

A handbook
for workplaces

Summary of the Occupational Health and Safety Act 2004

Edition No.2
June 2005



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WorkSafe Victoria is a trading name of the Victorian WorkCover Authority

The information presented in this guidance material is intended for general use only. It should not be viewed as a definitive guide to the law, and should be read in conjunction with the *Occupational Health and Safety Act 2004*.

Whilst every effort has been made to ensure the accuracy and completeness of this guide, the advice contained herein may not apply in every circumstance. Accordingly, the Victorian WorkCover Authority cannot be held responsible, and extends no warranties as to:

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AIM OF THIS SUMMARY

This booklet summarises the *Occupational Health and Safety Act 2004* (the Act). It gives an overview of duties and/or rights under the Act to all those who have health and safety responsibilities or roles, including employers, those who manage or control workplaces, employees, health and safety representatives, suppliers, designers and manufacturers.

Although this summary was written to help people understand what the Act requires, it is neither a legal document nor a substitute for the Act. People should read this booklet in conjunction with the Act. To assist readers, cross-references to specific sections of the Act are provided after each heading in the summary (e.g. S21, S91–94).

Selected definitions from the Act, and other useful terms and abbreviations used in this summary can be found in the glossary at the end of this summary.

To obtain a copy of the Act, go to www.dms.dpc.vic.gov.au or phone Information Victoria on 1300 366 356. Further information can also be obtained at **worksafe.vic.gov.au**

PRELIMINARY

Commencement (S3)

The Victorian Government recently passed the *Occupational Health and Safety Act 2004* (the Act) to replace the *Occupational Health and Safety Act 1985*. Most sections of the Act come into operation on 1 July 2005. The exceptions are as follows:

- a new Occupational Health and Safety Advisory Committee (OHSAC) has been established (S19);
- a new duty on employers to consult employees about health and safety matters will commence on a date to be set, no later than 1 January 2006 (S35 & 36); and
- a new duty on designers of buildings or structures, to ensure workplaces they design do not present health or safety risks, will commence on 1 July 2006 (S28).

Objects of the Act (S2)

The Act is designed to provide a broad framework for improving standards of workplace health and safety to reduce work-related injury and illness. It allows duty-holders to determine their approach to achieving compliance with the Act.

The Act aims to:

- secure the health, safety and welfare of employees and other people at work;
- protect the public from the health and safety risks of business activities;
- eliminate workplace risks at the source; and
- involve employers, employees and the organisations that represent them in the formulation and implementation of health, safety and welfare standards.

Throughout the Act, the meaning of health includes psychological health as well as physical health.

The principles of health and safety protection (S4)

The following health and safety principles should be applied in the administration of the Act:

- all people are given the highest level of health and safety protection that is reasonably practicable;
- those who manage or control activities that give rise, or may give rise, to risks to health or safety are responsible for eliminating or reducing health and safety risks, so far as is reasonably practicable;
- employers and self-employed people should be proactive and take reasonably practicable measures to ensure health and safety in their business activities;
- employers and employees should exchange information about risks to health or safety and measures that can be taken to eliminate or reduce those risks; and
- employees are entitled, and should be encouraged, to be represented on health and safety issues.

Who is covered by the Act? (S5 & 6)

All Victorian workers are provided with protection by this Act. This includes employees, contractors, sub-contractors, outworkers and employees in State Government departments and instrumentalities. However, employees of the Commonwealth Government are covered by different legislation. The Act also provides protection for the general public so that their health and safety is not placed at risk by work activities.

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WORKSAFE VICTORIA

Functions of WorkSafe Victoria (S7)

WorkSafe Victoria (WorkSafe) has a broad range of functions designed to improve occupational health and safety, including:

- monitoring and enforcing compliance with the Act and regulations;
- making recommendations to the Minister on regulations and compliance codes;
- informing employers and employees of their duties, obligations and rights;
- promoting health, safety and welfare education and training;
- fostering a cooperative, consultative relationship between employers and employees on workplace health, safety and welfare issues;
- promoting public awareness and discussion of all issues affecting occupational health, safety and welfare;
- developing and implementing programs that encourage employers to reduce risks to health and safety;
- initiating and encouraging research to identify strategies for improving occupational health, safety and welfare; and
- collecting and publishing statistics relating to occupational health, safety and welfare.

Power to obtain information and restrictions on disclosure (S9–11)

WorkSafe has the power to require a person to provide information or documents in the person's custody or control. This power is limited to use only for the purpose of determining whether the Act or regulations have been complied with or investigating a suspected contravention.

A person must provide the requested information or documents, unless they have a reasonable excuse. A person is not required to answer questions if it could incriminate them.

WorkSafe, its appointees, staff, or others acting on its behalf, may only make a record, disclose or use information to the extent necessary to perform their official duties. This does not prevent the production of documents or disclosure of information:

- in court or tribunal proceedings;
- to relevant government authorities, departments or parliamentary committees; or
- as otherwise required or permitted by an Act of Parliament.

Guidelines and advice (S12–15 & 18)

To help duty-holders comply with the Act, WorkSafe may issue guidelines to explain how it will apply the Act and how it will exercise discretion on provisions of the Act.

WorkSafe, including an inspector or other person authorised by it, may give advice on how to comply with duties and obligations under the Act.

Guidelines and any such advice do not create:

- any additional right, duty or obligation on a person;
- any additional defence for a person; or
- any liability or claim against WorkSafe.

Accepting and enforcing undertakings (S16–17)

If a person has, or is alleged to have breached the Act, WorkSafe may choose to accept written undertakings from the person rather than pursuing a prosecution. An undertaking is an agreement to carry out a specified program of occupational health and safety (OHS) improvements at a workplace. While the undertaking is in place no proceeding may be commenced for an offence to which it relates. However, if WorkSafe believes the undertaking has not been complied with, it can apply to the Magistrates Court to have the undertaking enforced. An undertaking may be withdrawn or varied at any time if WorkSafe provides written consent.

Occupational Health and Safety Advisory Committee (S19)

The Act established an Occupational Health and Safety Advisory Committee (OHSAC). This committee advises WorkSafe's Board on promoting healthy and safe working environments and on the operation and administration of the Act. Its membership will be drawn from WorkSafe, employers, employees, the Government and OHS specialists.

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GENERAL OHS DUTIES

Concept of ensuring health and safety (S20 part)

Part 3 of the Act imposes general OHS duties on employers, the self-employed, employees, designers, manufacturers, suppliers and others.

These general OHS duties require a person, in most instances, to ensure health and safety so far as is reasonably practicable. This requires the person:

- to eliminate risks to health and safety so far as is reasonably practicable; and
- if it is not reasonably practicable to eliminate risks to health and safety, to reduce those risks so far as is reasonably practicable.

Reasonably practicable (S20 part)

The words 'so far as is reasonably practicable' are words of limitation. What is 'reasonably practicable' in a given situation is to be determined objectively. The duty-holder must do what a reasonable person would do in the particular circumstances by putting in place 'reasonably practicable' measures.

In determining what is 'reasonably practicable', account must be taken of:

- the likelihood of a hazard or risk occurring (i.e. the probability of a person being exposed to harm);
- the degree of harm that would result if the hazard or risk occurred (i.e. the potential seriousness of injury or harm);
- what the person concerned knows, or ought reasonably to know, about the hazard or risk and any ways of eliminating or reducing that hazard or risk;
- the availability and suitability of ways to eliminate or reduce the hazard or risk; and
- the cost of eliminating or reducing the hazard or risk.

