



# Safety Solutions Group OH&S Newsletter

[www.safetysolutionsgroup.com](http://www.safetysolutionsgroup.com)

January 2009



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Please visit our website:  
[www.safetysolutionsgroup.com.au](http://www.safetysolutionsgroup.com.au)  
 where you will gain a better understanding of our range of services  
 and capabilities.

*Paul Pascoe   Colin Parkin   Richard Taylor*



## A TIMELY REMINDER

Extract from NSW WorkCover Media release, 19 December 2008

The head contractor and subcontractor at a Rhodes construction site were fined a total of \$343,500 in the NSW Industrial Court this week.

The prosecutions followed an incident in March 2003 where a 19-year-old man was severely injured after falling 15 metres from the fourth floor of the Rhodes Corporate Park site.



The worker, who was operating the lifting crane to install curtain wall panels, was not attached to a safety line at the time and spent four days on life support after the fall.

In 2006 the injured worker's employer (contracted) and its director, were fined a total of \$154,000 after pleading guilty to a breach of Section 8(1) of the Occupational Health and Safety Act 2000 for failing to ensure the health and safety of the worker.

However this week, the principal contractor was fined \$175,000 and their subcontractor was fined \$168,500 after they were found guilty of breaching section 8(2) of the Occupational Health and Safety Act 2000 Act, for **failing to ensure persons not in their employment were not exposed to risk.**

The Court heard that the contractor and subcontractor did not provide or maintain a safe system of work for installing curtain wall panels and failed to ensure that the weight of the panels did not exceed the Working Load Limit of the crane supporting the panels.

Justice Staunton said that **both contractors had not ensured that the employer was adequately supervising the worker and had not made certain that appropriate fall protection equipment such as a retractable lanyard was in use.**

### Comment

Poor Contractor management can leave a company critically exposed as is demonstrated in the case above. Diligence in implementing an effective Contractor Management System will assist a Company in managing its risk exposure to such events.

The Safety Solutions Group has experience in developing and implementing such systems and can also critique existing systems to identify areas of improvement.



## **TIME TO CLEAR THE AIR – PAVING THE WAY FOR HEALTHIER WORK**

Source: <http://www.hse.gov.uk/press/2009/e09067.htm>

In the UK in 2004, more than 500 construction workers lost their lives to lung cancer and even more were suffering from silicosis as a result of inhaling a dangerous substance called Respirable Crystalline Silica, (known as 'silica dust' or 'RCS').



These striking estimates are based on HSE-funded research.

Found in stone dust, RCS is easily inhaled if unprotected construction workers are involved in cutting stone and concrete such as kerbs or paving blocks.

The effects of silicosis can leave sufferers breathless and unable to do sport, or daily activities we normally take for granted. They can be rendered housebound and dependent upon bottled oxygen.

HSE's 'Clear The Air!' multimedia campaign was produced in collaboration with the construction industry; a DVD, leaflets and online forums show construction workers how to protect themselves from inhaling RCS. More than 240,000 leaflets and 3,000 copies of the DVD have been requested by industry.

The DVD was edited and scripted by highly experienced members of the industry, such as 'voiceover' Seamus Doyle from Daniel contractors. Vaughan Burnand, Chair of Major Contractors Group Health and Safety Committee said:

"Methods and products to prevent dust clouds have been available for a long time and this working group has produced a range of resources to facilitate their use. It is now up to industry as a whole to take the lead and prevent needless illness and deaths caused by silica dust."

The campaign also engages hire companies through the Hire Association Europe and the Builders Merchants Federation to access hard to reach groups. Few hire companies have provided dust suppression kits with their machinery, but STIHL (GB) has done this for its cut-off saws for 30 years. Since the launch of the campaign, Mark-One-Hire has also pledged to support the campaign:

"We are now offering this [dust suppression equipment] free for a period to support the construction industry in its goal to reduce this needless illness," said managing director, Clive Potter.



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Agencies are choosing to communicate the campaign messages to their staff in different ways. The Highways Agency is getting on the road with its specially equipped health and safety training vehicle to reach their workers across the country.

