



A GUIDE
to the
WORKPLACE
HEALTH *and*
SAFETY
LEGISLATION

Work Safe
TASMANIA



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PLEASE NOTE

This information is for guidance only and is not to be taken as an expression of the law. It should be read in conjunction with the *Workplace Health and Safety Act 1995*, the *Workplace Health and Safety Regulations 1998* and any other relevant legislation. Copies of the legislation can be purchased from the Printing Authority of Tasmania Bookshop: call (03) 6233 3289 or freecall 1800 030 940. It is also available on the Internet at www.thelaw.tas.gov.au

This guide was produced by staff from WorkCover Tasmania and Workplace Standards Tasmania.

We welcome your feedback on this guide. Send to: wstinfo@justice.tas.gov.au

INTRODUCTION

This is a brief guide to implementing the principal provisions of the Tasmanian *Workplace Health and Safety Act 1995* (the Act) and the *Workplace Health and Safety Regulations 1998* (the Regulations). It provides a brief overview of the legislation, which sets out the duties imposed on everyone at Tasmanian workplaces.

This guide outlines the responsibilities of every person at the workplace, the consultative framework, the requirements for reporting injuries and dangerous occurrences, the use of codes of practice, how the legislation is administered, and the role of inspectors.

The human and financial consequences of injury and disease at work are enormous.

Safe and healthy workplaces are the result of the commitment by employers, employees and others to the highest standards of safety. Continuing improvement relies upon the goodwill and co-operation of all those who are affected by the legislation. One important principle underlying the legislation is that by bringing all parties in the workplace into consultative and decision-making processes, there will be greater commitment to workplace health and safety.

HOW WAS THE ACT DEVELOPED?

The Act is the result of extensive consultation and detailed negotiations between the Tasmanian Government, employer associations and unions.

The legislation came into force on 16 August 1995, with further amendments occurring in 2000, 2001, 2002, 2003 and 2005.

THE ACT

The aim of the Act is to provide for the health and safety of people employed in, engaged in or affected by industry. Specifically, the Act aims to:

- secure the health, safety and welfare of employees at work
- protect people at or near workplaces from risks to health and safety
- promote an occupational environment for employees that harmonises with their health and safety needs
- foster a co-operative, consultative relationship between employers and employees on the health, safety and welfare of employees at work.

The Act applies to all workplaces in Tasmania, other than those for which the Commonwealth is the employer.

It provides a broad and flexible framework and involves employers and employees in achieving acceptable levels of occupational health and safety.

The Act sets out roles for employers, employees and inspectors. It provides methods for developing detailed occupational health and safety standards

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and for the way standards are applied and enforced.

A major initiative contained in the Act is involving employees in all decisions affecting their own and others' health and safety.

An important requirement of the Act is for an employer to provide any information, instruction, training and supervision reasonably necessary to ensure that each employee is safe from injury or risk to health.

The Act also requires health and safety committees to be set up in certain circumstances so the workforce can contribute to better accident and illness prevention.

WHAT IS A WORKPLACE?

A workplace is defined as any premises or place where an employee, contractor or self-employed person is or was employed or engaged in industry. It includes any mine, aircraft, vessel or vehicle.

WHO IS COVERED BY THE ACT?

The Act covers employers, employees, self-employed persons, manufacturers, service providers, designers, importers, suppliers and installers.

The Act requires all people participating in the workplace to make sure their workplace activities take into consideration the health and safety of themselves and others.

Employees of the Commonwealth Government are not covered by the Act

except when they may be a visitor to a workplace.

Some specific positions and their duties include:

Employers — and their employees

An employer's principal duty is to take all reasonably practicable steps to protect the health and safety of their employees at the workplace. This duty requires employers to provide a healthy and safe working environment.

Employers — and other people

Employers must take all reasonably practicable steps to ensure other people (such as visitors or members of the public) at or near the workplace are not exposed to health and safety risks. Employers must establish health and safety management practices to protect these other people.

The employer's duty of care also extends to the work of contractors, subcontractors and the employees of those contractors or subcontractors who may be engaged by that employer. This duty of care does not lessen the duty of care imposed on the contractor or subcontractor who is also an employer.

People in control of workplaces

In some workplaces, there may be no employer; or a person may be doing work for another employer that puts their workplace outside their usual place of work. This is common in the case of contractors and subcontractors working at other premises.

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A person who has control of a workplace (including access into and out of it) or plant or substances in a workplace must take all reasonably practicable steps to ensure the workplace is safe.

This person must make sure that any plant, substance, structure or temporary public stand poses no threat to health and safety.

