



# The Net

C-NET

Issue 49  
May 2011

## The editors corner...

### *Inside this issue*

- The editors corner...page 1
- Occupational health & safety news...page 3
- Upcoming c-net events...page 9
- Upcoming safety events...page 10
- The inside scoop...page 11
- OH&S at home...page 12

### About C-Net

C-Net is an Australian owned company that specialises in SAP based OH&S solutions. SafetySuite provides rich functionality for Australian and NZ companies that require an integrated, legislatively compliant fully supported OH&S system to compliment their SAP infrastructure.

We have only one month to go until we are hit with one of the most dreaded times of the year....winter! While we all try our best to stay clear of the common cold, unfortunately it's pretty much certain we will end up with the sniffles at some point this winter.

Like previous years, this year employers are urged to send workers home this winter or risk suffering unproductive staff.

Managers are warned that on top of breaching their occupational health and safety responsibilities, they also may suffer equal, or even greater, losses in productivity if workers struggle through work when sick.

Law firm Kelly & Co senior associate Michael Kay said staff who attended work when sick achieved little and would more likely cost employers as much money as if they had spent the day at home getting better.

"It costs money if you have anyone rocking up to work and not (working) if they are sitting there and being paid to work and not doing a lot."

Michael urges employers to be sympathetic to sick staff, explaining that it is unrealistic for some workers to require a month off work to recover from the flu, which could "knock a person around".

Many businesses are now being proactive to ensure their employees are as fit as possible by offering preventative flu vaccinations.



# The Net

## Occupational health & safety news...

### **“Safety In Workplaces—Australia—A new safety association ”**

On the 9th February, 2011 SIWA was registered as a 'not for profit' company limited by guarantee.

Now, for the first time in Australia, there is a member driven, member owned, national safety and health corporately structured organisation.

For the first time in Australia, it is now the case that safety and health practitioners and professionals are organising under the guidance and protections of the Australian Commonwealth, Corporations Law.

Now for the first time, practitioners and professionals can focus on the future of OSH in Australia.

Membership is growing steadily and we are targeting 1,000 members by June 30.

Integrity and Ethics are two of our fundamentals as is also a true commitment to servicing our practitioner and professional members.

Australia now has an organisation ready, willing and prepared to listen, hear and communicate with its members.

Now a month into our existence and already an alliance into South-East Asia is in negotiation along with several other local WA alignments and a Victorian and a Queensland alignment are contemplated. Each of which will provide additional information and networking to members. The best of this is that each has come to us as a suggestion from members. So already we are demonstrating that we not only listen to members but act on what they send to us.



# The Net

Our commitment to the future is demonstrated in the FREE membership offered to full time student of both the Vocational Training sector and Tertiary Education sector. Part time Students are offered a discount equal to their student load.

Already membership interest from Victoria has dictated that we establish a division in that State to support those local members. We welcome members, wherever they reside and will seek to service and support those members relative to their location to the extent we are practically able.

For more information, visit: [www.siwa.org.au](http://www.siwa.org.au)

---

Safety In Australia  
[www.safetyinaustralia.com.au](http://www.safetyinaustralia.com.au)

---

## “Work health and healthy life choices”

The 'healthy workers' initiative is being implemented under the National Partnership Agreement on Preventive Health run by the Department of Health and Ageing. The workplace is recognised as critical in helping prevent the lifestyle risks that cause chronic disease. Workplace health initiatives are being funded at State level through a Commonwealth managed grants program.

If you are working in NSW, ACT or Tasmanian jurisdictions you can access free telephone coaching to improve healthy living by calling the Get Healthy Information & Coaching Service on 1300 806 258.

For more information visit the [Get Healthy](#) website.



---

Safety In Australia  
[www.safetyinaustralia.com.au](http://www.safetyinaustralia.com.au)

---



# OH&S PIC OF THE MONTH!

# The Net

## “20 months on, 20 things you need to know about the Fair Work Act”

In 2009 and throughout 2010 the Fair Work Ombudsmen recouped \$26.1m in employee underpayments and received 1.1 million calls from businesses enquiring how to pay their staff. This was a result of the new Fair Work Act (FWA).