Interpave (British Precast Concrete Federation) has also produced excellent guidance on good practice including alternatives to cutting, which can be downloaded for free from the Interpave website. One of their case studies also recommends that cutting offsite should be an option, (even for difficult jobs), and makes suggestions for precast concrete kerbs.

Using plastic kerbs to avoid creating dust is an alternative that's gaining wide support in the industry. In fact, the Highways Agency recently triumphed at the Building magazine awards, winning 'Client with the Best Commitment to Health and Safety in 2008' for their use of plastic kerbs.

HSE's Dr Robert Ellis from the Chemicals Risk Management Unit is leading the 'Clear the Air' campaign. He is encouraged by reports that the industry has reported a marked increase in staff awareness and improved compliance.

"However," adds Rob, "reaching smaller businesses such as the one or two-man bands remains an important goal. Recently, I saw a sub-contractor working without any dust suppression and the foreman told me he didn't even realise there was an issue and was shocked to realise there was a cancer risk."

"HSE wants to continue the good work to make sure we're reaching everyone so we're asking everyone in Construction to become better informed. Anyone, no matter how big or small the company, can request information and will provide it for free." HSE has three top requests for the construction industry and their suppliers:

1. To use methods, materials and equipment to meet the legal requirements.
2. To ensure standards are being achieved.
3. Inform colleagues, employees and others of the risk.

The Interpave case study 'Efficient Design for Safe Construction using Precast Concrete Kerbs' and their good practice leaflet can be downloaded for free from the Interpave website: [www.paving.org.uk](http://www.paving.org.uk)[1]

- For a copy of the DVD / leaflets go online to a specially-devised website about kerb cutting safely:  
<http://webcommunities.hse.gov.uk/inovem/inovem.ti/kerbcutting.community>[2]
- HSE webpage about respiratory disease in construction:  
<http://www.hse.gov.uk/construction/healthrisks/respiratory.htm>[3]
- HSE's Research Reports are available on the HSE website at  
[www.hse.gov.uk/research/publish.htm](http://www.hse.gov.uk/research/publish.htm)[4].



## CONSTANT COMPLAINERS

. . . and how they can sap the energy out of your safety committee.

An elderly worker on a construction project opened his lunchbox, looked in, and growled, "Cheese sandwiches! Cheese sandwiches! Always cheese sandwiches for lunch!"

A fellow worker sitting close by overheard him and asked, "Why don't you ask your wife to make some other kind?"

"Wife?" said the elderly man. "Who's married? I make these myself."

Scientists haven't found it yet but I'm sure one day they will--a gripe gene. It's an illusive gene because, unlike most "normal" genes which are functional hereditary units that occupy a fixed location on a chromosome, the gripe gene doesn't like where and what it is, therefore it's always moving around and changing its shape.

People with the gripe gene are easy to identify. They have a permanent scowl on their face; one eyebrow is usually lifted to indicate disbelief, and they shake their head back and forth while other people are talking to them.



At meetings, they will disagree with everything and everybody. Their modus operandi is to continually bring up one minor problem after another until everyone in the room is thoroughly aggravated.

Having a chronic complainer on your safety committee can be very frustrating. It can also ruin the committee's desire to meet. Sadly, it only takes one person to turn a brief discussion about correcting a simple problem, such as a loose handrail, into a ferocious long-lasting conflict.

The constant complainer is described as "The doubting Thomas" in *How To Make Meetings Work* written by Michael Doyle and David Straus, who made the following suggestion on one way to dampen his impugning:

"While it's healthy to have a skeptic in any group, aggressive negativism is a damper on creative effort. As a facilitator, you can use mental judo to cope with the doubting Thomas.



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Get the whole group to agree to a process of not evaluating ideas for a set period of time, and then use this agreement to correct anyone who violates it, especially the doubting Thomas: "Wait a minute, Harry! You and the rest of the group agreed not to evaluate ideas for a while. You just jumped on Dave's suggestion. Hold on! You'll get a chance to evaluate ideas later."

You may also need to have a private conversation with the complainer, and let him or her know how much they are disrupting the committee's effort to make improvements. However, sometimes there's not much you can do to stop a chronic complainer.

If the person enjoys griping, you'll be hard pressed to take away one of their pleasures. There are situations when more drastic steps are the only solution (such as removing the person from the committee).