Manufacturers and designers

A key factor in improving health and safety is the degree to which risks are removed or reduced at the design and manufacturing stage of plant, substances and structures.

Even though they are not employers, manufacturers and designers have a duty of care. For example, they must provide services or products to a reasonable and acceptable standard, and provide information so the plant, substance or structure will be used safely at a workplace.

Suppliers

Suppliers of plant, substances or structures that are likely to be used in a workplace have specific duties of care about the plant, substances or structures they supply. For example, they must provide health and safety information on the plant, substances and structures they supply (such as material safety data sheets for chemicals).

Installers

Installers of plant or structures used in a workplace have a duty of care to ensure the plant or structure they install is not erected or installed in an unsafe manner.

Self-employed people

People who are self-employed must ensure that the health and safety of other people, as well as their own, is not affected by their work.

Employees

Employees have a duty to act responsibly.

They have a duty to perform their work according to the directions given by their employer and in line with the relevant safety standards, regulations or codes of practice.

They are expected to take reasonable care to protect the health and safety of themselves and others, including anyone whose work they may be supervising.

REFUSAL TO WORK

If an employee becomes aware of a hazard that presents an imminent risk of serious bodily injury to themselves or another person, that employee may refuse to work until the cause of the risk is fixed.

If this situation arises, the employee must immediately tell the employer or the person in charge.

If there is an employees' safety representative for that section of the workplace, this representative needs to be told of the employee's refusal to work.

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DISCRIMINATION

An employer must not dismiss or discriminate against an employee if the employee:

- assists or gives information to an inspector
- appears as a witness in any proceedings taken against the employer under the Act
- makes a reasonable complaint about health and safety to either the employer or an inspector
- performs any function or duty as an employee safety representative or a member of a safety committee
- refuses to work in circumstances where the employee reasonably believes a hazard exists that presents an imminent risk of serious bodily injury to themselves or another person.

WHAT IS A DUTY OF CARE?

A duty of care is a legal responsibility. The duties set out in the Act have always existed under common law.

The duties set out in the Act require all people in the workplace (see *Who is covered by the Act?* on page 3) to take practical steps to ensure health and safety measures are met. Each person who has a duty must meet it, even if others also share this duty.

The general duties set out in the Act are limited by 'reasonable practicability'. To carry out a duty as far as is reasonably practicable means:

- balancing the degree of risk in a particular activity or environment against measures taken to control it
- doing only what is possible or capable of being done safely.

The 'reasonable practicability' test must take into account:

- the nature of the job or the particular aspect of the job concerned
- the severity of any potential injury or harm to health or safety that may be involved, and the degree of risk that exists for such potential injury or harm
- what is known about the injury or harm to health or safety that may be involved; what is known about the risk of that injury or harm occurring; and what is known about preventing, removing or reducing that injury, harm or risk
- the availability and suitability of ways to prevent, remove or reduce that injury, harm or risk
- whether the cost of preventing, removing or reducing that injury, harm or risk is prohibitive in the circumstances.

As the risk increases, it is reasonable to assume that the time, effort and cost needed to reduce or remove that risk also increases.

IN THE WORKPLACE

WHAT IS A WORKPLACE HEALTH AND SAFETY POLICY?

Employers are encouraged to develop and maintain a policy on workplace health and safety for their employees. The policy:

- must foster effective consultation between employers and employees, in order to develop and promote measures that will ensure workplace health and safety
- should allow these measures to be regularly reviewed
- should be developed and maintained by consulting with employees, a health and safety committee or an involved union.

Both the *Workplace Health and Safety Act 1995* and *Workers Rehabilitation and Compensation Act 1988* recognise that the workplace parties are best placed to influence health and safety in the workplace.

EMPLOYEES' SAFETY REPRESENTATIVES

Members of a particular work group numbering 10 or more may elect an employees' safety representative.

The legislation gives employees' safety representatives the power to be consulted; to inspect the workplace; to obtain information; and, in consultation with the accountable person in the workplace, direct work activities to stop if a risk of serious injury or harm exists.

HEALTH AND SAFETY COMMITTEES

Where more than 20 employees are engaged at a workplace, a majority of them may request that a health and safety committee be established. The employer is then required to establish this committee.

FUNCTIONS OF A HEALTH AND SAFETY COMMITTEE

Under the Act, the functions of the health and safety committee are to:

- foster consultation and co-operation between employers and people working at the workplace
- initiate, develop and implement measures that will ensure workplace health and safety
- keep abreast of changes in standards of workplace health and safety
- review and make recommendations to the employer about health and safety matters
- recommend to the employer that programs, measures and procedures about workplace health and safety are established, maintained and monitored
- keep information provided by the employer about hazards that may arise at the workplace in a place where employees can access them

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- consider and recommend to the employer training and education options in workplace health and safety
- consider and recommend to the employer that changes be made at a workplace following an accident or incident
- perform any other functions given by the employer in accordance with the legislation.