The term 'reasonably practicable' in the Act has the same practical effect on how duties are to be met as the term 'practicable' had in the old Act.

*Note: The general OHS duties under the Act are all duties to be met 'so far as is reasonably practicable' with the exception of those marked **.*

Duties of employers to employees and contractors (S21)

The Act requires all employers to provide and maintain a working environment that is safe and without risks to health.

Employers owe the same duty to independent contractors and their employees who are working at the workplace, but only for matters over which the employer has, or should have, control.

The Act sets out specific duties that employers must comply with as part of their general duty. These include:

- providing and maintaining plant and systems of work that are safe and do not pose health risks (e.g. providing effective guards on machines and regulating the pace and frequency of work);
- making arrangements to ensure the absence of risks to health and safety connected with the use, handling, storage and transport of plant or substances (e.g. toxic chemicals, dusts and fibres);
- maintaining workplaces under their management and control in a condition that is safe and without health risks (e.g. controlling noise and lighting levels);
- providing adequate facilities for the welfare of employees at workplaces under their management and control (e.g. washrooms, lockers and dining areas); and
- providing employees with information, instruction, training or supervision needed for them to work safely and without risks to their health**.

An employer must provide their employees with health and safety information in languages appropriate for their employees, including the name of any person to whom employees may make an enquiry or complaint about health or safety.

Duties of employers to monitor health and safety conditions (S22)

Employers must:

- monitor the health of their employees and the conditions of the workplaces under their management and control;
- keep records on the health and safety of their employees; and
- employ or engage the services of a person suitably qualified in OHS to provide advice on the health and safety of their employees.

Duties of employers and self-employed to other people (S23 & 24)

Employers and the self-employed must ensure that the health and safety of members of the public is not adversely affected by their business activities. This duty includes matters such as protecting visitors to a workplace, protecting the general public from construction or demolition work being done near roads and footpaths, and preventing the emission of hazardous substances from a workplace.

Duties of employees (S25)

While at work, employees are required to take reasonable care for their own safety and the safety of others who may be affected by their actions or omissions**. They must also cooperate with any actions taken by their employer to comply with the Act and regulations**.

An employee must not intentionally or recklessly interfere with or misuse anything provided at the workplace in the interests of health, safety and welfare**.

Duties of those who manage or control workplaces (S26)

Any person or body that manages or controls a workplace, to any extent, must ensure that the workplace, including entering and exiting the workplace, is safe and without risk to health. This duty is limited to matters over which the person has management or control.

Those who manage or control a workplace could include the employer, the occupier of the workplace, the owner of the workplace and others.

*Note: The general OHS duties under the Act are all duties to be met 'so far as is reasonably practicable' with the exception of those marked **.*

GENERAL OHS DUTIES

Duties of designers of plant (S27)

A person who designs plant and knows, or ought reasonably to know, that the plant is to be used at a workplace must ensure that it is designed to be without risks to health or safety when used for a purpose for which it was designed.

A designer of plant must carry out tests and examinations sufficient to ensure that plant used for its intended purpose is safe and without risks to health. Information must be made available to those for whom the plant was designed about its intended purpose, test results and any conditions necessary to ensure that it is safe and without risks to health, when used for its intended purpose.

Duties of designers of buildings and structures (S28)

The designer of a building or structure, or part thereof, which is to be used, or could reasonably be expected to be used, as a workplace must ensure that the building or structure is designed to be safe and without risks to the health for those who will use it at a workplace for a purpose for which it is designed.

Duties of manufacturers of plant and substances (S29)

Manufacturers of any plant or substance which is manufactured to be used, or could reasonably be expected to be used, at a workplace must ensure that the plant or substance is safe and without risks to health when used for a purpose for which it was manufactured.

Manufacturers must carry out or arrange tests and examinations sufficient to ensure that the plant or substance is manufactured to be safe and without risks to health when used for a purpose for which it was manufactured**.

Manufacturers must give to each person they supply with any plant or substance, and on request to any person who uses or is to use the plant or substance, information about the intended purpose(s) of the plant or substance, the results of tests for the plant or substance and any conditions necessary to ensure that when used for their intended purpose they are safe and without risks to health**.

Duties of suppliers of plant and substances (S30)

Suppliers of any plant or substance that is to be used, or could reasonably be expected to be used, at a workplace must ensure that the plant or substance is safe and without risks to health when used for the purpose for which it was designed, manufactured or supplied.

Suppliers must provide to each person they supply with any plant or substance, and on request to any person who uses or is to use the plant or substance, information about the intended purpose(s) of the plant or substance and any conditions for the safe use of the plant or substance**.

Duties of people installing, erecting or commissioning plant (S31)

A person who installs, erects or commissions plant which is to be used, or could reasonably be expected to be used, at a workplace must ensure that nothing about the way in which it is installed, erected or commissioned makes its use unsafe or a risk to health.

Duty not to recklessly endanger people at workplaces (S32)

It is an offence, without lawful excuse, to recklessly engage in conduct that exposes, or may expose, a person at a workplace to the risk of serious injury.

*Note: The general OHS duties under the Act are all duties to be met 'so far as is reasonably practicable' with the exception of those marked **.*

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CONSULTATION WITH EMPLOYEES

The experience and knowledge of employees can make a significant contribution to identifying hazards, assessing risks and developing preventative measures for health or safety issues that arise in a workplace.

Employers to consult with employees (S35)

Employers are required to consult with their employees about health or safety matters that directly affect them. Employers must consult directly with affected employees on OHS actions including when they are:

- identifying or assessing hazards or risks arising from the activities of the business;
- deciding on measures to control these risks;
- deciding on the adequacy of employee facilities;
- deciding on procedures for resolving health or safety issues arising from the activities of the business, consultation, monitoring employee health and workplace conditions, and the provision of information and training;
- determining the membership of any health and safety committee; or
- proposing changes that may affect health or safety.

Employers must also consult independent contractors and their employees, although this duty is limited to matters over which the employer has control, or would have control, but for an agreement which attempts to limit that control.

How employees are to be consulted (S36)

Consultation means that employers must share information with employees, give them a reasonable opportunity to express their views and take those views into account. Procedures for consultation that have been agreed on must be adhered to. Where employees are represented by a health and safety representative (HSR), the consultation must involve that HSR.

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REPRESENTATION OF EMPLOYEES

The Act provides for the participation of employers and employees in decisions on OHS. While maintaining the process from the previous Act for the establishment of designated work groups (DWG) and the election of HSRs, the new Act provides more flexibility in arrangements for workplace representation.

DESIGNATED WORK GROUPS

Establishment of designated work groups (single employer) (S43–46)

Any employee or group of employees may ask their employer to establish a designated work group of employees at one or more of the employer's workplaces. The employer must do everything reasonable to ensure that negotiations start within 14 days. Alternatively, an employer may themselves initiate negotiations with employees to establish a DWG.

Negotiations concerning the establishment or variation of a DWG must only deal with:

- how to group employees at one or more workplaces into one or more DWGs in a way that best enables the OHS interests of employees to be represented and safeguarded and provides access by group members to an HSR;
- the number of HSRs and deputy HSRs for each DWG;
- the term of office of each HSR, which must not exceed 3 years; and
- whether HSRs will represent independent contractors and their employees.

These negotiations and any inspectors' determinations about them must take into account the number of employees at the workplace(s), the nature of the work, the number and grouping of employees that undertake the same or similar work and the areas in which they work, the nature of any hazards, overtime or shiftwork arrangements and the languages spoken at the workplace.

