

working together for safer, healthier workplaces



Meeting the needs of small and medium businesses

Occupational Health and Safety Act 2004

Introduction

The first major review of Victoria's occupational health and safety (OHS) system conducted by Chris Maxwell QC (the Occupational Health and Safety Act Review) found that the system did not adequately reflect the needs of small and medium size businesses, which make up the vast majority of Victorian workplaces.

As a result of the OHS Act Review, the Victorian Government has announced Working Together for Safer, Healthier Workplaces: a package of 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 regulator able to provide employers, self-employed people and employees with the advice and assistance they need to make their workplace 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.

Implementation of the reforms will be tailored to meet the needs of small and medium size businesses.

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, be injured or become ill as a result of their work
- Good safety is good for business and the community
- Workplaces have changed dramatically since the introduction of the first OHS Act in 1985, and
- The OHS Act Review recommended a series of reforms to make the system work better to meet the needs of workplaces today and into the future.

What will change?

The improvements will create safer, healthier workplaces. Legislative changes include:

- Modernising the language and layout of the legislation
- Increasing participation by employers, employees and their representatives in workplace health and safety
- Providing greater clarity and certainty about the obligations of duty holders
- Creating a level playing field for small business
- 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 in tackling the toll of work-related deaths, injuries and illness, WorkSafe is transforming the way it operates as the regulator of workplace health and safety in Victoria.

A more constructive WorkSafe will offer support and provide more advice and guidance about how small businesses can meet 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 straightforward, practical guidance on how to comply, tailored to the needs of all duty holders. This will have a particular focus on the needs of small and medium size businesses.

Other WorkSafe initiatives, such as the Small Business Safety Program, a free three-hour consultancy program for small business, will continue and be expanded. (Contact details for this service are provided under 'Further Information', below.)

The Act also provides for 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 specifically appointed to represent the views of small business.

Modern Occupational Health and Safety Legislation

The general language and layout of the Bill has been revised, making it clearer, more logical and therefore easier to understand and follow.

Greater clarity and certainty

The Bill 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 small and medium sized businesses more certainty about what they need to do.

The Act also provides for a clarification of the 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 manage or control workplaces' and clarifies that these persons include owners of workplaces.
- 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, 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 one of the major failings of the current system is the lack of representation of workers on health and safety matters. It also recommended that more be done to increase the participation by employers and employees in workplace health and safety issues.

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 is 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.

In addition to these changes, WorkSafe will provide better support for health and safety representatives and employer representatives.

The Act brings Victoria into line with other states and permits an authorised representative of a registered employee organisation to enter a workplace to enquire into suspected breaches of OHS law, under certain strict conditions. Similar right of entry provisions exist in OHS legislation in other Australian jurisdictions. A right of entry is included in the Commonwealth Workplace Relations Act 1996 and industrial relations legislation in other States and Territories.

Creating a level playing field for small business

The Occupational Health and Safety Act 1985 contained offences for officers of bodies corporate. However, the way the section of this Act was framed was too narrow and made prosecution impossible except in the rarest of circumstances. In practical terms it was much easier to prosecute officers in small businesses, who are not protected by elaborate corporate structures. This was unfair.

The Act establishes a level playing field by ensuring that officers of large businesses are held just as accountable for their actions and omissions as those in small businesses.

Promoting fairer, consistent and transparent enforcement

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

- Clearly defines the role and powers of inspectors and the rights of people affected by the exercise of those powers, and
- Introduces 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 brings penalties broadly into line with other jurisdictions and closely tailors them to offences. As a result existing penalties for some offences will reduce.

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.

The Act permits 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.

Keeping paperwork to a minimum

WorkSafe does not expect that employers will have to deal with any additional paperwork to comply with the updated Act.

Making your business more competitive

While you will need to spend some initial time reading about and understanding the changes, the overall aim of the reforms is to save you time by making your obligations clearer and compliance more straightforward. Safer, healthier workplaces are more productive and have less down-time, which helps make your business more competitive. Consulting and involving your workers will motivate them to help you improve your OHS performance, thus saving you more time and money.

Few additional costs for small businesses

Overall, the reform package does not impose additional costs on businesses, although some businesses may have to invest in additional training (to meet the increased training requirements for health and safety representatives, including deputies). People who represent the employer in resolving OHS matters (if any) will also need to have appropriate OHS competencies. However, the availability of better-informed and trained staff who are able to work constructively together is important to developing and maintaining safer, healthier workplaces.

Benefits for small businesses

Businesses, 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.

Compliance with the new Act will be more straightforward for employers and self-employed people, 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 strongly represented on the new statutory advisory body.

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

Getting ready for the changes

These reforms will be implemented progressively and smoothly. There will be time for you to get and WorkSafe will help you with guidance and assistance. In most instances, if you have been complying with the Occupational Health and Safety Act 1985 you will comply with the new Act.

WorkSafe will produce simple guidance material, including a new Guide to the Act and will work with everyone in the workplace including employers, self-employed people, workers and HSRs to ensure that everyone is ready for the implementation of the new Act. WorkSafe's guidance material will be available early in 2005.

Further Information

WorkSafe provides assistance such as the Small Business Safety Program – which enables any Victorian small or medium size business (up to 50 employees) to have access to an independent health and safety consultant for up to three hours of free safety assistance. The assistance will be specific to your workplace and include a simple safety action plan. You can find out more about this service on the WorkSafe website www.worksafe.vic.gov.au (on the home page under 'More items of interest – Small Business') or ring the WorkCover Advisory Service on 1800 136 089.

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.