

# GETTING INTO THE ACT

**2ND EDITION**

September 2005



The Occupational Health and Safety Act 2004  
Making Victorian workplaces even safer

# CONTENTS

<b>1. Important information</b> .....	1
<b>2. Why do we have a new Occupational Health &amp; Safety Act?</b> .....	2
<b>3. When does the new Act come into effect?</b> .....	3
<b>4. Key principles</b> .....	4
<b>5. Workplace responsibilities</b> .....	5
<b>6. Workplace representation</b> .....	7
<b>7. The role and powers of WorkSafe Inspectors</b> .....	9
<b>8. New Right of Entry provisions</b> .....	11
<b>9. Prosecution and penalties</b> .....	12
<b>10. Further information</b> .....	13

The information presented in this guide 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*.

ISBN 1-921096-03-9

WorkSafe Victoria is a division of the Victorian WorkCover Authority.

# 1

## IMPORTANT INFORMATION



*John Merritt,  
Executive Director, WorkSafe Victoria*

WorkSafe Victoria, the Occupational Health and Safety arm of the Victorian WorkCover Authority, is committed to working with employers and workers to help create safer workplaces.

This booklet provides an overview of what you are required to know about the *Occupational Health and Safety Act 2004*.

If you already comply with the previous Act, you're well placed to comply with the new Act. However, there are significant changes so you're urged to read this guide, and if necessary, seek further information to make sure you fully understand your responsibilities.

"None of us should be satisfied until Victoria has one of the safest working environments in the world."

# 2

## WHY DO WE HAVE A NEW OCCUPATIONAL HEALTH & SAFETY ACT?

The previous Occupational Health and Safety Act was some 20 years old, and whilst there was a broad consensus that the fundamentals were right, there is still an unacceptable level of death and injury in Victorian workplaces.

In 2004, 29 people died as a result of a workplace incident in Victoria. Around 32,000 others were injured and made claims for compensation and assistance through the Workplace Injury Insurance scheme. That level of workplace trauma is clearly unacceptable.

The cost to Victoria in pure dollar terms is enormous, but the cost to families and the community is devastating.

The new Act clarifies and brings Victoria's safety laws up to date to reflect modern workplaces and arrangements.

It has been introduced to help all of us work together to create one of the safest working environments in the world.

# 3

## WHEN DOES THE NEW ACT COME INTO EFFECT?

After a wide-ranging review by Chris Maxwell QC, the Occupational Health & Safety Bill passed through Victorian State Parliament in December 2004.

Most sections of the *Occupational Health and Safety Act 2004* come into effect on July 1, 2005. Two exceptions to that are:

- a new requirement for employers to consult with employees will come into effect from January 1, 2006; and
- a new duty will apply to designers of buildings and structures from July 1, 2006.

# 4

## KEY PRINCIPLES



Rhonda Barro, The Barro Group

“We don’t want anybody to be injured. We want people to go home the way they came to work.”

The *Occupational Health and Safety Act 2004* is built on five key principles:

- All people – workers and the general public – should have the highest level of protection against risks to health and safety;
- Those who manage or control things that create health and safety risks in the workplace are responsible for eliminating those risks. Where they can’t be eliminated, they are responsible for reducing those risks so far as is reasonably practicable;
- Employers should be proactive in promoting health and safety in the workplace;
- Information and ideas about risks and how to control them should be shared between employees and employers; and
- Employees are entitled – and should be encouraged – to be represented in relation to health and safety issues.

# 5

## WORKPLACE RESPONSIBILITIES



Julie Mills, Safety Officer, Rural North West Health Service

“Now if the staff have a problem they say ‘how can we solve it’, not just let it go – that attitude’s disappeared.”

While the new Act is not a radical departure from the old Act – the general responsibilities remain the same – there are changes you will need to be aware of.

### **Eliminate and reduce the risks**

As with the old Act, employers are responsible for eliminating risks in the workplace. If it isn’t reasonably practicable to eliminate particular risks, employers must do everything that’s reasonably practicable to reduce them.

Employers must also be proactive in regards to Occupational Health and Safety in their workplaces. They must proactively find the hazards, assess the risks, and fix the problems. They must also consult with workers in this process.

### **Incident Notification and Site Preservation**

The new Act includes provisions for Incident Notification and Site Preservation. Essentially, the requirements from the old regulations are now included in the new Act.

Employers must notify WorkSafe immediately after becoming aware of an incident at their workplace that results in:

- a death;
- a person requiring medical treatment with 48 hours of exposure to a substance;
- a person requiring immediate medical treatment in a hospital;
- a person requiring medical treatment for certain serious injuries.

Employers must also immediately notify WorkSafe of some incidents in which people are exposed to immediate health and safety risks.

Employers must keep a record of these incidents for five years.

