

working together for safer, healthier workplaces



Overview

Occupational Health and Safety Act 2004

Introduction

Working Together for Safer, Healthier Workplaces is a package of administrative and legislative reforms designed to provide employers, employees, self-employed people and other duty holders with more support in creating workplaces that are healthy, safe and free from work-related deaths, injuries and illness.

The reforms will make WorkSafe a more constructive, transparent, accountable and effective organisation able to provide employers, employees and the self-employed with the advice and assistance they need to make their workplaces safer and healthier.

The combination of a transformed WorkSafe and modernised, straightforward legislation will deliver long-term benefits for the community and for business, by reducing the social and economic costs of work-related deaths, injuries and illness.

These reforms build on a number of significant achievements in the operation of the Victorian WorkCover Authority (VWA). These include:

- Strong financial management
- A new workplace injury insurance system that provides timely rewards to employers for improvements in occupational health and safety (OHS) performance
- A 10 per cent reduction in the average premium rate from 1 July 2004 and
- Improved no fault benefits for injured workers.

Why are the reforms needed?

There are four major reasons why the improvements to our workplace health and safety system are needed.

- Too many Victorians continue to die, get injured or become ill as a result of their work. In 2004 29 Victorians died as a result of a work-related incident. This doesn't include workers who died from a work-related illness. Each year more than 30,000 people lodge a WorkCover claim, indicating that they have been injured seriously enough to be entitled to workers' compensation¹. Our over-riding goal is to improve Victoria's health and safety system and prevent work-related deaths, injuries, and illness and the associated high social and economic costs.
- Good safety is good for the community and good for business. Work-related deaths, injuries and illness tragically affect workers, their families, workplaces and the community. For example, the economic cost of work-related deaths and injuries in Victoria is \$8.5 billion a year². Reducing the incidence of deaths, injuries and illness in the workplace benefits workers and their families, businesses and the economy. A five per cent reduction would save almost half a billion dollars each year³.

¹ Victorian WorkCover Authority (VWA).

² Based on preliminary NOHSC estimates (2004), excludes the impact of pain, suffering and early death.

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- Since the introduction of the Occupational Health and Safety Act 1985, workplaces and working arrangements have changed dramatically. The legislation needed to be modernised to adapt to these changes. There has been a rapid growth in service industries and in the uptake of new communications technologies. Small business is now the backbone of the Victorian economy and only 7 per cent of employees now work nine to five. There has been significant growth in casual, part-time and temporary work and many people in full-time positions are working longer and harder.
- The first major review of the Victorian OHS system conducted by Chris Maxwell QC (Victorian Occupational Health and Safety Act Review) found that while the current Act had served Victoria well and was basically sound, reforms were needed to make it work better and to meet the needs of workplaces today and into the future.

Occupational Health and Safety Act Review findings

The OHS Act Review made a series of recommendations to improve the effectiveness of WorkSafe and to update Victoria's occupational health and safety laws to:

- Make clearer the existing obligations of those involved in the workplace
- Tackle a major failing of the system: the lack of arrangements in most workplaces for employees to be involved and represented on health and safety matters
- Provide fairer and more transparent processes for inspection decisions, investigations and prosecutions, and
- Bring penalties for breaches of Victorian OHS legislation and other provisions broadly into line with other States and Territories.

The Government's response to the OHS Act Review follows an exhaustive and robust consultative process involving detailed discussions with stakeholder groups from across the community.

What will the changes do?

The reforms will create safer, healthier workplaces by:

- Transforming WorkSafe into a more constructive, transparent, accountable and effective regulator able to provide more help to employers and employees, and the guidance and assistance they need to make their workplaces safe and healthy
- Modernising the language and layout of the Act, making it easier to understand

- Providing greater clarity and certainty about the obligations of duty holders
- Fostering increased participation by employers, employees and their representatives in workplace health and safety issues
- Promoting fairness, consistency and transparency in the enforcement of the legislation and
- Bringing penalties broadly into line with other jurisdictions.

Transforming WorkSafe

To support the Victorian community to tackle the toll of work-related deaths, injuries and illness, WorkSafe will provide more advice and guidance about how employees and employers can meet their OHS obligations.

A more constructive WorkSafe will provide more advice and guidance about how employers and employees can meet their OHS obligations

A more accountable WorkSafe will establish a process to review its decisions quickly and with no cost to those concerned to ensure fairness and consistency. It will seek feedback with regular surveys.

A more transparent WorkSafe will make its enforcement strategy clear, explaining how it focuses its efforts, how and why it prosecutes, and what systems are put in place to ensure fairness.

A more effective WorkSafe will continue to enforce the law and work more constructively with stakeholders to make workplaces safer.