The next time you feel like choking someone with a gripe gene who constantly disturbs your committee meetings, keep this in mind: A customer once wrote to General Mills to complain that Cheerios aren't "aerodynamic." When he threw his cereal, it veered left or right instead of flying straight. He demanded that General Mills correct the problem or give him a refund.

Some people just can't be pleased.

## ODD SIGNS

A Marine Terminal complex has nicely paved roads -- and peculiar speed limit signs. All the speeds are marked with peculiar values: 11, 16, 21, 26, 29 miles per hour.

The odd signs are part of the terminal's safety program, operating on the theory that the unusual number will force drivers to pay more attention to the speed limits.

The tour guides seemed evenly split on the program's effectiveness.

(Photo by Megan Litwin).





## **DISPROVING BREACH OF DUTY**

Having a compensation claim brought against your business is clearly not a desirable turn of events. In many cases, employers are advised to settle with the complainant out of court as this avoids the possibility of having the firm's practices raked over in public.

Furthermore, if it transpires that the employer is indeed negligent then there is little point in dragging the process out. However, spurious complaints are sometimes brought against organisations, and in these cases it is important for a business to know how to defend itself.

### **Criteria for a Claim**

Generally speaking, four criteria must be met in order for a claim to be successful. The complainant must:

- prove that the employer had a duty of care;
- prove that this duty was breached;
- prove that damage or injury has been suffered; and
- prove that the damage or injury was caused in whole or part by the breach of duty.

A defence based on a denial of duty of care will almost always fail, as employers have such a duty to their employees by definition. Similarly, damage or injury is clearly very easy to prove.

The most frequently successful defence, therefore, is to attempt to disprove that the employer breached their duty of care.

The most important piece of legislation concerning occupational health and safety is the Health and Safety Act of your State or Territory and from an employer's legal point of view it is important to understand the duties that it confers.

### **Employers' Duties**

The Act makes clear the employer's responsibilities in ensuring the health, safety and welfare of employees while they are at work.

These include:

- providing safe and risk-free machinery and tools;
- the removal of risks concerning the use and transport of materials;
- providing sufficient health and safety training and supervision;
- the maintenance of buildings and other workplaces to ensure that they are risk-free; and
- the provision of sufficient employee welfare facilities.



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The majority of claims will concern the breach of one or more of these duties. It should be remembered that the law requires employers to eliminate risks as far as is 'reasonably practicable'; in cases in which this is not possible, working practices should be altered in order to remove these risks.

If risks are unavoidable, then as much as possible must be done to ensure that risk is mitigated. Thus, the presence of a risk that led to an accident is not, in and of itself, proof of a breach of duty.

Duty can only be said to have been breached if the employer did not act to remove and mitigate risks as far as is reasonably practicable.

Clearly, effective and well-maintained occupational health and safety practices are the best defence against compensation claims. If you can be shown to have discharged your duty in accordance with the provisions of the Act and its related statutes, then you stand a good chance of success.

Furthermore, you are likely to find that efficient health and safety practices represent a cost-saving in the long-run as they will protect you from claims and ensure that as little working time as possible is lost.

## OOOPS!!





## **SO WHAT IS A DUTY OF CARE?**

Source: <http://www.compensationculture.co.uk/duty-of-care-a-case-study.html>

The concept of a duty of care, and any breach thereof, is central to compensation law. It is legally accepted that there is a general duty of care amongst individuals, and also between individuals and organisations.

For a compensation claim to be successful it must be proved, amongst other things, that this duty of care was breached by the individual or organisation against whom the claim is being made.

### **Background to the Case**

An interesting test case regarding the duty of care owed to customers and the public was heard in the UK High Court last year. It concerned Graham Calvert, a compulsive gambler who eventually ran up debts totalling over £2 million. The case revolved around Mr Calvert's request to William Hill, with whom he placed the bulk of his bets, to carry out 'self-exclusion'.

This means that, at the gambler's request, the bookmaker closes the individual's account, normally for a period of six months, and bans them from placing any bets for the same period. The purpose of this facility is to offer addicts a way to ease their problem once they have recognised that it is, in fact, a problem.