The Act requires that when WorkSafe has been notified of an incident involving serious injury, the immediate site must remain undisturbed until advised by a WorkSafe inspector. A site may be disturbed if it is to protect the health and safety of a person, aid an injured person, take essential action to make the site safe or prevent a further occurrence of an incident.

# WORKPLACE RESPONSIBILITIES

---

## **Company officers can be personally liable**

The new Act requires officers of organisations to take reasonable care to ensure their organisation complies with the Act. Officers are generally the most senior people, such as the Chief Executive, a director, partner or other senior staff who are in a position to prevent breaches of the Act.

Company officers are obliged to be aware of their organisation's health and safety obligations and how they are managed.

Officers need to ensure that safety responsibilities are communicated to all staff, that appropriate safety procedures are in place, and that sufficient resources are allocated to health and safety. Any officers who are proactive and take reasonable care are not likely to be affected.

When determining if an officer should be considered personally liable for a breach of the Act, WorkSafe will take into account relevant matters, such as: what the officer knew; whether they were in a position to make a decision; and whether anyone else was involved.

Volunteer officers are exempt.

# 6

## WORKPLACE REPRESENTATION



*Gilden Peppin, Bunnings Distribution Centre*

“Every safety issue that comes up is discussed with every single member.”

The best way of tackling health and safety issues is for all parties to participate in ongoing dialogue.

Workers have a basic right to be represented and take part in all aspects of health and safety in their workplace. From January 1, 2006, employers have a duty to consult employees.

The new Act maintains all existing entitlements of representation, while adding extra flexibility.

The Act recognises that conditions can vary from workplace to workplace, so many of the new arrangements will need to be negotiated.

In certain situations, if agreement can't be reached, WorkSafe can provide assistance and make a final determination.

### **Establishing a Designated Work Group**

Workers in any workplace can establish a Designated Work Group to decide how their occupational health and safety interests will be represented, usually by electing one or more Health and Safety Representatives.

The new Act now allows Designated Work Groups to represent multiple employers and multiple worksites.

These arrangements must be mutually agreed, and allow for unique situations, for example, on construction sites or temporary workplaces like major events.

### **Health and Safety Representatives**

The new Act also allows Designated Work Groups to elect more than one Health and Safety Representative, and the election of Deputy Representatives.

The powers of Health and Safety Representatives are largely unchanged, though they can now act for another Designated Work Group if there is an immediate risk.

# WORKPLACE REPRESENTATION

---

The new Act introduces maximum three-year terms for Health and Safety Representatives, after which they face re-election.

The Act also confirms that Health and Safety Representatives must be allowed to attend an initial training course, and a one-day annual refresher course, while on full pay. The employer must pay for these courses, plus associated costs.

## **Employer Representative requirements**

Employers must ensure that their Representative is appropriately senior and sufficiently competent to deal with health and safety issues.

The Representative should have a thorough knowledge of the Act, an understanding of health and safety issues and systems, and also have suitable communication and negotiation skills.

# 7

## THE ROLE AND POWERS OF WORKSAFE INSPECTORS



Mark Aylward, Operations Manager,  
TNT Express

“OHS is part of what we do. It’s not an adjunct. It’s woven into the business.”

WorkSafe Inspectors have a wide-ranging role and important powers as part of the *Occupational Health and Safety Act 2004*.

WorkSafe’s approach to administering the Act is to balance positive motivators and deterrents to improve workplace health and safety. It’s all part of the Constructive Compliance strategy.

WorkSafe Inspectors monitor and enforce compliance with OHS laws. They also provide guidance and advice to help employers deal with health and safety risks in the workplace.

### **Deterrence through presence**

Inspectors make planned inspections of poor performing industry sectors or high-risk industries and occupations. They also respond to reports of unsafe work conditions and, where necessary, arbitrate on health and safety related disputes.

Inspectors also attend worksites following reports of fatalities, serious injuries, dangerous incidents and emergencies and, where necessary, direct that the workplace be left undisturbed subject to investigation.

### **Enforcement Notices**

Inspectors respond to breaches of the law or situations involving immediate risk by imposing remedial enforcement notices, such as:

- *Improvement Notices*, which direct that a breach of the law be remedied within a specified time; and
- *Prohibition Notices*, which prohibit any action that is likely to involve immediate risk to any person.

When a Prohibition Notice has been issued, the prohibited activity cannot recommence until an Inspector certifies in writing that the risk has been remedied.

# THE ROLE AND POWERS OF WORKSAFE INSPECTORS

---

## **Right to enter a workplace**

Under the Act, WorkSafe Inspectors have the power to enter any workplace during working hours. They can also enter any place at any time if they believe there is an immediate risk to health and safety arising from the business being conducted at the place.

They may call on the assistance of other people during an inspection, including technical or scientific experts, interpreters and police officers.

You are required to cooperate with an Inspector when questioned, and it is a serious offence to refuse access to an Inspector or to intentionally hinder an Inspector in the course of their duties.

