

WORKSAFE VICTORIA INSPECTORS

2ND EDITION

JUNE 2007



How inspectors support and enforce
health and safety at work

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INTRODUCTION

WorkSafe Victoria is the key regulator of occupational health and safety (OHS) laws in Victoria. We aim to reduce workplace incidents, injuries and death through “constructive compliance”, a prevention strategy that balances positive motivation with strong deterrents. Our inspectors target unsafe workplace activity, provide guidance and advice on how to comply with health and safety laws, and enforce those laws.

This booklet explains the role, powers and activities of WorkSafe inspectors.

HEALTH AND SAFETY LAWS



In general terms, Victoria's health and safety laws aim to:

- create and maintain safe and healthy work environments that give the highest level of protection to employees and members of the public that is reasonably practicable;
- eliminate risk to the health, safety and welfare of employees and the public;
- protect the public from risks associated with dangerous goods, high-risk equipment and unsafe work practices; and
- involve employees and their representatives in health and safety issues in the workplace.

There are four main Acts of Parliament dealing with health and safety. They are:

- *Occupational Health and Safety Act 2004 (OHS Act)*, which deals with health, safety and welfare in the workplace;
- *Dangerous Goods Act 1985*, which deals with dangerous goods and explosives;
- *Equipment (Public Safety) Act 1994*, which deals with high-risk equipment used on private property or in public places; and
- *Road Transport (Dangerous Goods) Act 1995*, which enables federal legislation [i.e. the *Road Transport Reform (Dangerous Goods) Act 1995 (Commonwealth)*] that deals with the transport of dangerous goods by road] to be administered and enforced in Victoria.

These Acts:

- impose responsibilities on, and give legal rights to, people and organisations in relation to health and safety;
- define offences and set maximum penalties; and
- allow inspectors to be appointed and give them the powers they need to inspect, give advice, investigate and enforce the law.

In addition, the Acts allow regulations to be made. Regulations set out specific duties for all people with a role in workplace health and safety.

The WorkSafe Victoria website lists Victorian health and safety legislation at www.worksafe.vic.gov.au/legislation

ROLE OF WORKSAFE VICTORIA INSPECTORS



The primary role of WorkSafe inspectors is to ensure that workplaces comply with health and safety legislation. They do this by:

- providing advice and information;
- inspecting workplaces; and
- enforcing the law.

INFORMATION AND EDUCATION

WorkSafe inspectors work with Victorians to improve workplace health and safety. They have a key role in implementing WorkSafe's constructive compliance strategy and can:

- advise you of employer and employee responsibilities and rights under OHS law;
- provide practical and accessible guidance material on hazard identification and risk control; and
- promote consultation and representation of employees in health and safety matters.

They encourage:

- commitment from management to a planned approach to, and continuous improvement of, health and safety;
- effective workplace communication and meaningful employee involvement at all levels;
- control of hazards at their source;
- appropriate provision of training, information and supervision; and
- integration of health and safety into broader enterprise systems and practices.

WorkSafe Victoria encourages employers and employees to develop an effective mechanism for resolving workplace health and safety problems. An inspector can help establish an agreed issue resolution procedure.

ROLE OF WORKSAFE VICTORIA INSPECTORS

WORKPLACE INSPECTIONS

WorkSafe's inspection and enforcement activities focus on poor-performing industry sectors and organisations, specific hazards that pose serious risks, and the causes of common injury. Inspectors generally conduct planned inspections in these areas.

Inspections are conducted after "reportable" workplace incidents - fatalities, serious injuries, dangerous incidents and emergencies. If necessary, WorkSafe inspectors will direct that the incident scene be left undisturbed prior to an investigation or while seeking assistance from an expert.

Inspectors will also attend workplaces in response to reports of unsafe work conditions and to make decisions about:

- disputed Provisional Improvement Notices (PIN) issued by health and safety representatives;
- unresolved matters from designated work group negotiations;
- disputed work stoppages due to alleged immediate threats to health and safety; and
- issues unable to be resolved through agreed or prescribed issue resolution procedures.

WorkSafe inspectors may be asked to assist in the conduct of elections for health and safety representatives. They may also be asked to resolve disputes about the exercise of powers by Authorised Representatives of Registered Employee Organisations (ARREOs) where these disputes relate to Victorian health and safety legislation.

For information about ARREOs, see the WorkSafe publication *Guide to Right of Entry by Authorised Representatives*.

ENFORCEMENT ACTION

If OHS laws are broken or there is an immediate risk to health and safety, WorkSafe inspectors will take action to enforce the law using:

- improvement notices – written directions requiring a person to remedy a contravention of the law within a specified time;
- prohibition notices – written directions prohibiting any activity that will, or is likely to, involve an immediate risk to the health and safety of any person.