It is important that employers are aware of their compliance obligations under the Fair Work Act and if in doubt, obtain legal advice.

El Legal has identified 20 important points that you should know about the FWA.

**1. Application of Modern Awards.** 122 industry and occupational Modern Awards commenced on 1 January 2010. Employers to which the Modern Awards "apply" must abide by the full terms and conditions of the applicable Modern Awards. Employees "covered" by a Modern Award are eligible to bring unfair dismissal claims.

**2. Guarantee of annual earnings.** In order to avoid the application of Modern Awards, employers with Award-covered employees earning more than the high income threshold (currently set at \$113,800) should enter into "guarantees of annual earnings" with such employees, which guarantees their wages, non-monetary benefits with an agreed value and amounts paid on behalf of any such employee will exceed the "high income threshold".

**3. Transitioning.** There is a transitional process under most Modern Awards which provides for the incremental phasing in/out until 2014 of minimum wages, piece-work rates, industry allowances, loadings, penalties and shift allowances.

**4. Individual Flexibility Agreement ("IFA").** An IFA lets employers and an individual employee vary certain Modern Award terms to "meet the genuine needs of employer and employee", provided the employee will be "better off" under the arrangement. An IFA must be in writing and be signed by both parties but an IFA is not assessed by Fair Work Australia to become operational. An IFA can be termi-

# The Net

nated by either party with four week's notice or at any time by the written agreement.

**5. Enterprise agreements.** Enterprise Agreements will operate to the exclusion of any relevant Modern Awards and can have a nominal term of four years and are therefore a good way to achieve long-term flexibility within your business. However, enterprise agreements must be approved by 50 per cent of those who vote, and are then assessed by Fair Work Australia to ensure that the employees will be "better off" under the Enterprise Agreement than under the relevant Modern Award/s.

**6. Set off.** An entitlement under a contract of employment can be used to set off monetary entitlements under the Modern Award (such as where an employer pays a higher rate of pay than that required under the Modern Award). However, careful analysis and drafting is required to avoid underpayment claims.

**7. Salaries.** Some Modern Awards have salary provisions which allow a salary of a certain level to absorb certain Modern Award entitlements (provided the employee receives at least what they would be entitled to under the Modern Award).

**8. Maximum weekly hours of work.** The ordinary weekly hours for a full time employee are 38 under the Fair Work Act, plus "reasonable additional hours". Employees can refuse additional work if extended hours are "unreasonable" (as determined in accordance with factors set out in the Fair Work Act).

**9. Request for flexible working arrangements.** Generally, a parent or primary caregiver of a child who is under school age (or a child under 18 with a disability), who has 12 months' continuous service with their employer, may request changes to working times and arrangements. Any such request must be made in writing to the employer with details of the change sought and the reasons for the request. The employer must respond within 21 days. Flexible working arrangements can be refused on "reasonable business grounds" with documented reasons as to why the request was refused.



# The Net

**10. Parental leave.** The primary care-giver of a child or adopted child under 16 is now entitled to up to 12 months of unpaid parental leave (with the option to request a further 12 months of unpaid parental leave) where the employee has 12 months of service at the time of the birth or adoption. The provisions also extend to same-sex de-facto couples.



**11. Annual leave.** Annual leave will now accrue from the day an employee commences employment. Some Modern Awards, Enterprise Agreements or contracts of employment (for Award/Agreement-free employees) may allow for cashing out of annual leave so long as the employee has at least four weeks annual leave remaining after the cash out.

**12. Community service leave.** This is a new entitlement that allows for unpaid leave to participate in eligible community service activities and jury service. Employers are required to make a maximum of 10 days of "make-up payments" to employees who are absent on jury service.

**13. Notice of termination and redundancy pay.**

Employers must provide written notice of termination to permanent employees (and should also be in the practice of providing these to casuals). The Fair Work Act introduced a statutory scale of redundancy pay which now applies to most employees. There are some transitional arrangements with respect to redundancy pay, which should be considered before making any such payments.