The new Act also empowers Inspectors to obtain and execute Search Warrants, and with that comes the power to arrest. However, that power will only ever be used in exceptional circumstances and only in conjunction with the Police.

## **New Internal Review system for appeals**

A new Internal Review system gives both employers and employees the right to ask for a review of decisions made by Inspectors.

From July 1, 2005, a free and fast review of decisions will be available within 14 days of the Inspector's decision.

The Review Unit has already been established and is totally separate from WorkSafe. To ensure transparency, WorkSafe will publish the number of requests and outcomes.

# 8

## NEW RIGHT OF ENTRY PROVISIONS



Rebecca Carlon , Alcoa Australia Roll Products

“I believe safety can make a difference and I believe you can change peoples’ attitudes.”

A right of entry to the workplace has been introduced for authorised representatives of employee organisations, such as unions to gain entry to workplaces where they have reasonable suspicion that a breach of the Act has or is taking place.

It has been introduced to provide another option for raising and addressing workplace health and safety issues. A union official’s existing right to enter workplaces when their assistance is requested by a health and safety representative continues.

### Authorised Representatives

An authorised representative is an employee or officer of a registered employee organisation who has completed a WorkSafe approved training program and obtained an entry permit from the Magistrates Court.

They can enter a workplace during working hours if they reasonably suspect a contravention of the Act or regulations has occurred or is occurring.

The suspected contravention must be described in a Notice of Suspected Contravention.

The authorised representative must take all reasonable steps to give the Notice to the employer, or a person who has management or control of the workplace on the employer’s behalf, as well as a health and safety representative, if there is one, before beginning enquiries.

Permits do not allow entry into a private home, even if the home is also a workplace or the place is restricted under another Act. The authorised representative must comply with any reasonable safety and security requirements.

They cannot enter any part of a place that is used as a residence or restricted under another Act and must comply with any reasonable safety and security requirements.

### Rights and obligations

Authorised representatives must not hinder, obstruct, threaten or intimidate employers or any employees. Employers and their representatives must not refuse authorised representatives entry to the workplace and must not hinder, obstruct, threaten or intimidate the authorised representative.

It is critical that the right of entry powers are exercised appropriately and promote co-operation in the workplace. Abuse of the system by employers, authorised representatives, employee organisations or workers will not be tolerated. Tough sanctions will apply for misuse.

# 9

## PROSECUTION AND PENALTIES



Harry Lumanovski, Pilkington Australia

“I got a call on Saturday morning telling me there was a fatality on the site and that really hit home.”

WorkSafe’s focus isn’t on prosecuting businesses or individuals, it’s on making workplaces safer by identifying health and safety issues and helping employers eliminate or reduce the risk to workers.

Our prosecution activity is only used when people fall short of the acceptable standard or show deliberate disregard for worker safety.

### Increased penalties

From July 1, 2005, the maximum fines for serious breaches of the new Act increased:

- The maximum fine for corporations has increased from \$255,625 to \$943,200; and
- The maximum fine for individuals has increased from \$51,125 to \$188,658.

The new Act also provides for jail sentences for reckless endangerment. Where conscious and deliberate disregard for safety has taken place, a maximum term of 5 years imprisonment can now apply.

### Alternatives to prosecution

A number of alternatives to prosecution, known as Enforceable Undertakings have also been introduced through the new Act. These include:

- Adverse Publicity Orders;
- Orders to undertake improvement projects; and
- Special health and safety undertakings can also be enforced, for up to 2 years.

# 10

## FURTHER INFORMATION



*John Chessells, Director, Ezidoor*

“It’s a joy to make a difference. To make things easier and safer.”

Now that we have a new Occupational Health and Safety Act, take advantage of it. Use it as a prompt to review safety in your workplace, talk to your workers, listen to their suggestions, and make sure everyone is aware of their rights and responsibilities.

Together we can achieve healthier and safer workplaces.

WorkSafe Victoria is progressively introducing both general and technical guidance material on how to comply with various provisions of the Act, so continue to visit [www.worksafe.vic.gov.au](http://www.worksafe.vic.gov.au) or call the WorkSafe Advisory Service on 1800 136 089.

To obtain a copy of the Act, go to [www.dms.dpc.vic.gov.au](http://www.dms.dpc.vic.gov.au) or phone Information Victoria on 1300 366 356.

## **WORKSAFE VICTORIA**

### **Advisory Service**

222 Exhibition Street  
Melbourne 3000

Phone . . . . . 03 9641 1444

Toll-free . . . . . 1800 136 089

Email . . . . . [info@workcover.vic.gov.au](mailto:info@workcover.vic.gov.au)

### **Head Office**

222 Exhibition Street  
Melbourne 3000

Phone . . . . . 03 9641 1555

Toll-free . . . . . 1800 136 089

Website . . . [www.workcover.vic.gov.au](http://www.workcover.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