Where agreement cannot be reached in a reasonable time concerning DWGs, either party to the negotiations may ask WorkSafe to provide an inspector to resolve the issues. The parties must comply with the inspector's determination.

An employee or group of employees may authorise any person to be their representative at these negotiations.

Once agreement is reached, the employer must establish the DWG as agreed by giving written notice to employees. Variations of the agreement can be negotiated at any time by either party, with employers again required to notify employees in writing of the changes.

Designated work groups for multiple employers (S47–52)

DWGs can also represent employees of more than one employer. In these cases, negotiations about DWGs must involve each employer and their employees.

REPRESENTATION OF EMPLOYEES

Negotiations to establish one or more DWGs for multiple employers must focus on the same factors previously specified for DWGs for a single employer. Once agreement is reached, employers must establish each DWG as agreed by giving written notice to employees. Variations can be negotiated.

A party to an agreement or negotiation for an agreement on DWGs for multiple employers may withdraw by giving reasonable notice in writing.

Prohibition of coercion in relation to DWGs (S53)

It is an offence for a person to coerce or try to coerce someone:

- not to make, or to withdraw, a request for a DWG;
- during negotiations about DWGs including variations of an agreement; or
- about being represented in negotiations about DWGs.

HEALTH AND SAFETY REPRESENTATIVES

Election of health and safety representatives (S54 & 55)

The members of each DWG elect the HSR for the group. All members of the DWG are entitled to vote in an election. To be eligible for election as an HSR, a person must be a member of the DWG and not disqualified from acting as an HSR.

Members of the DWG may decide how to run the election for an HSR, but must follow the procedures, if any, set out in the regulations. If agreement cannot be reached, a member can ask WorkSafe to conduct the election or appoint someone to do so.

The term of office for an HSR cannot exceed 3 years and they cease holding office if:

- they leave the DWG;
- they are disqualified by a Magistrates Court from being an HSR;
- they resign as HSR;
- after 12 months in office, the majority of members of the group resolve that the person should no longer represent them; or
- the DWG is varied, unless the variation is agreed or determined not to affect office-holders.

HSRs can be re-elected.

Deputy health and safety representatives (S57)

The provisions of the Act for the election, term of office, training and disqualification of deputy HSRs are the same as for HSRs.

If an HSR ceases to hold office or is unable to exercise powers (for example, because of absence), those powers may be exercised by the deputy HSR.

Training of health and safety representatives (S67–68)

Employers must, if requested, allow HSRs and their deputies to attend an initial course in OHS after their election and refresher courses at least annually. Requests for training must be made at least 14 days before the training is to start.

The employer must give the HSR paid time off work to attend the course and must cover course costs. If the HSR's DWG includes employees of multiple employers, those employers must split the costs.

Courses must be approved or conducted by WorkSafe, be relevant to the work of the DWG or the HSR's role and selected in consultation with the employer.

If the employer and HSR do not agree on a course or the employer refuses to allow the HSR to attend, the HSR can ask WorkSafe to determine a specified course, which commences no less than 14 days after the determination. Refusal to allow the HSR to attend the determined course is an offence.

REPRESENTATION OF EMPLOYEES

Entitlements of health and safety representatives (S69–71)

Employers must allow HSRs access to information about actual or potential hazards, and the health or safety of group members and other represented people (e.g. independent contractors). Any medical information must be non-identifying, unless released with the member's consent.

Employers must allow HSRs to attend OHS interviews between any person they represent and an inspector or employer, provided the represented person's consent is given.

Employers must allow HSRs paid time off work in order to exercise their powers or to take part in training, and must offer any other necessary or prescribed facilities and assistance that enable the HSR to exercise their powers.

Employers must also provide access to the workplace to any person assisting the HSR. An employer may only refuse entry to the person assisting an HSR on the grounds of lack of knowledge of OHS. If the employer refuses access to the person assisting, the HSR may ask the Magistrates Court to grant an access order.

Employers must keep a written, up-to-date list of HSRs and deputies for each DWG and that list must be displayed at each workplace or made accessible to employees in some other way.

Powers of health and safety representatives (S58 & 59)

The Act does not impose any function or duty on an HSR. However, an HSR for a DWG may:

- inspect any part of a workplace in which a member of their DWG works, on reasonable notice, or without delay if there is an incident or immediate risk to health or safety;
- accompany an inspector during a workplace inspection involving their DWG;
- require a health and safety committee to be established;
- if a member of their DWG consents, attend interviews on health or safety matters between that person and an inspector or employer;
- if the HSR is authorised to represent an independent contractor and they consent, attend interviews on health or safety matters between that person and an inspector or employer; and
- seek the assistance of any person when necessary.

These powers may only be exercised to represent members in relation to OHS, monitor compliance with OHS laws, enquire into existing or potential risks to members of the DWG or other represented people, and to try to resolve health or safety issues with the employer.

HSRs are generally entitled to act only on matters that affect, or may affect, members of their own DWG. Exceptions exist when there is an immediate risk to a member of another DWG, or when a person in another DWG asks for help and the matter cannot be referred to their own HSR.

Provisional improvement notices issued by an HSR (S60–62)

An HSR may issue a provisional improvement notice (PIN) to a person if they reasonably believe that the person has contravened, or is contravening, the Act or regulations and they have tried to remedy the contravention through consultation.

A PIN must:

- state the belief on which the notice is based and the grounds for that belief;
- include the provision of the Act or regulations considered to have been contravened; and
- include the date (at least 8 days from the issue date) by which the contravention should be remedied.

The PIN may also contain directions about how to remedy the breach.

REPRESENTATION OF EMPLOYEES

If the person receiving the notice is an employee, they must inform their employer about the notice. When an employer or self-employed person receives a notice, they must tell all people whose work is affected about the notice and display it prominently at the location to which it applies. A person must comply with a PIN issued to them.

Inspector attendance after the issue of a provisional improvement notice (S63–65)

Within 7 days of a PIN being issued, any person issued with a PIN, or their employer, can ask WorkSafe to send an inspector to enquire into the PIN. WorkSafe must, after a request has been made, send an inspector before the compliance date in the PIN. The inspector must either affirm, with or without modification, or cancel the PIN. A PIN that is affirmed must be complied with.

A PIN or a notice issued by an inspector in relation to a PIN is not invalid merely because of a formal defect or irregularity, unless this defect or irregularity would lead to substantial injustice.

Resolving health and safety issues (S73)

The employer or their representative and employees affected by an issue, or the HSR where one is elected, must try to resolve health or safety issues using agreed internal procedures or, if there are no established procedures, using those specified by regulations.

Anyone representing an employer in these attempts at resolving OHS issues must be sufficiently senior and competent to act for the employer, and must not be an HSR.

If the parties cannot resolve a health and safety issue in a reasonable time, either party can ask WorkSafe to arrange for an inspector to attend in order to enquire into the issue. The inspector may exercise any powers considered necessary in the circumstances to resolve the issue.

Direction to cease work (S74–75)

If an OHS issue arises concerning work which involves an immediate threat to health or safety, and the nature of the threat and degree of risk make the agreed or prescribed resolution procedures inappropriate, either an employer or a relevant HSR can, after consulting each other, direct employees to cease work. During a 'cease work' the employer may assign affected employees to suitable alternative work.

If the issue that is the subject of the direction to cease work cannot be resolved, either party can ask WorkSafe to provide an inspector to attend to or enquire into the issue. The inspector may exercise any powers considered necessary in the circumstances to resolve the issue.