**14. Fair Work Information Statement ("FWIS").** From 1 January 2010, employers have been obliged to provide new employees with a FWIS upon commencement of employment (or as soon as practicable thereafter).

# The Net

**15. Probation period.** A probationary employee must now be provided with one weeks' notice upon termination under the Fair Work Act.

**16. Unfair dismissal.** To minimise the risk of a successful unfair dismissal claim brought by an eligible employee, employers must ensure there is a substantive reason for a termination and that the employee is afforded procedural fairness. Subject to some exclusions, an employee who is covered by a Modern Award, or to whom an enterprise agreement applies or who earns less than \$113,800 is eligible to submit an unfair dismissal claim if they have reached the "minimum employment period".

**17. General protections.** Under the Fair Work Act a person (including an employer) must not take an "adverse action" against another person (including an employee) because of their "workplace right". Where an employee alleges his or her employer took an adverse action against them, the burden rests with the employer to prove that this they did not take the action for reasons that include the employee's workplace right.

**18. Serious misconduct.** If an employee engages in serious misconduct (such as safety breaches) an employee can be summarily dismissed, but caution should be exercised before summarily dismissing an employee as there is a very narrow interpretation of serious misconduct.

**19. Permitted deductions.** Generally, a deduction from an employee's pay must be authorised in writing (under a Modern Award, Enterprise Agreement or law or be for the employee's benefit) in order to be lawful.

**20. Record keeping.** Employers must keep records of all employee details for a period of 7 years from the employee's termination date.

# The Net

## “Red Rooster boss wins compensation after punching customer”



**AN angry restaurant manager who broke his wrist after repeatedly thumping a customer has been awarded thousands of dollars in workers' compensation.**

Matthew Styles, who has previous convictions of assault, including against police, brawled with the customer in the front of the Melbourne Red Rooster store.

But a Melbourne Court magistrate ruled that Mr Styles, who was sacked after the brawl, is entitled to a juicy compensation payout despite using foul language and escalating the dispute.

The magistrate found that the angry customer "was the verbal and physical aggressor" but Mr Styles contributed to the fiasco.

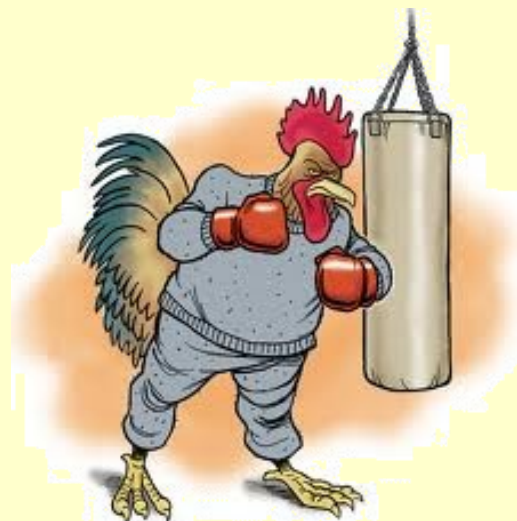
The mayhem started after a chaotic night in 2008 after three staff failed to turn up to work.

Mr Styles became engaged in a slanging match with a disgruntled customer who was unhappy with the wait for his food.

The customer - who was allegedly drunk at the time - asked Mr Styles whether his order would be ready today, to which he replied it would be "ready tomorrow".

Mr Styles told the court the customer then became aggressive, threatening to get him fired, before punching a window.

The two were then involved in a slanging match after the customer yelled, "I'm gonna find ya and kill ya", with Mr Styles allegedly calling the customer a "f---ing clown and f---ing maggot".



# The Net

Video footage viewed in court shows the two ready to fight, with Mr Styles having his hands raised as the customer walks towards him.

According to court documents, "a struggle then ensued with a flurry of arms and both being seen to grab each other".

Red Rooster, which refused Mr Styles' compensation claims, said he did not honour its "employee behaviour standards" and therefore was not entitled to any compensation

It also pointed out Mr Styles lengthy criminal record.

But the magistrate found his injuries arose "out of or in the course of the employment".