Mr Calvert sued William Hill because, two months after he excluded himself, he was able to open a new account in his own name, and continue gambling. He claimed that the bookmaker had breached the duty of care owed to him when they allowed him to return to gambling.

### **Tiered Duty of Care**

The judge eventually dismissed Mr Calvert's claim. There are a number of reasons for this, and they provide an interesting explanation of the concept of the duty of care.

In the first instance, the case illustrated the gradations of this duty. The judge felt that there was a two-tier duty in the case of bookmakers; he ruled that there was a lesser duty owed to cash customers than there was to credit customers.

In the latter case, the bookmaker owes a similar duty of care to that of a bank, as the commitment of the customer is more significant.

This worked against Mr Calvert because, after excluding himself as a credit customer, he subsequently placed significant bets in cash.



In order for a negligence claim to be successful, it must also be proved that the losses suffered by the individual bringing the case were incurred as a direct result of the breach of duty. This also proved problematic for My Calvert. As was pointed out by commentators at the time, although he had chosen to exclude himself from William Hill, there was nothing to prevent him gambling at other bookmakers; indeed, he did place bets elsewhere.

As such, it was argued that the losses suffered cannot be said to have been a direct result of William Hill's breach of duty, even if such a breach had occurred.

This case illustrated the complexities of the legal arguments surrounding duty of care and its relation to negligence and compensation claims.

Although Mr Calvert's case failed, it is likely to prompt a rethink of both gambling legislation and bookmakers' internal policy.

More generally, it is likely to become a benchmark case for other breach of duty claims.

## **DUTY OF CARE?**





## **FORKLIFTS AND FLAMES**

The Queensland Government Workplace health and safety website reports that it investigated the hazards of using forklift trucks where flammable atmospheres may exist.

It appears a forklift operator was using a LPG powered forklift to load plant into the doorway of a flammable liquids mixing and storage area. There was a mixing process in place at the time and it's likely that vapours were produced involving the flammable liquids. This operation took place without the normal ventilation requirements.



This was likely to have allowed a flammable atmosphere to come into contact with numerous ignition sources on the forklift. The atmosphere was subsequently ignited, causing a fire and explosion which resulted in the operator of the forklift receiving severe burns over most of his body.

Issues of concern were;

- Flames or sparks from the forklift exhaust can become an ignition source,
- Flashback produced by vapours being drawn into and ignited in the combustion engine system can ignite the flammable atmosphere,
- Overspeeding of the engine can occur due to the additional combustion of the flammable vapours in the combustion engine,
- Hot surface temperatures of the exhaust system and other engine components may act as an ignition source,
- Arcs and sparks from electrical equipment and starter motors can be an ignition source,
- Sparks from discharge of static electricity or from friction can be an ignition source,
- Sparks and heat from brake components in action are a potential ignition source,
- Tyres and other material rubbing or moving in close proximity to shelving can discharge static electricity producing the risk of ignition.

### **The lesson:**

Using unprotected electric, diesel, or LPG powered forklift vehicles where flammable dangerous goods are stored or handled without precautions can create an immediate and severe risk of fire or explosion, or both.

If you have concerns about the safety of your mobile plant operation, please contact us and we will be happy to assist you review your management system.



## GAS CYLINDER RUPTURE

The Queensland Government issued an Alert in December 2008 following an incident at a gas supplier's facility where an "E" size (24 litre water capacity) cylinder ruptured during refilling. Damage to the cylinder had been disguised by a user, resulting in the rupture, which could have caused injury or death.



Gas cylinders of this type are used by a large number of workplaces such as hospitals, metal trades, automotive panel repairers, and construction sites.

The cylinder was subjected to a standard pre-fill inspection procedure. During refilling the rupture occurred causing other cylinders to fall from the filling rig and damage was caused to the area. Fortunately there was no one injured. The cylinder was being filled with an argon-based mixture which is an inert gas, used for welding and other purposes. An explosion and fire could have resulted if the fill was a flammable gas.