Inspectors will reach their decision after making enquiries, as appropriate, with the people responsible for providing a safe workplace (i.e. duty holders), any health and safety representatives, and other relevant parties. Their decisions also take into account:

- the nature and circumstances of the alleged contravention;
- the principles of health and safety protection;
- the characteristics of the duty holder; and
- WorkSafe's strategic enforcement priorities (i.e. target areas).

An inspector may recommend a comprehensive investigation by WorkSafe Victoria to determine whether the contravention of OHS laws warrants prosecution or other punitive action, even if notices have already been issued.

In determining the most appropriate action to take following a comprehensive investigation, WorkSafe Victoria will apply the prosecution criteria of:

- *sufficient evidence* - whether there is sufficient evidence to support a reasonable prospect of conviction; and
- *public interest* - whether the nature and circumstances of the breach make it appropriate to take further punitive action.

For details about when comprehensive investigations and prosecution-related activities will be conducted by WorkSafe Victoria, see the publication *WorkSafe Compliance and Enforcement Policy*, incorporating the VWA General Prosecution Guidelines.

INSPECTORS' POWERS



WorkSafe inspectors have legislated powers to enter your workplace during working hours, or when there is an immediate risk to anyone, to assess compliance with health and safety laws. They may also enter workplaces in other cases by execution of a search warrant issued by a magistrate.

When a WorkSafe inspector considers it necessary, they may inspect workplaces and some public places at all reasonable times, day or night, and have the authority to:

- issue improvement notices, prohibition notices or directions;
- require names and addresses;
- conduct interviews and make enquiries;
- take photographs, recordings and measurements;
- take possession of items for examination, testing or for use as evidence;
- take samples of substances or objects; and
- require production of, examine and copy documents.

Other people, including technical or scientific experts, interpreters or police officers, may be called on to assist a WorkSafe inspector and must be allowed access to your workplace during an inspection.

An inspector can also:

- review a Provisional Improvement Notice (PIN) issued by a health and safety representative and affirm, modify or cancel it;
- review a decision to cease work, which may include the issuing of a prohibition notice; or
- issue a non-disturbance notice; e.g. to prevent disturbance to an incident scene.

OBLIGATIONS ON INSPECTORS



WorkSafe inspectors carry an official identification card. They must show this identification if asked to do so, when performing a function or exercising a power, and when the relevant legislation requires them to do so. This identification lists the Acts of Parliament under which they have been appointed and given inspectorial powers.

All WorkSafe inspectors are appointed inspectors under the:

- *Occupational Health and Safety Act 2004*; and
- *Equipment (Public Safety) Act 1994*.

Many are also appointed as inspectors or authorised officers under the:

- *Dangerous Goods Act 1985*; or the
- *Road Transport Reform (Dangerous Goods) Act 1995 (Commonwealth)*.

When WorkSafe inspectors enter a workplace or site, they will take all reasonable steps to notify the occupier, person in charge or site manager, and relevant health and safety representatives of their presence. The only time this might not be done is if to do so would defeat the purpose of their entry, or cause unreasonable delay, or if the relevant workplace parties are already aware of their presence.

Health and safety representatives are entitled to speak to the inspector and to participate in the inspection. An inspector may talk to several health and safety representatives if the inspection crosses a number of designated work groups at the workplace.

As they are leaving, or as soon as practicable after they have left the workplace, WorkSafe inspectors will give a written Entry Report to the occupier or person in charge, and relevant health and safety representatives. If there is no such representative, a copy will be given to an employee member of the health and safety committee if there is one.

Health and safety legislation sets out what is to be included in this Entry Report, including:

- a summary of what the inspector has observed;
- a description of things done by the inspector;
- the powers used by the inspector; and
- where photographs, sketches or records will be available for inspection.

WorkSafe inspectors are required to provide certain warnings or information to the relevant person when exercising their powers to request:

- a name and address;
- production of documents; or
- answers to questions.

ACHIEVING COMPLIANCE



WorkSafe inspectors deal with a variety of people who have health and safety responsibilities. Under the OHS Act, these duty holders include employers, self-employed people, employees, contractors and company officers. Other people who have a legal responsibility to prevent injury or disease in the workplace include:

- those who manage or control workplaces;
- designers of plant, buildings or structures;
- manufacturers and suppliers of plant and substances; and
- people installing, erecting or commissioning plant.

When a WorkSafe inspector detects a contravention of an Act or Regulation, the inspector will take action to ensure that the contravention is remedied by the duty holder. The inspector will do one or more of the following:

- get immediate voluntary compliance and take no further action;
- issue an improvement notice requiring the contravention to be fixed by a certain date;
- issue a prohibition notice where there is an immediate risk and the activity must stop until the risk is removed; or
- direct that a certain action be taken where an immediate risk exists, or if the inspector deems this appropriate.