If, after enquiring into the issue, the inspector issues a prohibition notice or finds reasonable cause for employees to be concerned for their health or safety, employees affected by the 'cease work' are entitled to be paid.

Disqualification of a health and safety representative (S56)

An employer can apply to the Magistrates Court for the disqualification of an HSR who has intended to cause harm to an employer or their business by:

- issuing a PIN where they could not reasonably have believed there were grounds for issuing the notice;
- issuing a direction to cease work or exercising any other power causing harm to the employer; or
- using information from the employer for a purpose that is not connected with the exercise of their powers as an HSR.

If satisfied that grounds are established, a magistrate may disqualify an HSR permanently or for a specified time. The magistrate will take into account the harm, if any, caused to the employer or their business and the HSR's past record in exercising their powers.

REPRESENTATION OF EMPLOYEES

Health and safety committees (S72)

An employer must establish a committee within 3 months of being requested to do so by an HSR or when required by regulations.

There is no requirement for every DWG at a workplace to have a committee. More commonly, health and safety committees cover the workplace as a whole, and therefore consultation should occur between the HSRs from the different workplace DWGs. However, a particularly large DWG with quite specific risks or hazards associated with their work may have its own committee.

At least half of the members of the committee must be employee representatives and where practicable, these should be HSRs or their deputies. It is also recommended that management representatives on the committees should be senior managers in the organisation.

The committee must meet at least every 3 months, and at any other time if half of the committee members request a meeting. The committee may determine its own procedures for its operation.

The functions of a committee include:

- facilitating cooperation between an employer and their employees in instigating, developing and carrying out measures to ensure health and safety at work; and
- formulating, reviewing and disseminating, in other languages if appropriate, the OHS standards, rules and procedures for the workplace.

Prohibition of discrimination against employees or prospective employees (S76 & 78)

An employer must not threaten, dismiss, refuse to hire a person or otherwise adversely affect the person's employment because they:

- are, or were, an HSR or a health and safety committee member;
- exercised a power as an HSR or a health and safety committee member;
- assisted an inspector, an HSR or a health and safety committee member; or
- raised a health or safety issue with the employer, an inspector, an HSR or a health and safety committee member.

The employer can only be found guilty of this offence if the employee's involvement in OHS issues is the dominant reason for the employer's conduct.

If an employer or a prospective employer is found guilty of such an offence, in addition to a penalty, the court can order the offender to pay damages, employ the prospective employee or reinstate the employee in their former, or a similar position.

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AUTHORISED REPRESENTATIVES OF REGISTERED EMPLOYEE ORGANISATIONS

In certain circumstances, authorised representatives of registered employee organisations (authorised representatives) may obtain a permit to enter workplaces.

Entry permits (S81–86)

An application may be made to a Magistrates Court for an entry permit to be issued to a person to act as an authorised representative.

To hold a permit, a person must be an officer or a permanent employee of a registered employee organisation (REO), most commonly a union. The person must have completed a WorkSafe-approved training course and must not have been disqualified by the Magistrates Court. Authorised representative permits expire 3 years after issue, when the permit-holder ceases to be an officer or a permanent employee of the organisation, or if the organisation is no longer a REO.

WorkSafe or an employer may apply to a Magistrates Court to have an entry permit revoked on the grounds that the authorised representative has, while exercising, or purporting to exercise, their powers:

- intentionally hindered or obstructed an employer or employee;
- acted unreasonably or not for the purposes of exercising a power; or
- intentionally used or disclosed, for a purpose not reasonably connected with the exercise of a power, information that was acquired from any employer or employee.

The magistrate may revoke the permit and, where appropriate, disqualify the person from holding a permit for up to 5 years.

Entry by authorised representatives (S87–90)

An authorised representative can enter a workplace if they reasonably suspect a contravention of the Act or regulations affecting work that is being carried out by:

- a member of the REO; or
 - a person whose employment is covered by a certified agreement that binds the REO; or
 - a person whose employment is not covered by a certified agreement that binds any REO, but who is eligible to be a member of the REO; or
- which relates to or affects any of those people.

Nothing in this section requires an authorised representative to disclose to anyone the names of those who are members of their organisation.

An authorised representative may enter a workplace during working hours but only to enquire into suspected contraventions. On entry, the authorised representative must produce their entry permit to the employer and any relevant HSR and take all reasonable steps to give the employer a notice in a form approved by WorkSafe.

A person must not refuse an authorised representative entry to a workplace or intentionally hinder, obstruct, threaten or intimidate an authorised representative while on a workplace visit.

AUTHORISED REPRESENTATIVES OF REGISTERED EMPLOYEE ORGANISATION

An authorised representative has the power to conduct an inspection, observe work being carried out, consult with employees who are, or are eligible to be, members of the REO and consult with the employer on any matter relevant to the suspected contravention. These activities may only be carried out to the extent reasonable to enquire into the suspected contravention.

If an issue arises with an employer about the exercise of the authorised representative's powers, either party may request that WorkSafe send an inspector to the workplace as soon as possible to enquire into the issue and exercise powers as necessary.

An authorised representative is not allowed to exercise any powers in any part of a place used as a residence, except with the occupier's consent, or any other part of a place to which access is limited by or under another Act (e.g. security or quarantine). An authorised representative must not exercise any power if it would cause work to cease, although they can warn employees of any immediate and significant risk of serious injury or death observed during their inspection.

Offences relating to authorised representatives (S91–94)

It is an offence for an authorised representative to intentionally:

- unreasonably hinder or obstruct any employer or employee;
- intimidate or threaten any employer or employee;
- use or disclose information that was acquired in the workplace for a purpose not reasonably connected with the exercise of their powers; or
- exercise or purport to exercise a power under the Act other than for the purpose of enquiring into a suspected contravention.

If a person has suffered significant loss or damage as a result of such an offence, they are entitled, through action in a court, to recover from the REO a reasonable amount for the loss or damage.

A person who does not hold an authorised representative entry permit must not represent themselves as holding a permit or being an authorised representative.

7

INCIDENTS

The Act now incorporates requirements for incidents that were previously in separate regulations.

Notification of incidents (S37 & 38)

An employer or self-employed person must notify WorkSafe immediately they become aware of an incident that results in death or serious injury. Serious injuries include, but are not limited to, those that require:

- medical treatment within 48 hours of exposure to a substance;
- immediate treatment in hospital as an in-patient; or
- immediate medical treatment for injuries, e.g. amputation, serious head or eye injuries, scalping, electric shock, spinal injury, loss of bodily functions or serious laceration.

This duty also applies to incidents that expose a person in the immediate vicinity to an immediate health or safety risk, including:

- the collapse, overturning, failure or malfunction of, or damage to, plant that is required to be licensed or registered;
- the collapse or failure of an excavation or of any shoring supporting excavation;
- the collapse or partial collapse of a building or structure;
- an implosion, explosion, or a fire;
- the escape, spillage or leakage of any substance, including dangerous goods; or
- the fall or release from a height of any plant, substance or object.

Within 48 hours of becoming aware of such an incident, the employer or self-employed person must give WorkSafe a written record of what occurred. They must keep a copy of this record for at least 5 years and make copies available to:

- people injured or exposed to risk by the incident, and their representatives;
- the representatives of anyone who died as a result of the incident; and
- the HSR for the designated work group and the members of any health and safety committee established.

Preservation of incident sites (S39)

An employer or self-employed person must ensure that the site of a notifiable incident is not disturbed until an inspector directs otherwise, although a site may be disturbed to protect a person's health or safety, to help someone who is injured or to make the site safe.

