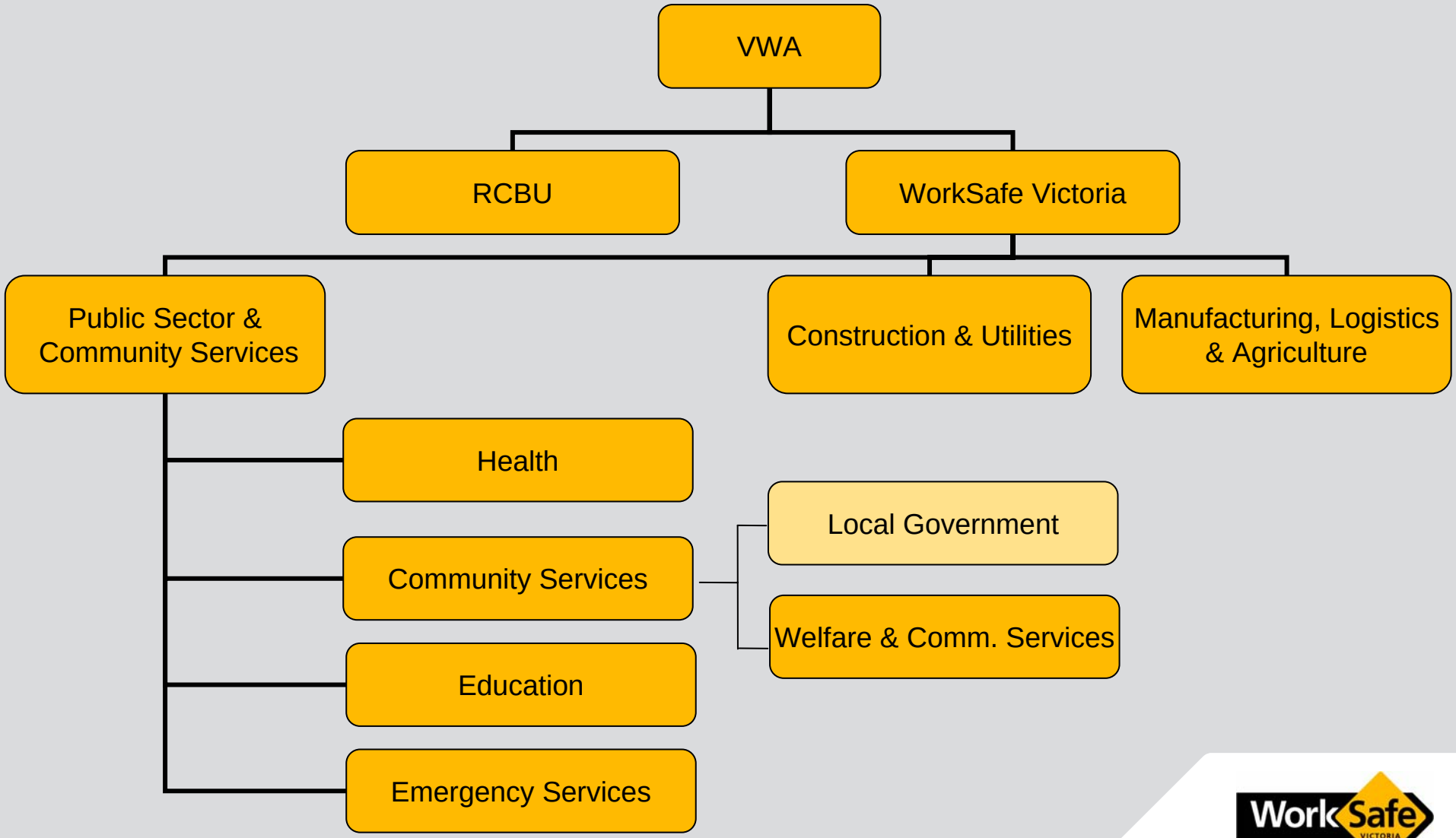
Occupational Health & Safety Risk Management in Human Services