WorkSafe will develop a wide range of simple guidance material tailored to meet the needs of all duty holders, with a particular focus on small and medium size businesses.

Small Business

Other WorkSafe initiatives such as the Small Business Safety Program, a free three-hour consultancy program for small business, will continue and be expanded.

The Act also establishes a new 19-member statutory advisory committee to advise VWA on occupational health and safety matters. Among the employer representatives will be at least two people who are specifically appointed to represent the views of small business.

Modern Occupational Health and Safety Legislation

The general language and layout of the Act is clearer, more logical and therefore easier to understand and follow.

Greater clarity and certainty

The Act includes a clear statement of principles to foster understanding of its purpose and to guide WorkSafe on how it is to be administered.

The Act permits WorkSafe to issue guidelines on its interpretation of the Act and makes clear that compliance with an approved compliance code will constitute compliance with the Act. Inspectors will be able to give advice on how to comply. All these measures will give duty holders more certainty about what they need to do.

The Act clarifies clarification of existing duties and obligations. For example it:

- Makes clear that references to 'health' include psychological health;
- Ensures that officers and managers of large businesses are responsible in the same way as those in small businesses;
- Replaces the duty on 'occupiers of a workplace' with duties on 'persons who have management or control of a workplace' (whether or not they are owners of a workplace);
- Requires designers of buildings and structures to ensure, so far as is practicable, that a building or structure intended to be used as a workplace is designed to be safe and without risks to those who use it as a workplace for the purpose for which it was designed; and
- Protects volunteer officers from liability.

Increasing participation in health and safety issues

Research shows that where employees are consulted and involved in health and safety, better health and safety outcomes are achieved in the workplace, leading to improved productivity and competitiveness.

The OHS Act Review found that more could be done to increase participation by employers and employees in workplace health and safety issues. The Review also found that one of the major failings of the current system is the lack of employee representation on safety matters. To address this problem, the Occupational Health and Safety Act 2004 makes the following changes to the arrangements for consulting and representing employees:

- employers are required to consult employees so far as reasonably practicable on workplace health and safety matters affecting them

- employees will be given better access to representation, to improve their participation in workplace health and safety
- HSRs will be given more training to improve their occupational health and safety knowledge and skills and
- people who represent the employer in resolving OHS issues must have sufficient knowledge and competency.

WorkSafe will also provide better support for health and safety representatives and employer representatives.

The OHS Act Review noted that some employees were isolated, unaware or fearful of raising concerns about workplace risks. Further measures are needed to protect their interests.

The Act permits an authorised representative of a registered employee organisation to enter a workplace if he or she reasonably suspects a contravention of health and safety law has occurred. Strict safeguards will ensure this right is exercised appropriately. The authorised representative may only enquire into the suspected breach.

A right of entry by authorised representatives exists for OHS in other States and in the Commonwealth Workplace Relations Act 1996 for industrial relations.

Promoting fairer, consistent and transparent enforcement

The Act provides for clearer and fairer processes for inspections, notices, investigations and prosecutions. The Act:

- Clearly defines the role and powers of inspectors and the rights of people affected by the exercise of those powers; and
- Provides for more transparent mechanisms for inspector decisions to be reviewed internally, and makes the Victorian Civil and Administrative Tribunal responsible for external reviews of WorkSafe decisions.

Bringing penalties broadly into line

The Act requires that WorkSafe to accept enforceable undertakings as an alternative to prosecution. It also provides new sentencing options such as adverse publicity orders and OHS improvement project orders.

The Act brings penalties broadly into line with other jurisdictions and closely tailors them to offences. As a result, existing penalties for some offences have been reduced. The maximum penalty for a breach of general

duties will be increased to \$920,250 for corporations and \$184,050 for individuals. The maximum custodial sentence is five years, but will only apply to a new high culpability offence of reckless conduct endangering persons at a workplace.

The current penalties for breaches of the regulations will be maintained for a limited period of two years while they are being reviewed.

Who will benefit?

Employers, employees and the whole Victorian community benefit from safer, healthier workplaces. The reforms will help reduce the high social and economic cost of workplace deaths, injuries and illness.

All employees will be able to better participate in workplace health and safety matters.

Compliance with the Act will be more straightforward for employers and they will get the advice they need to comply. Information will be tailored to the needs of small and medium size businesses and they will be well represented on the new statutory advisory committee.

Good safety is also good for business. Safe, healthy workplaces are more productive, have reduced claims and enjoy lower workplace injury insurance costs – that means business is more competitive.

How will the changes be implemented?

These reforms will be implemented progressively and smoothly. There is time to get ready and WorkSafe will help you get ready.

Further Information

For further information visit the WorkSafe website www.worksafe.vic.gov.au or the Department of Treasury and Finance website www.dtf.vic.gov.au, or ring the information line on 1800 136 089.