8

LICENCES, REGISTRATIONS AND PERMITS

Requirements for licences, registrations, permits and certificates of competency (S40 & 42)

Employers and self-employed people must not undertake their business activities unless they hold the licences and registrations required under the relevant regulations.

Where regulations require a licence or permit for a substance, plant or its design, people must not use the substance or plant in a workplace without the appropriate licence or permits.

Where a person is required by regulations to hold a licence, registration, permit or certificate of competency to carry out a particular activity, it is an offence for someone to carry out this work or activity unless they hold the required licence, registration, permit or certificate of competency.

Requirements for qualifications, experience and supervision (S41)

Regulations may require specified qualifications or experience, or supervision by someone who has these qualifications or experience, for certain work or activities. People must not perform this work or these activities without the necessary qualifications, experience or supervision.

9

INSPECTORS AND ENFORCEMENT

Appointment of inspectors (S95)

WorkSafe may appoint any of its officers or employees to be inspectors.

Inspectors are subject to WorkSafe's directions in carrying out their functions and when exercising their powers.

Powers on entry (S98, 99 & 102)

Inspectors may enter any place:

- during working hours that they reasonably believe to be a workplace; and
- at any time if they believe there may be an immediate risk to health or safety.

However, an inspector must not enter any part of a place that is used as a residence except with the consent of its occupier or the authority of a search warrant.

Upon entering a place, an inspector may:

- make enquiries;
- inspect and examine the workplace and any thing in the workplace, including documents;
- bring with them any equipment or materials that may be required;
- seize anything that may provide evidence of an offence;
- seize anything that needs to be taken off site for further testing;
- take photographs or measurements, or make sketches or recordings;
- exercise any powers available to them under the Act or regulations; and
- do anything that is reasonably necessary to perform their functions.

As soon as an inspector enters a place, they must take all reasonable steps to advise of their entry and show their photo-identification card to the occupier and to any HSR who may be affected by the visit. However, the inspector is not required to do so if it would defeat the purpose of their visit, cause unreasonable delay or either the occupier or HSR had already been given advance notice of the visit.

Search warrants (S104–106)

An inspector may apply to a magistrate to obtain a warrant to search a place if they reasonably believe there is, or that within the next 72 hours there may be, evidence of a breach of the Act or regulations. This warrant allows an inspector and any necessary assistants to enter the place to search for the thing described in the warrant that may provide evidence of an offence.

Before executing a search warrant, an inspector must announce that they are authorised to enter and give any person at the place a chance to allow entry, unless the inspector reasonably believes that immediate entry is required for the safety of any person or to ensure that the search is not jeopardised. If the occupier is present, the inspector must identify themselves by producing their photo identification and provide a copy of the warrant.

INSPECTORS AND ENFORCEMENT

Require documents and ask questions (S100, 123 & 124)

An inspector may require a person to produce documents for examination and to answer questions. The person must comply, unless they have a reasonable excuse. A person is not required to answer questions if doing so may incriminate them.

Inspectors are authorised to take affidavits and make copies of, or take extracts from documents.

Require name and address (S119)

An inspector may ask for a person's name and address if they reasonably believe the person may assist them in investigating an indictable offence or if the person has committed, or is about to commit, an offence.

The inspector must inform the person of the grounds for their belief sufficient to allow an understanding of the nature of the offence. The person must provide their correct name and address.

Assistance to inspectors (S121 & 122)

To help them carry out their role, inspectors may seek assistance from an occupier, apparent occupier, employer or employee at the workplace. The assistance must be provided, unless there is a reasonable excuse for not assisting.

Inspectors may also bring with them people to give the necessary assistance for their role. An employer or occupier must not refuse entry to these people.

Taking samples (S101)

An inspector may take samples for further analysis from a place they have entered. Prior to taking the sample, the inspector must advise the employer and the relevant HSR. Upon request, and if it is safe to do so, the inspector must provide a part of the sample to the occupier and to the HSR.

Issuing directions (S120)

An inspector may issue directions to anyone at the workplace if they reasonably believe that it is necessary because of an immediate risk to anyone's health or safety. A person must not fail to comply with these directions, without a reasonable excuse.

Entry report (S103)

After each visit, an inspector must detail their findings in a written report to the workplace's occupier and relevant HSRs. The report must include:

- the purpose of the entry;
- what was done during the visit;
- a summary of the inspector's observations;
- the procedures for obtaining further details from WorkSafe;
- how to seek review of the inspector's decision; and
- whether any photographs, sketches or drawings were made and where they may be inspected.

INSPECTORS AND ENFORCEMENT

NOTICES FOR HEALTH AND SAFETY

Once an inspector has entered a place, they may issue three types of notices to help enforce compliance with the Act and improve health and safety.

Non-disturbance notices (S110)

If an inspector believes that it is necessary to enable them to exercise their powers, they may issue a non-disturbance notice that requires the occupier or apparent occupier of a place to stop using, moving, disturbing or interfering with any specified plant, substance, other thing, or the area in which these are located.

A person to whom the notice is issued must comply with the notice.

A non-disturbance notice remains in force for up to 7 days, but the inspector may issue subsequent notices for the same issue.

Improvement notices (S111)

An inspector may issue an improvement notice if they believe someone has contravened the Act or regulations, or that a contravention may continue or be repeated.

The notice will identify the provisions of the Act that have been, or may be, contravened, the reasons for the notice, and a deadline for remedial action.

An improvement notice may also include directions about how to remedy a breach, which may include:

- a direction to cease the activities to which the notice relates if they are not remedied by the date set in the notice, until an inspector can certify that the breach is remedied; and
- interim conditions considered necessary to minimise the risks to health or safety.

A person to whom an improvement notice is issued must comply with the notice.

Prohibition notices (S112)

An inspector may issue a prohibition notice when they believe that there is an activity that may be an immediate risk to health or safety. The notice prohibits the activity from continuing or from being carried out in a specific way, and is issued to the person with real or apparent control over the activity. The notice may include directions on how to remedy the risk identified. It remains in place until an inspector has certified that the risk has been remedied.

A person to whom a prohibition notice is issued must comply with the notice.

Other matters on notices (S114–116)

Notices issued by inspectors may be mailed, faxed or personally delivered.

Notices are not invalid merely because of a formal defect or irregularity, unless this defect or irregularity would lead to substantial injustice. A failure to use the correct name on the notice of the person to whom the notice is issued, if the notice sufficiently identifies the person, does not invalidate the notice.

When an employer or contractor receives a notice, they must give a copy to each relevant HSR, post it in a prominent place and bring it to the attention of those whose work is affected by the notice.

Once an inspector has issued a notice, only WorkSafe can vary or cancel it.

The issue, variation or cancellation of a notice issued by an inspector does not affect any legal proceedings for an offence against the Act or regulations.

INSPECTORS AND ENFORCEMENT

Injunctions for non-compliance with notices (S118)

WorkSafe may apply for an injunction from the Supreme Court to ensure a person complies with, or does not continue to contravene, a notice. This can happen whether or not proceedings for an offence against the Act or regulations have commenced.

Hindering an inspection (S125)

A person must not intentionally:

- hinder or obstruct an inspector, or seek to have others do so;
- conceal anything from an inspector; or
- attempt to prevent anyone else from assisting an inspector.

It is an offence to assault, threaten or intimidate an inspector or a person assisting them, or to attempt to do so.