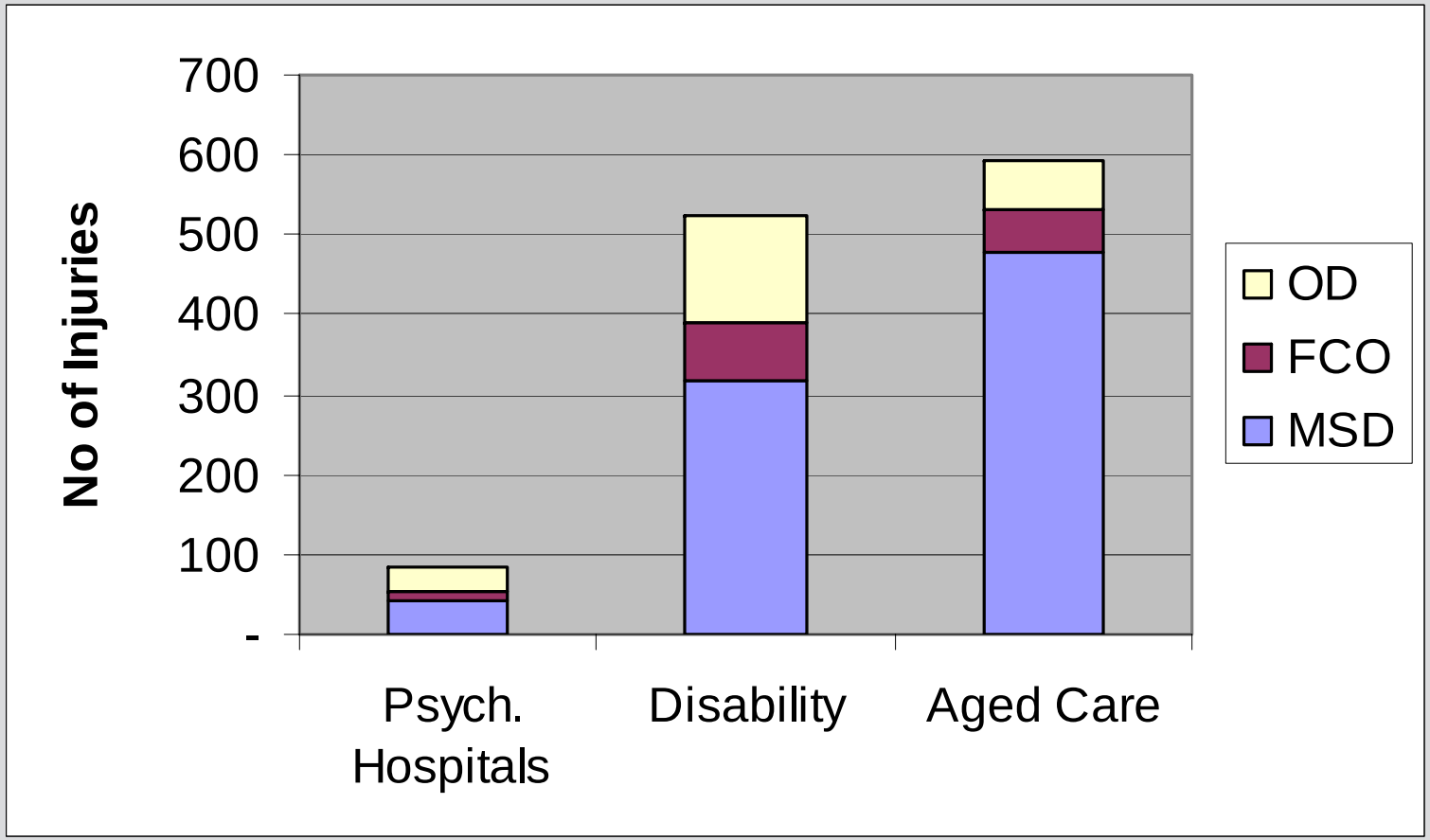
Office of the Public Advocate
Risk and Rights Forum 2005
Tony Caruso
Public Sector & Community Services – WorkSafe Victoria
October 2005

Who are we


VWA
RCBU
WorkSafe Victoria
Public Sector & Community Services
Construction & Utilities
Manufacturing, Logistics & Agriculture
Health
Community Services
Education
Emergency Services
Local Government
Welfare & Comm. Services

Typical Injuries Incurred by Carers

2003/2004



OD – Occupational Disease FCO – Fracture, Contusions, Open Wounds
MSD – Musculoskeletal disorders

What is the Impact of Workplace Injuries?