He was awarded 13 weeks in lost pay.

Red Rooster was deciding whether to appeal the decision.

---

12 May 2011  
News.com.au  
[www.news.com.au](http://www.news.com.au)

---



## Upcoming C-Net Events

2nd-4th August 2010  
SAUG Summit 2011  
Sydney Convention and Exhibition  
Centre,  
Darling Harbour, Sydney



# The Net

## Upcoming safety events...

### “Resource Safety workshop to target safety initiative and priorities”

An industry workshop to discuss the safety reform process and safety initiatives for mines safety will be held on April 8, at Mineral House.

The workshop, hosted by Resources Safety, has been organised to generate consensus on priority safety initiatives as determined by industry and help industry better understand the safety regulator's priorities.

Presentations will cover safety performance in the mining industry, the evidence- and risk-based approach in addressing significant issues and trends, and what a resilient safety culture is and how industry is tracking.

Workshop participants will be asked to nominate priority targets for the mines safety regulator in the next few years and suggest what might be done to tackle hazards identified as high risk.

The workshop outcomes will be referred to the Ministerial Advisory Panel.

Participants must register by 5.00 pm, Thursday, 31 March 2011.

Although there is no registration fee, pre-registration is required to reserve a place. Early registration is recommended as places are subject to availability.

Morning tea and a light lunch will be provided.

For more information on the workshop click [here](#) or if you would like to register click [here](#)

#### Event Details

Identifying Mines Safety Initiatives and Priority Targets

- Date: 8 April 2011
- Time: 8.30 am to 1.00 pm
- Venue: Level 9 Theatrette, Mineral House
- Location: Department of Mines and Petroleum, 100 Plain St, East Perth

---

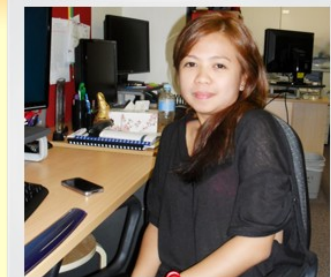
Safety In Australia  
[www.safetyinaustralia.com.au](http://www.safetyinaustralia.com.au)

---

# The Net

## The inside scoop...

This month, one of C-Net's newest additions, Erynn, is hit with some of life's hard questions. See how well she did!



*Erynn*

**Q.** What is your hometown?

**A.** Makati City, Metro Manila, (Dasmariñas village), Philippines.

**Q.** What are some of your favourite pastimes?

**A.** Photography

**Q.** What are some of your lifetime aspirations?

To manage a company

**Q.** What is your favourite saying?

**A.** The only constant thing in life is CHANGE

**Q.** What is your favourite meal?

**A.** Adobo (Filipino food similar to Teriyaki)

**Q.** If you could change places with any other person for a week, famous or not famous, living or dead, real or fictional, who would it be?

**A.** BARACK OBAMA



# The Net



Next time you are at the shops and about to make your light globe purchase, please beware of the brand you choose!

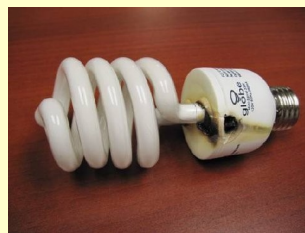
Below is a picture of a CFL light bulb from someone's bathroom. After being turned on for a couple of minutes, the globe started to smoke, which quickly turned into four inch flames!



Luckily someone was home at the time and the light was immediately turned off, but it's certain that it would have caused a fire if someone was not home!

The MFB Fire Department weren't at all surprised about this incident explaining this was not an uncommon occurrence!

The brand purchased was 'Globe' which can be bought from Bunnings. CFL bulbs are a great energy saver but make sure you buy a name brand like Sylvania, Phillips or GE!



Click here to learn more about SafetySuite's brand new V4.0 functionality!



Level 1, 693 Burke Road, Camberwell, VIC 3124, Phone: (03) 9811 7000, Fax: 03 9811 7001  
 Email: [info@c-net.com.au](mailto:info@c-net.com.au), [www.c-net.com.au](http://www.c-net.com.au)