Things that have been seized (S108–109)

Anything seized at a workplace must be returned to the workplace as soon as possible, unless:

- it is needed as evidence in legal proceedings;
- its return may cause further offences;
- it cannot be returned to the owner despite reasonable effort; or
- WorkSafe is otherwise authorised to retain, dispose of or destroy the thing.

Conditions may be imposed by WorkSafe on the return of a thing, and the owner must comply with these conditions.

10

REVIEW OF DECISIONS

Decisions that are reviewable (S127)

Section 127 of the Act sets out which decisions made under the Act can be reviewed (reviewable decisions) and who can apply to have them reviewed (eligible persons). Reviewable decisions are principally those made by inspectors, but can also be made by WorkSafe. Eligible persons include employers, employees and HSRs who are affected by these decisions. The failure to make a reviewable decision is also reviewable.

Internal review (by WorkSafe) (S128)

An eligible person may apply to WorkSafe for a review (within 14 days) of a reviewable decision coming to their notice, provided the decision was not made by WorkSafe itself. WorkSafe may grant an extension of time.

WorkSafe must undertake the review and decide to affirm or vary the reviewable decision, or set it aside and replace it with another decision it considers appropriate. WorkSafe must advise the eligible person of its decision, and the findings leading to its decision, within 14 days. For reviewable decisions which require an inspector to certify that matters subject to a notice have been remedied, WorkSafe must advise of their decision within 7 days.

Review by the Victorian Civil and Administrative Tribunal (S129)

An eligible person may apply to Victorian Civil and Administrative Tribunal (VCAT) for review of a decision made by WorkSafe (as distinct from a reviewable decision made by an individual, usually an inspector) as well as a decision made by WorkSafe in an internal review.

The application to VCAT for review of a decision must be made within 14 days of the decision first coming to the person's notice, except for decisions involving forfeiture, in which case the application must be made within 28 days.

11

LEGAL PROCEEDINGS AND SENTENCING OPTIONS

PROCEEDINGS

Proceedings under the Act (S130 & 132)

WorkSafe and inspectors authorised by WorkSafe can initiate legal proceedings for offences under the Act. For indictable offences, the Director of Public Prosecutions (DPP) may also initiate proceedings.

Proceedings for an indictable offence must be brought within 2 years, unless a different timeframe is authorised by the DPP.

Procedure if prosecution is not brought (S131)

If a person considers that an offence has occurred and no prosecution has been brought within 6 months, they can request WorkSafe to undertake a prosecution. WorkSafe has 3 months to investigate the matter and advise if it will prosecute. Should WorkSafe advise that it will not prosecute, the person may request that WorkSafe refer the matter to the DPP. The DPP will then advise whether or not a prosecution should be brought. WorkSafe must provide a copy of the DPP's advice to the person who made the request to prosecute and, if WorkSafe declines this advice, the reasons for this decision.

SENTENCING

Penalties

Penalties may be imposed on those found guilty of offences under the Act. Different maximum penalties are now set for different offences. Refer to the Table of penalties (page 32) for maximum penalties for offences under the Act. In addition to the penalties specified for each section of the Act, courts may impose additional or alternative sentencing options as outlined below.

Adverse publicity orders (S135)

If a court finds a person guilty of an offence, in addition to or instead of imposing a penalty or other order, it may require the offender to publicise and/or notify specified people of the offence, its consequences and any imposed penalty.

Within 7 days of the end of the period specified in the order, the offender must give WorkSafe evidence that the specified actions have been taken in accordance with the order. If the specified actions have not been taken, WorkSafe may be authorised by a court to undertake these actions and recover costs from the offender.

Orders to undertake improvement projects (S136)

If a court finds a person guilty of an offence, in addition to or instead of imposing a penalty or other order, it may require the offender to undertake a specified project by a nominated date for the improvement of occupational health, safety and welfare. There may be conditions specified for the project. The cost of undertaking the project cannot exceed the maximum financial penalty that can be imposed for the offence.

LEGAL PROCEEDINGS AND SENTENCING OPTIONS

Release on a health and safety undertaking (S137)

If a court finds a person guilty of an offence it may adjourn proceedings for up to 2 years and order that the offender give an undertaking to observe specific conditions. If the offender is an employer, they may be required to:

- engage an approved consultant to assist with OHS matters;
- develop and implement a systematic approach to better manage health and safety risks; or
- engage an approved independent person to audit the person's business with respect to OHS.

The offender must return to the court if called and must not commit any further offences during the period. If the court is satisfied at the adjourned hearing that the undertaking has been met, it must then discharge the offender.

Infringement notices (S139–142)

Regulations may allow for infringement notices to be issued as an alternative to prosecution for an offence that is not indictable. The penalty imposed by an infringement notice cannot exceed \$1,022 (or one-fifth of the maximum penalty that could be imposed by a court).

An infringement notice can be withdrawn by the person who issued it within 28 days of issue. The withdrawal of an infringement notice does not prevent proceedings in relation to the offence.

If the penalty imposed by an infringement notice is paid within the required time, no proceedings may be taken for the offence and no conviction can be recorded, nor can payment be taken as an admission of guilt or liability for any future civil claim. Prosecution may proceed if the penalty is not paid.

BODIES CORPORATE, PARTNERSHIPS AND UNINCORPORATED BODIES OR ASSOCIATIONS

Duties under the Act apply to officers within the meaning of the *Corporations Act* and cover those who make, or participate in the making of, decisions that affect the whole, or substantial part, of the business of an organisation. Accordingly, these provisions relate to the officers at the most senior levels of organisations who are genuinely in a position to prevent contraventions of the Act.

An officer of a body corporate, a partnership or an unincorporated body or association who is a volunteer is exempt from prosecution under these provisions of the Act.

Imputing conduct to bodies corporate (S143)

Any conduct undertaken on behalf of the body corporate by its employees, agents or officers acting within the scope of their actual or apparent authority, is deemed to be conduct of the body corporate.

Liability of officers of bodies corporate (S144)

If a body corporate contravenes this Act or regulations because an officer of the body corporate failed to take reasonable care, the officer is guilty of an offence and liable to a fine of an amount no greater than a fine applicable to an individual found guilty of the same offence.

For an officer of a body corporate to be found guilty of an offence, regard must be given to:

- what the officer knew about the matter;
- the extent of the officer's ability to make, or participate in the making of, decisions that affect the matter concerned;
- whether the contravention can be attributed to any other person; and
- any other relevant matter.

An officer of a body corporate can be convicted of an offence, regardless of whether the body corporate has been convicted or found guilty of the offence.

LEGAL PROCEEDINGS AND SENTENCING OPTIONS

Offences by partnerships and unincorporated bodies or associations (S145)

The duties under the Act may apply to a partnership, an unincorporated body or association. When the Act imposes a duty on a partnership, an unincorporated body or association, the duty is imposed on each of its officers.

Where the Act has been breached by a partnership, an unincorporated body or association, an officer is only guilty of the offence if the offence can be directly attributed to their failure to take reasonable care. Any penalty imposed on them cannot exceed the penalty for an individual found guilty of the same offence.

An officer of a partnership, an unincorporated body or association who is a volunteer is exempt from prosecution under this section of the Act.

12

COMPLIANCE CODES

The Minister may approve compliance codes which provide practical guidance to those who have duties or obligations under the Act or regulations. The Minister must ensure that compliance codes are available for inspection free of charge.

Where a compliance code deals with a duty under the Act or regulations, a person who complies with the code is taken to have complied with their duty under the Act or regulations to the extent that the code addresses that duty. However, failing to comply with a compliance code does not give rise to any civil or criminal liability.