To carers

- Reduced ability to provide care
- Dissatisfaction related to injury and reduced performance at work

To clients

- Care provided by agency carers when employees are injured and away from work
- Disruption to care – agency staff learning routines, clients' likes & dislikes
- Clients assisting injured carers

To the employer

- Increased cost – agency costs, replacing employees
- Increased employee turnover
- Reduced operational efficiency
- Increased premium
- Increased training requirements

Legal Responsibilities

Common Law

- Employers have a recognised duty of care to provide a safe working environment

- Taking reasonable care so that work operations do not subject employees to unnecessary (and foreseeable) risk

OHS Law

- Mirrors this duty and sets out duties for a variety of people
  - > Employers
  - > Employees
  - > Suppliers

- Employers are required to provide a safe working environment as far as is practicable

Definitions – so far as is reasonably practicable

New Act introduces '**so far as is reasonably practicable'** to clarify this concept

- This reflects how OHS legislation has been interpreted and applied
- Must do what a reasonable person would do
  - To eliminate risks or,
  - If not reasonably practicable to reduce so far as is reasonably practicable

Practicability considerations:

- Severity of hazard or risk
- State of knowledge
- Availability and suitability of ways to mitigate the risk
- Cost of mitigating the risk

Working environment includes:

- Cars
- Buses
- Community
- Homes

Interpretation of the Law

"The [OHS] Act does not require employers to ensure that accidents never happen. It requires them to take such steps as are practicable to provide and maintain a safe working environment. The courts will best assist the attainment of this end by looking at the facts of each case as practical people would look at them; not with the benefit of hindsight nor the wisdom of Solomon but nevertheless remembering that one of the chief responsibilities of all employers is the safety of those who work for them. Remembering also that, in the main, such responsibility can only be discharged by taking an ***active, imaginative and flexible approach*** *to potential dangers in the knowledge that human frailty is an ever present reality"*

Supreme Court of Victoria
Holmes v R.E Spence & Co Pty Ltd 1992

Constructive Compliance Framework

Workplace

Encouragement for effective workplace safety

Strong deterrence for poor performance

Levers

Information, Education and Communication

- Co-ordinated Stakeholder and Communication Strategy

Financial Incentives

- Safety Development Fund
- Small Business Innovation Fund
- High involvement from Industry Associations and Unions for targeting and delivery

Risk of Detection

- Refocus inspectors on regulator role

Risk of Prosecution

- More aggressive stance on prosecution
- High publicity of prosecution cases (reputational penalty)
- Industrial manslaughter

Penalties

- Increased penalties

Needs of the Carer v Needs of the Client (1)

Client:

- 20 year old man with an intellectual disability

Task:

- No information provided to carer about the client
- Carer takes the client to a swimming pool in her car

Incident:

- Client hits the carer as she is driving over Westgate Bridge injuring and scaring her

Potential Risk Controls:

- Appropriate communication of expected client behaviour
- System of risk assessment of in place
- Alternative transport
- An additional carer
- Preset mobile phone for communication

Needs of the Carer v Needs of the Client (2)

Client:

- Large, heavy client uses a wheelchair to move around
- Frequent seizures, falls to the floor of the school bus almost daily

Task:

- Lifted in & out of the school bus twice daily
- Lifted from the floor after falling
- Several musculoskeletal injuries from lifting her in & out of the bus

Action:

- Prohibition Notice issued on this task
- The school and parents believed this was intrusive on the rights of the client

Risk control:

- Divert a bus with wheelchair access from a close route
- Transfer the client in the wheelchair

Related Prosecutions (1)

- No prosecutions within the human services sector in Victoria to date
- A number of investigations which may proceed prosecution are currently underway

NSW

Detainee/student fatal assault on staff member

The Crown (Department of Education and Training, Department of Juvenile Justice and TAFE) convicted and fined $294,000

Failures related to:

> The absence of appropriate risk assessment

> Provision of information to school staff

Assault by a psychiatric patient in a hospital

Hospital convicted and fined $180,000

Failures related to:

> The absence of non-breakable glass in the ward

> Having a controlled entry point in the event of a critical incident

WorkSafe VICTORIA

Related Prosecutions (2)

NSW

Resident assault on social welfare worker

North West Disability Services convicted and fined $7,500

Failures related to:

> Having a management system

> Providing information concerning residents

Multiple assaults of staff by residents in a group care residential facility

Department of Community Services convicted and fined $410,000

Failures related to:

> Provision of adequate emergency procedures

> Assessment of the behaviour of certain clients

> Properly investigate incidents resulting from client behaviour

> Ensuring that clients with a disposition to aggressive or violent behaviour did not have access to dangerous instruments

WorkSafe VICTORIA

Management of OHS Risk v Provision of Services

- Client care and OHS management are **not** mutually exclusive

- Services are still provided to clients
  - Different providers
  - Different way

- Effective OHS management may improve services to clients by:
  - Identifying if clients are at risk ie potential for assault from other clients
  - Manual handling risks to carers may result in uncomfortable/unsafe transfers/lifts for clients
  - Reducing staff turnover