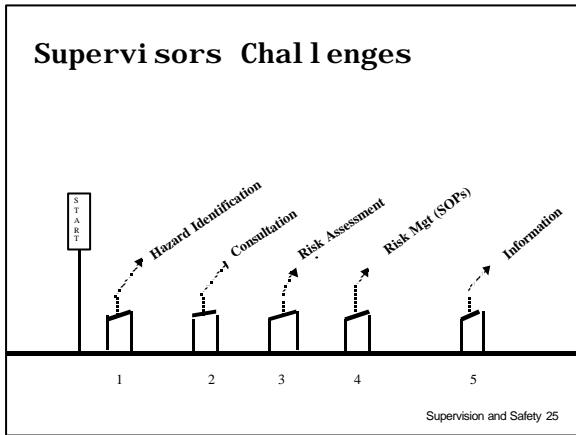
Important for supervisors to appreciate

- It is an offence to aid abet, counsel by act or omission an offence
- Considered to be committed the offence and can face the same penalties

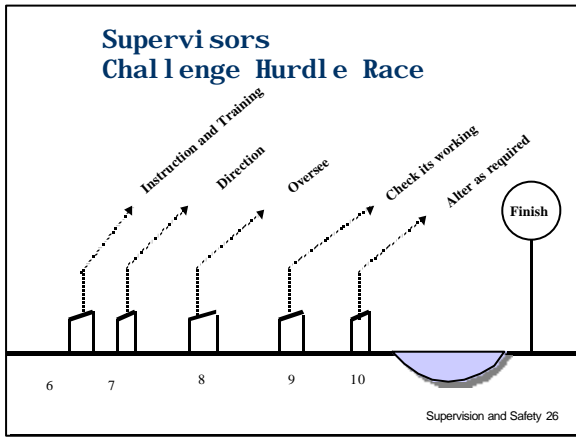


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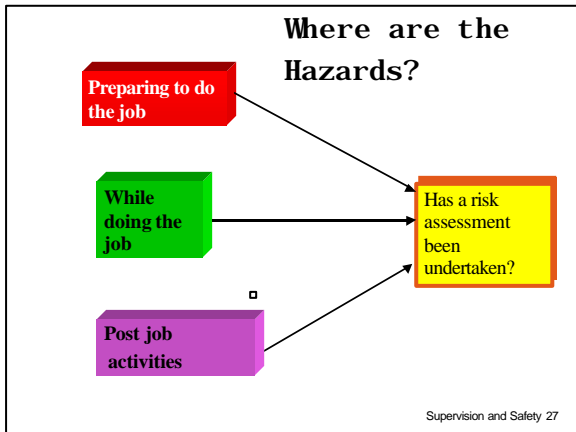
Supervisors Challenges