Offence to give false or misleading information (S153)

When providing information or a document to comply with the Act a person must not:

- give information that they know to be false or misleading in any way; or
- provide any document that they know to be false or misleading in any way, unless they indicate the way in which it is false or misleading and take practical steps to provide the correct information.

Protection against self-incrimination (S154–155)

An individual may refuse to provide information if doing so could incriminate them. This protection does not apply to handing over documents or giving their name or address.

The Act does not entitle or require a person to disclose information that is subject to legal professional privilege.

Regulations (S158)

Regulations can be made for OHS matters as set out in section 158 of the Act.

Where a regulation makes provision for a duty under the Act, a person who complies with that regulation is taken to have complied with their duty under the Act, to the extent that the regulation addresses that duty.

14

REPEAL OF OLD ACT AND TRANSITIONAL ARRANGEMENTS

TRANSITIONAL PROVISIONS

Most of this Act comes into effect on 1 July 2005 (for information on variations to commencement dates, refer to the Preliminary section, page 2). Until that time, the *Occupational Health and Safety Act 1985* remains in place.

Continuations (S163–171)

The following determinations, appointments, powers and actions made under the *Occupational Health and Safety Act 1985*, which were still in place at the commencement of this Act, will continue:

- DWGs;
- HSRs and the duties owed to them by employers;
- health and safety committees;
- inspector appointments;
- inspector powers relating to offences committed under the 1985 Act;
- the status of codes of practice under the 1985 Act in proceedings brought under that Act;
- improvement notices, prohibition notices and certain directions;
- licences and certificates issued, registrations and notifications effected, exemptions granted and other things done for the purposes of the 1985 Act and its regulations; and
- proceedings for offences committed under the 1985 Act and its regulations.

Continuation of regulations (S172–174)

The following 10 regulations made under the *Occupational Health and Safety Act 1985* will, after the commencement of this Act, continue for 2 years or until revoked:

- *Occupational Health and Safety (Certification of Plant Users and Operators) Regulations 1994*;
- *Occupational Health and Safety (Confined Spaces) Regulations 1996*;
- *Occupational Health and Safety (Hazardous Substances) Regulations 1999*;
- *Occupational Health and Safety (Issue Resolution) Regulations 1999*;
- *Occupational Health and Safety (Lead) Regulations 2000*;
- *Occupational Health and Safety (Manual Handling) Regulations 1999*;
- *Occupational Health and Safety (Mines) Regulations 2002*;
- *Occupational Health and Safety (Noise) Regulations 2004*;
- *Occupational Health and Safety (Plant) Regulations 1995*; and
- *Occupational Health and Safety (Prevention of Falls) Regulations 2003*.

In addition, arrangements are made for the continuation of the *Occupational Health and Safety (Asbestos) Regulations 2003* and the *Occupational Health and Safety (Major Hazards) Regulations 2000*.

GLOSSARY

DEFINITIONS FROM THE ACT

'Employee' means a person employed under a contract of employment or contract of training. (Note sections 21(2) and 35(2).)

'Employer' means a person who employs one or more other persons under contracts of employment or contracts of training.

'Health' includes psychological health (as well as physical health).

'Officer' of a body corporate, an unincorporated body or association or a partnership has the meaning (other than in Part 8) given by Section 9 of the *Corporations Act*.

'Person' includes a body corporate, an unincorporated body or association and a partnership.

'Place' includes a car, truck, ship, boat, aeroplane and any other vehicle.

'Plant' includes:

- any machinery, equipment, appliance, implement and tool;
- any component of any of those things; and
- anything fitted, connected or related to any of those things.

'Self-employed person' means a person, other than an employer, who works for gain or reward otherwise than under a contract of employment or training.

'Substance' means any natural or artificial substance, whether in the form of a solid, liquid, gas or vapour.

'Volunteer' means a person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses).

'Workplace' means a place, whether or not in a building or structure, where employees or self-employed persons work.

Other helpful definitions

These terms are not defined in the Act. Their meaning is given here to assist the reader.

'Building or structure' includes any part of a building or structure.

'Indictable offence' mean a serious offence for which the accused may be tried by a judge and jury.

'Penalty unit' means an amount of money indexed annually by the Treasurer. *The Monetary Units Act 2004* establishes the framework for penalty units. At the time of printing this publication, the value of one penalty unit was \$104.81.

'Summary offence' means an offence which can be heard and decided by a magistrate.

'Indictable offence triable summarily' means a serious offence for which an accused may elect to be tried by a magistrate.

ABBREVIATION	
DPP	Department of Public Prosecutions
DWG	Designated work group
HSR	Health and safety representative
OHS	Occupational health and safety
OHSAC	Occupational Health and Safety Advisory Committee
PIN	Provisional improvement notice
REO	Registered employee organisation
VCAT	Victorian Civil and Administrative Tribunal

TABLE OF PENALTIES

SECTION	OFFENCE	MAXIMUM PENALTY	TYPE OF OFFENCE
9(2)	Person refusing or failing to give information to WorkSafe or produce a document.	\$6,289 – individual \$31,443 – body corporate	Summary
10(2)	Person copying or disclosing information, or using information for purposes outside of its intended use.	\$10,481	Summary
21(1)	Employer failing to provide a safe working environment for employees.	\$188,658 – individual \$943,290 – body corporate	Indictable offence triable summarily
22(1)	Employer failing to monitor health and conditions at the workplace and to provide health and safety information.	\$25,154 – individual \$125,772 – body corporate	Summary
22(2)	Employer failing to obtain and keep records of employee health and safety.	\$6,289 – individual \$31,443 – body corporate	Summary
23(1)	Employer failing to ensure that their undertaking does not expose people (other than employees) to health and safety risks.	\$188,658 – individual \$943,290 – body corporate	Indictable offence triable summarily
24(1)	Self-employed person failing to ensure that their undertaking does not expose people to health and safety risks.	\$188,658	Indictable offence triable summarily
25(1)	Employee failing to take care of their own health and safety or that of others affected by their work, or failing to cooperate with their employer.	\$188,658	Indictable offence triable summarily
25(2)	Employee intentionally or recklessly interfering with or misusing anything at work with regards to health and safety.	\$188,658	Indictable offence triable summarily
26(1)	Person who manages or controls a workplace failing to ensure the workplace is safe.	\$188,658 – individual \$943,290 – body corporate	Indictable offence triable summarily