An independent metallurgist investigated and found

- The heat tag around the neck ring of the cylinder had been replaced. A heat tag is a plastic indicator that melts when a cylinder is exposed to excess heat,
- The cylinder had been abraded and repaired
- The mechanical strength of the cylinder was less than half that required by Australian Standard AS1777-2005: *Aluminium cylinders for compressed gasses – Seamless – 0.1kg to 130kg*
- *There was a uniform reduction in hardness throughout the cylinder.*

It was concluded the cylinder had been damaged by exposure to high temperature during use or while stored. A user had disguised the damage by replacing the heat tag and repainting the cylinder. Following the incident the gas supplier is reviewing its pre-fill inspection procedures and the type of heat indicator it uses to avoid further incidents.

It's impossible to stop users from incorrect usage or storage, so it becomes evident that proper and stringent inspection processes must be applied prior to taking possession of a returned cylinder.

As a matter of interest, if we look at the issue from the users viewpoint, how many of us have purchased or hired a gas cylinder wherein the supplier identified the intact safety features and gave us full assurance that the cylinder was safe to use, if used properly?



## **NEW ZEALAND INCREASES FINES**

Source: <http://dol.govt.nz/News/Media/2008/accident-fines.asp>

The Department of Labour welcomes a High Court decision to substantially increase fines for employers and others who breach the Health and Safety in Employment (HSE) Act.



“We are pleased that the Court has recognised the human and financial costs that workplace accidents impose on victims, their families and the community, and the need to motivate employers and others in the workplace to take action to keep people safe at work,” says Department of Labour National Support Manager, Andrew Kear.

In a decision issued recently, the full bench of the High Court said a “substantial uplift in existing levels of fines is needed” to reflect the seriousness of workplace accidents, the need for deterrence, the effects of inflation and an increase in the maximum fines in 2003.

The Court’s decision relates to an appeal by the Department of Labour against the fines imposed on three companies prosecuted under the HSE Act following separate workplace accidents. The Court ordered that the fine imposed on mining company Black Reef Mine Limited be increased to \$20,000 from \$10,000, and that additional reparation of \$25,000 be paid to the widow of the victim, miner Robert McGowan.

Food manufacturer Cookie Time Limited had its fine increased to \$40,000 from \$15,000. The fine related to an accident in February 2007, when a female worker’s arm was badly broken when it became caught in the mechanism of a conveyor belt.

The fine imposed on commercial construction company Hanham & Philip Contractors Limited was increased to \$50,000 from \$5,000. This related to an accident in November 2007, when an employee of a contractor was seriously injured when he fell from a wooden platform.

The court said starting points for fines under the HSE Act should generally be fixed at:

- Low culpability: a fine of up to \$50,000
- Medium culpability: a fine of between \$50,000 and \$100,000
- High culpability: a fine of between \$100,000 and \$175,000.

The Court noted that higher levels of fines might be required in cases of extremely high culpability.



## PERMIT TO WORK

In some instances, it is impractical or simply impossible to remove all potential risks from the workplace.

The law recognises this, and does not expect every occupational environment to be completely risk-free.

Rather, employers are expected to have made as significant an effort as is 'reasonably practicable' to mitigate the risks involved, and to deal with risks that cannot be eliminated.

An important method by which this can be achieved is the 'permit to work' system.

### High Risk Environments

Permit to work systems tend to be operated within workplaces that are particularly high risk environments, or that have a particularly complex set of risk factors.

A permit to work is a document that outlines the nature of the occupation in question, and the way in which the work should be carried out. Furthermore, it identifies the potential risks involved in the work, and specifies precautions that should be taken to ensure their mitigation.

Finally, it should give details of post-accident drills that should be enacted.

In operation, a permit to work system should be sufficiently simple to ensure that those who it is designed to protect will not be put off abiding by it. On the other hand, they must be formally operated and documented.

Each permit must include detailed information about the nature of the work, the precautions taken by the worker and by the employer, and details regarding the individual permitted to do the work. It must also give details of the length of time for which the permit is valid.

Furthermore, the instructions given in the permit must be assumed to be of higher importance than any other instruction given by an employer or other employee. The permit is used to ensure the highest levels of safety practice, and as such must be abided by.





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## Suitable Situations

Permit to work systems are not necessary in all situations; it would be ridiculous, for example, to operate such a system if all of your employees are typists. However, there are a number of circumstances in which a system is mandatory. These include:

- When employees are required to enter confined or closed spaces.
- When the work involves hazardous chemicals such as chlorine, hot substances or substances under pressure
- When the work involves welding outside the workshop.
- When the work involves certain types of radiation

If a permit to work system is necessary in your workplace, the first step should be to assess the risks involved, and the individuals most likely to be affected by them. This should have been done to some extent in your initial health and safety risk assessment, but it may be necessary to repeat that in more detail for particularly hazardous or complex situations.