WorkSafe inspectors include information in the notice about how to comply with the law. The person receiving the notice or direction is responsible for achieving compliance with legislation or dealing with an immediate risk.

If a prohibition notice has been issued, a prohibited activity cannot recommence until an inspector certifies in writing that the risk has been remedied.

A WorkSafe inspector authorised to act under the *Road Transport Reform (Dangerous Goods) Act 1995 (Commonwealth)* may direct a person in charge of a vehicle or piece of equipment to take appropriate actions to render that vehicle or equipment safe.

Where there has been a breach of conditions associated with a licence, approval, certificate, permit, authorisation, etc., issued by WorkSafe Victoria, an inspector can recommend its revocation, suspension or cancellation.

REVIEW OF INSPECTORS' DECISIONS



A WorkSafe inspector may form an opinion that an activity in a workplace is a risk to health and safety and may issue a notice. Alternatively, the inspector may form an opinion that an activity is safe and decide not to take action. Decisions such as these can be independently reviewed through a process set up by WorkSafe Victoria.

If there is any query regarding health and safety matters covered by the WorkSafe inspector's Entry Report or in a notice, the inspector named in the report should be contacted. However, if an employer or a health and safety representative, or another eligible person, wants to contest a reviewable decision, an application may be lodged with the Victorian WorkCover Authority Internal Review Unit.

For further information about making an application for internal review, what a reviewable decision is, or who is eligible to apply for a review, see WorkSafe's publications *Internal Review of Inspector's Decisions* and *How to Apply for a Review of an Inspector's Decision*. Alternatively, contact the Internal Review Unit on (03) 8663 5450. Information on how to apply for an internal review is also included on every notice and Entry Report issued by an inspector.

OFFENCES IN RELATION TO WORKSAFE VICTORIA INSPECTORS



It is a serious offence for anyone to:

- refuse access to a WorkSafe inspector or anyone assisting the inspector;
- intentionally hinder or obstruct or induce others to hinder or obstruct inspectors in the course of their duties;
- intentionally conceal from the inspector the location or existence of a person, plant, substance or thing;
- refuse to provide assistance to an inspector or to prevent others from assisting; or
- assault, intimidate or threaten, or attempt to intimidate or threaten an inspector or person assisting an inspector.

FEEDBACK OR COMPLAINTS IN RELATION TO INSPECTORS' ACTIONS



WorkSafe inspectors are expected to comply with legislated obligations and WorkSafe operational procedures. They are also expected to be professional, objective and consistent when enforcing the law and they are accountable for how they do their job. If there is a need to inform WorkSafe of any aspect of an inspector's performance, the appropriate manager's contact details appear on the inspector's Entry Report.

Complaints about inspector conduct will be investigated independently of the inspector and their line management.

To comment on WorkSafe Victoria activities or health and safety legislation, you may provide feedback to:

Executive Director
WorkSafe Victoria
GPO Box 4306
Melbourne Victoria 3001

Ph: (03) 9641 1215

Fax: (03) 9641 1711

Email: executivedirector@worksafe.vic.gov.au

EMERGENCY RESPONSE



WorkSafe Victoria seeks widespread community support for securing healthy and safe workplaces. If dangerous situations are observed in workplaces or public places, the Advisory Service should be contacted (see contact details at the end of this booklet). In emergencies the WorkSafe Victoria Emergency Response Service should be contacted on 13 23 60.

WorkSafe Victoria operates a 24-hour emergency response service for health and safety incidents. Inspectors will attend incidents requiring immediate response, including the following types of emergencies:

- workplace deaths;
- State Disaster Plan operations;
- serious incidents involving the transport, use, storage or handling of dangerous goods and chemicals;
- workplace and work-related incidents that result in injury or have the potential for injury;
- health and safety disputes where work activity has stopped; and
- other urgent prevention activity.

IN AN EMERGENCY CONTACT WORKSAFE VICTORIA AT ANY TIME ON 13 23 60

WORKSAFE VICTORIA

Advisory Service

222 Exhibition Street
Melbourne 3000

Phone 03 9641 1444
Toll-free 1800 136 089
Email info@worksafe.vic.gov.au

Head Office

222 Exhibition Street
Melbourne 3000

Phone 03 9641 1555
Website www.worksafe.vic.gov.au

Local Offices

Ballarat 03 5338 4444
Bendigo 03 5443 8866
Dandenong 03 8792 9000
Geelong 03 5226 1200
Melbourne
(628 Bourke Street) 03 9941 0558
Mildura 03 5021 4001
Mulgrave 03 9565 9444
Preston 03 9485 4555
Shepparton 03 5831 8260
Traralgon 03 5174 8900
Wangaratta 03 5721 8588
Warrnambool 03 5564 3200