TABLE OF PENALTIES

SECTION	OFFENCE	MAXIMUM PENALTY	TYPE OF OFFENCE
27(1)	Designer of plant failing to ensure it is designed to be safe; failing to carry out testing to ensure safe design, or failing to give appropriate information to design recipients and, on request, the intended plant users.	\$188,658 – individual \$943,290 – body corporate	Indictable offence triable summarily
28(1)	Designer of a building or structure to be used as a workplace failing to ensure it is designed to be safe.	\$52,405 – individual \$262,025 – body corporate	Indictable offence triable summarily
29(1)	Manufacturer of plant or substance failing to ensure it is manufactured to be safe, failing to carry out testing to ensure it is safe; or failing to give appropriate information to plant/substance recipients and, on request, the intended plant/substance users.	\$188,658 – individual \$943,290 – body corporate	Indictable offence triable summarily
30(1)	Supplier of plant or substance failing to ensure that the supplied plant/substance is safe, or failing to give appropriate information to plant/substance recipients and the intended plant/substance users.	\$188,658 – individual \$943,290 – body corporate	Indictable offence triable summarily
31(1)	Person who installs, erects or commissions plant failing to ensure that it is safe and without risks to health.	\$188,658 – individual \$943,290 – body corporate	Indictable offence triable summarily
32	Person recklessly endangering persons at a workplace.	\$188,658 or 5 years imprisonment (or both) – Individual \$943,290 – body corporate	Indictable offence triable summarily
35(3)	Employer failing to consult with employees regarding health and safety issues in the workplace.	\$18,866 – individual \$94,329 – body corporate	Summary
38(5)	Employer/self-employed person failing to notify WorkSafe immediately, and later in writing, of an incident that has occurred at a workplace, or failing to keep an accessible record of the incident.	\$6,289 – individual \$31,443 – body corporate	Summary
39(1)	Employer/self-employed person failing to preserve an incident site until directed otherwise by an inspector.	\$6,289 – individual \$31,443 – body corporate	Summary
40(1)	Employer/self-employed person conducting an undertaking at a workplace, that does not have the appropriate licensing or registration.	\$52,405 – individual \$262,025 – body corporate	Indictable offence triable summarily
40(2)	Person using plant at a workplace that does not have the appropriate licensing or registration.	\$10,481 – individual \$52,405 – body corporate	Summary
40(3)	Person using a substance at a workplace that does not have the appropriate licensing or registration.	\$10,481 – individual \$52,405 – body corporate	Summary

TABLE OF PENALTIES

SECTION	OFFENCE	MAXIMUM PENALTY	TYPE OF OFFENCE
40(4)	Person carrying out work or an activity at a workplace without possessing the appropriate licensing or registration.	\$10,481 – individual \$52,405 – body corporate	Summary
41	Person carrying out work or an activity at a workplace without possessing (or being under the supervision of a person possessing) the prescribed qualifications or experience.	\$10,481 – individual \$52,405 – body corporate	Summary
42	Person carrying out work or an activity at a workplace without possessing the appropriate permit or certificate of competency.	\$10,481 – individual \$52,405 – body corporate	Summary
43(3)	Employer failing to ensure that negotiations start within 14 days of an employee requesting the establishment of a designated work group.	\$1,048 – individual \$5,240 – body corporate	Summary
44(2)	Employer failing to give written notice to employees to establish an agreed designated work group.	\$1,048 – individual \$5,240 – body corporate	Summary
44(4)	Employer failing to give written notice to employees to vary a designated work group.	\$1,048 – individual \$5,240 – body corporate	Summary
48(2)	Employer failing to give written notice to employees to establish agreed designated work group of multiple employers.	\$1,048 – individual \$5,240 – body corporate	Summary
48(4)	Employer failing to give written notice to employees to vary a designated work group of multiple employers.	\$1,048 – individual \$5,240 – body corporate	Summary
53(1)	Person coercing or attempting to coerce another person in relation to a designated work group.	\$6,289 – individual \$31,443 – body corporate	Summary
60(4)	Person who has been issued with a provisional improvement notice failing to bring it to the attention of the employer or other people affected by the notice.	\$524 – individual \$2,620 – body corporate	Summary
62(1)	Person failing to comply with a provisional improvement notice (where an inspector has not been required).	\$52,405 – individual \$262,025 – body corporate	Indictable offence triable summarily
63(6)	Person failing to comply with a provisional improvement notice that is affirmed by an inspector.	\$52,405 – individual \$262,025 – body corporate	Indictable offence triable summarily
67(7)	Employer failing to allow a health and safety representative to attend a prescribed training course.	\$6,289 – individual \$31,443 – body corporate	Summary
69(1)	Employer failing to provide an HSR with access to information regarding hazards and safety of employees, failing to allow an HSR to attend interviews relating to OHS, failing to allow an HSR time off with pay, as necessary, or failing to provide an HSR with other assistance as required to perform their role.	\$6,289 – individual \$31,443 – body corporate	Summary

TABLE OF PENALTIES

SECTION	OFFENCE	MAXIMUM PENALTY	TYPE OF OFFENCE
69(2)	Employer giving an HSR access to an identified employee's medical information without their consent.	\$6,289 – individual \$31,443 – body corporate	Summary
71	Employer failing to update or display a list of HSRs for each designated work group.	\$524 – individual \$2,620 – body corporate	Summary
72(1)	Employer failing to establish a health and safety committee within 3 months of a request or as required by the regulations.	\$1,048 – individual \$5,240 – body corporate	Summary
73(2)	Employer failing to ensure that they provide a suitable representative when resolving health and safety issues with employees.	\$6,289 – individual \$31,443 – body corporate	Summary
76(4)	Employer (or prospective employer) discriminating against an HSR, someone assisting in relation to a health and safety issue, or someone who raises a health and safety issue.	\$52,405 or 6 months imprisonment (or both) – individual \$262,025 – body corporate	Summary
91	Authorised representative intentionally hindering, obstructing, intimidating or threatening an employer/employee or disclosing information or exercising powers other than to enquire into a suspected contravention of the Act.	\$6,289	Summary
93	Person intentionally hindering, obstructing, intimidating, threatening or refusing entry to an authorised representative.	\$6,289 – individual \$31,443 – body corporate	Summary
94	Person impersonating an authorised representative.	\$6,289	Summary
100(2)	Person refusing to produce documents or answer questions for an inspector.	\$6,289 – individual \$31,443 – body corporate	Summary
108(3)	Owner failing to comply with terms and conditions placed on the return of seized things.	\$6,289 – individual \$31,443 – body corporate	Summary
110(4)	Person failing to comply with a non-disturbance notice.	\$52,405 – individual \$262,025 – body corporate	Indictable offence triable summarily
111(4)	Person failing to comply with an improvement notice.	\$52,405 – individual \$262,025 – body corporate	Indictable offence triable summarily
112(5)	Person failing to comply with a prohibition notice.	\$52,405 – individual \$262,025 – body corporate	Indictable offence triable summarily
115(2)	Person who has been issued with a non-disturbance notice failing to provide a copy to the employer and the HSR, and failing to bring the notice to the attention of other people affected by it.	\$524 – individual \$2,620 – body corporate	Summary
119(3)	Person refusing to provide their name or address to an inspector.	\$524	Summary

TABLE OF PENALTIES

SECTION	OFFENCE	MAXIMUM PENALTY	TYPE OF OFFENCE
120(2)	Person failing to comply with a direction given by an inspector.	\$52,405 – individual \$262,025 – body corporate	Indictable offence triable summarily
121	Occupier, employer or employee failing to provide assistance to an inspector.	\$6,289 – individual \$31,443 – body corporate	Summary
122(2)	Occupier or employer failing to allow an inspector access to a workplace.	\$6,289 – individual \$31,443 – body corporate	Summary
125(1)	Person intentionally hindering or obstructing an inspector concealing persons or plant from an inspector or preventing another person from assisting an inspector.	\$6,289 – individual \$31,443 – body corporate	Summary
125(2)	Person assaulting, intimidating or threatening an inspector or a person assisting an inspector.	\$25,154 or 2 years imprisonment (or both) – individual \$125,772 – body corporate	Summary
126	Person impersonating an inspector.	\$6,289	Summary
153(1)	Person giving false or misleading information in complying with the Act.	\$25,154 – individual \$125,772 – body corporate	Summary
153(2)	Person providing a false or misleading document in complying with the Act.	\$25,154 – individual \$125,772 – body corporate	Summary

WorkSafe Victoria

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