Before the permit is issued, the worker must receive detailed training regarding the precautions that they must take to ensure their own safety. The system will only work if the individuals concerned abide by the instructions given on their permit.

Furthermore, behaviour should be monitored and practice reviewed regularly. In order to aid this, all permits should be copied into triplicate, with one copy going to the worker; another to the departmental manager; and a final copy being kept by the individual responsible for the system.

## DISCUSSION BOARD

COHS has launched a new online discussion board called [Workscape](http://www.workscape.ca), for Canadians to talk about all aspects of workplace health and safety. There are separate areas designated for chemical safety, ergonomics, healthy workplaces, legislation and compliance, and general health and safety.



Post your question or thoughts about current issues or situations happening at your workplace, and get answers and opinions from other professionals across the country. You can also post and find job openings, training opportunities, workshops and events, and resources.

And to further build the community aspect, Workscape features areas for students to discuss their programs and courses, and for health and safety professionals to introduce themselves and network with each other.

Workscape is absolutely free (and easy) to join. Check it out and sign up today. Visit [www.workscape.ca](http://www.workscape.ca) to get started



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## FUTUREMEDIA

### 2008 Best Sellers Available

#### Manual Handling NEW

This new Australian training DVD will take viewers through a range of tips, procedures and preventative actions that encourage safer manual handling practices.

#### Consequences NEW

The consequences of failing to manage risk are outlined in this dramatic video.

#### Piper Alpha

This DVD unravels the sequence of events that in the course of one critical hour, lead to the Piper Alpha explosion and fire, resulting in the loss of 167 lives.

#### Risk Maker Risk Taker

**AS/NZS 4360 Risk Management Standard.**

Demonstrates for managers the steps to manage the risks in their environment, and how cracks may occur in the risk assessment and risk management process.

#### All for One - The Meerkat Way

Beautifully filmed and packed with insight - on everything from teamwork and inter-dependence to the safety instinct, the importance of communication and continuous improvement.

#### Remember Charlie

Outlines Charlie's journey from death's door following a refinery explosion, to his position as the world's leading presenter on why we all should follow safety procedures precisely.

#### Creating a Mindful Organisation

Organisational safety culture is one of the key factors why companies fail to recognise the warning signs prior to workplace accidents.

#### Heat Stress

Highlights the risk factors, how to handle heat and outlines heat disorder symptoms and ways to treat them as well as describing ways to prevent heat disorders.

### Contact us

**For further information or if you are unable to view video over the Internet, please contact us: [info@futuremedia.com.au](mailto:info@futuremedia.com.au) or call +612 9279 4499.**



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## SAFETY SOLUTIONS GROUP

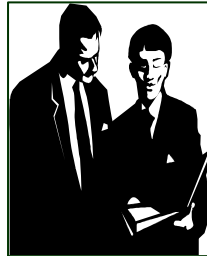
OHS Auditing



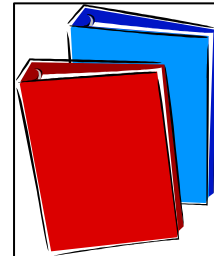
OHS Training



OHS Consulting



Management System



Professional Safety Solutions (PSS), COVAL Risk Management Solutions (CRMS) and Safer Work Solutions (SWS) have established an effective business alliance in forming **The Safety Solutions Group**.

Alliances are established across Australia, Canada and South East Asia with highly qualified and professional providers of OHS Management Solutions. These are strategic links with other global OHS professional consultants who have the commitment, experience and expertise and are dedicated to the highest level of OHS Standards.

A strong portfolio of total OHS Business Management and Corporate Social Responsibility Solutions can be provided to service the needs of organisations across the globe. When you next consider your arrangements for your OHS Program needs we would welcome the opportunity to meet with you to understand your requirements and provide you with practical cost effective solutions.

Please give us a call to gain a better understanding of our range of services and capabilities.