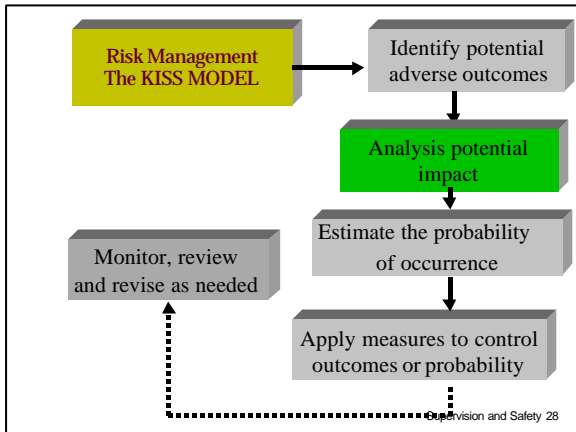


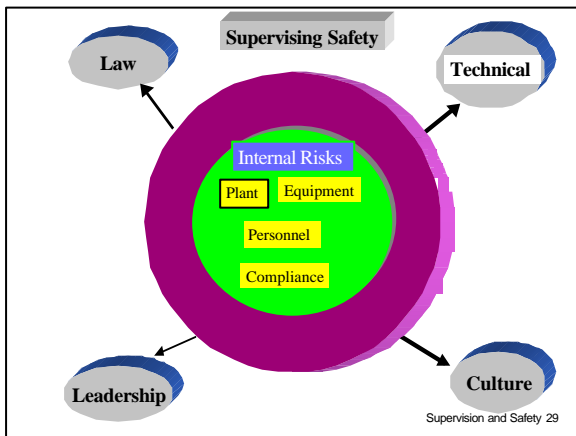
Supervisors Challenge Hurdle Race

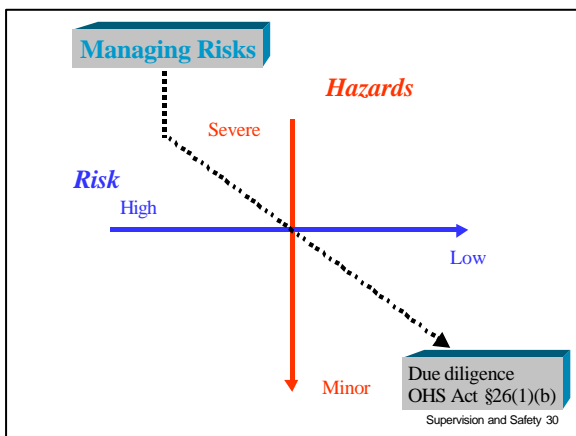


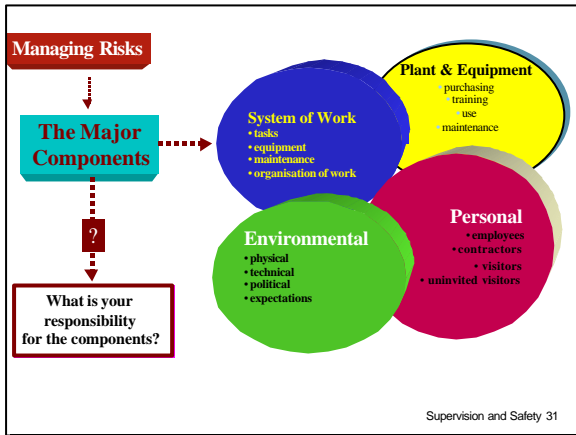
Where are the Hazards?

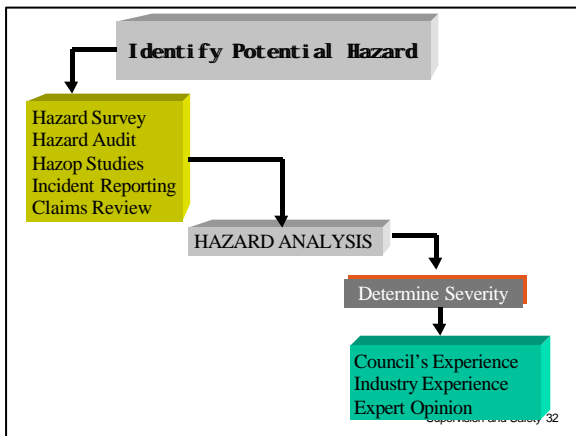


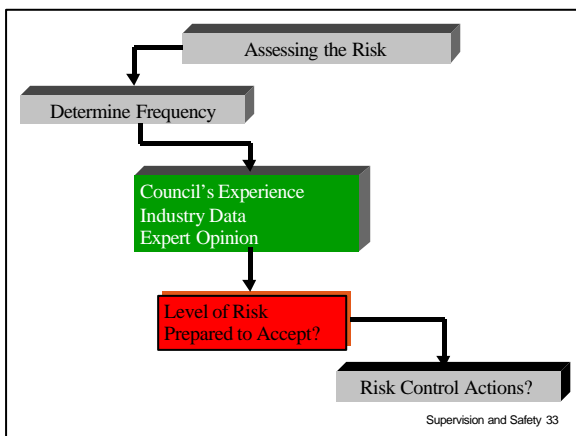












An Unwelcome Synergy

- accidents rarely occur in isolation
- tend to resemble links in a chain
- if there is no circuit breaker, lead to a breakdown in systems
- A breakdown in systems can lead to a catastrophic incident
- At the root of major incidents there is a naïve supervisor and management

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The Naïve Supervisor

- The naïve manager is of the belief that accidents happen somewhere else
- accidents could never occur in our organisation
- Before every major incident there has been at least one similar incident with no major adverse outcome
- The experience is frequently not incorporated into the corporate memory

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The Cassandra

- Before every major incident there is invariably one or more persons in the organisation warning that it could occur
- The local intelligence is transmitting the message
- The naïve Managers and Supervisors have switched off the receiver
- Why listen to information you do not wish to hear
- Is your organisation's receiver on and tuned in?



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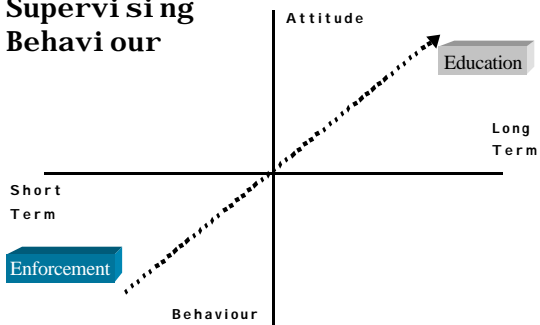
Ensuring the Receiver is switched on

- Need to transmit on WIIFM
- What experience can you draw on to identify the potential hazards of the jobs you are to supervise
- Is there a combinations of potential hazards that could have a multiplier effect leading to a major incident?
- Have you considered the risks of it occurring?



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Supervising Behaviour



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The 12 Golden Rules

- safety is the highest priority
- safety is a line supervisor's responsibility
- through good supervision all accidents can be avoided
- supervisors achieving excellence in safety should be considered a key performance indicator



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The Golden Rules c/d

- Safety has to be build into the job – not added on at the end
- Positive attitudes of your staff is important – however **behaviour** is the critical factor
- Get the behaviour right – the attitudes will follow
- Do not tolerate breaches of safety procedures

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The Golden Rules c/d

- Stop the inappropriate behaviour and go back to the start
- Do not negotiate over breaches of breaches
- Ignorance of hazards is rarely a cause of accidents
- Employees take risks because they believe there will be no adverse consequences to them

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Supervision of Safety

End of Session

For details of OHS Courses presented by Gerry Holmes

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