

# OHSIG Conference

11-12 September 2008

## **From investigation to prosecution: A practical perspective**

Shona Carr, Department of Labour  
Grant Nicholson, Kensington Swan

# What will we cover?

- Duties on employers and others after accidents
- How does the Department of Labour decide whether, and how, to investigate?
- What happens during an investigation?
- What powers does the inspector have?
- How can you influence the process?
- What happens at the end of an investigation?

# Duties after an accident

- Don't disturb the scene
- Notify the Department of Labour ASAP
- Record details
- Investigate!

# Will the Department of Labour investigate?

- Decision is made by a designated person, not the call centre or your local inspector
- Accidents are rated:
  - Limited response
  - Category B
  - Category A

# What does the inspector do?

- Initially, ensure the hazard is controlled
- Later, investigate what happened
  - conduct interviews
  - request reports
  - obtain expert assistance

# The inspector's powers

- Visit the site
- Call for documents
- Interview different parties work
- Take samples and photographs
- Sketch layout drawings
- Obtain assistance from experts

# Influencing the process

- Try to participate in the investigation
- Put all exculpatory material forward
- Offer innovative solutions to ensure future compliance
- Negotiate over enforcement outcomes

# Prosecution

- Department of Labour only prosecutes if:
  - recommended by inspector
  - peer reviewed then approved by local Team Leader
  - approved by Legal Service
- Defending a prosecution is tough
  - focus on what was reasonably practicable
  - blaming the victim doesn't work on its own