RESPONSIBLE OFFICERS

The following information should be read in conjunction with sections 10–12 of the Act.

The responsible officer performs the duties of the employer set out in the Act, although the appointment of a responsible officer in no way diminishes the liability of an employer.

Section 10 of the Act allows an employer discretion in the appointment of a person as responsible officer. However, in satisfying the requirements of section 9, the choice of an appropriate person should be made with care.

If an employer, other than one operating a designated workplace, does not appoint a responsible officer, the person responsible for the direction and management of that workplace is deemed to have been appointed as the responsible officer.

Where an employer makes a formal appointment, they must tell the person in writing of their appointment. The employer must also make others at the workplace aware of the appointment.

As the function of a responsible officer is to perform the duties of the employer

in relation to health and safety at the workplace, Workplace Standards Tasmania therefore recommends that employers:

- consider the authority level a responsible officer needs to perform their functions
- make the appointment at the appropriate level in the organisation
- give the responsible officer sufficient authority to carry out their duties.

Workplace Standards Tasmania recommends that the position be given to the chief executive or the most senior manager at a particular workplace.

In the case of a small organisation, the business owner would logically appoint himself or herself.

THE ROLE OF THE RESPONSIBLE OFFICER

Used wisely, the responsible officer concept is a powerful tool, helping the organisation delegate workplace health and safety matters effectively.

Used unwisely, the responsible officer concept can:

- frustrate employees who may have the responsibility but lack the authority to carry it out
- corrupt the authority structure of the organisation.

The definition of a workplace is broad, and specific responsible officer appointments should not be made if, in the context of the workplace, they are meaningless. For example, the Act defines a vehicle as a workplace; to appoint the driver formally

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as a responsible officer is of little value.

The responsible officer does not have to be present at the workplace for which they are responsible. However, the responsible officer must effectively plan, organise, control and manage health and safety at that workplace.

WHAT ARE DESIGNATED WORKPLACES?

There will always be industries where the work poses a relatively greater risk to the safety and health of employees. These are called 'designated workplaces'.

The Act does not specify the type of enterprise that might be declared a designated workplace. However, the Director of Industry Safety has the power to designate any workplace or class of workplace where the work carried out is hazardous for employees or other persons.

Mines, large quarries, mineral processing plants, sawmills and hazardous construction sites would be candidates for designation. Other businesses with a poor record of accident prevention may also be designated.

Employers responsible for designated workplaces must notify Workplace Standards Tasmania of:

- their name and address and the location of the workplace
- the name of the person appointed as the responsible officer.

There are special provisions relating to responsible officers at a designated workplace. They may also be required to:

- maintain a record book of inspections and instructions given by inspectors
- hold specified qualifications or be assisted by someone who holds those qualifications.

WorkCover Tasmania produces practical guides to help you meet your obligations under the Act and Regulations. Two good ones to start with are Hazard Management: Play it SAFE (GB081) and Making Your Small Business Safer and Healthier (GB148). For your free copy of these and other guides, call the Workplace Standards Helpline on 1300 366 322 or go to www.wst.tas.gov.au

REPORTING SERIOUS BODILY INJURY AND DANGEROUS INCIDENT

WORKPLACE REPORTING REQUIREMENTS

The Act requires employers to keep records of injuries in their workplaces. As part of their general accident prevention policy, employers are encouraged to keep their own record of any event that results in any person in the workplace losing one day of work or more. These are indicators of risk to health and safety.

Under the Act, all serious bodily injuries or illnesses suffered by an employee (or a third party) must be reported by the employer to Workplace Standards Tasmania by the quickest available means and as soon as is reasonably practicable. The employer must also provide written notification of the details within 48 hours.

‘Serious bodily injury’ or ‘illness’ means an injury or illness that disables a person to the extent that they are admitted to hospital as an in-patient.

Dangerous incidents must also be reported. A dangerous incident is any incident involving:

- damage to any boiler or other pressure vessel or to a load-bearing member of any lifting machinery, scaffolding or amusement structure that endangers the health or safety of any person in the vicinity
 - an uncontrolled explosion, fire or discharge of electricity, gas or steam
- or
- an occurrence (including those involving any dangerous substance) involving an imminent risk of explosion, fire, death, serious bodily injury or illness to any person or serious damage to any property.

The kind of records employers should keep are detailed at the end of this booklet.

REGULATIONS AND CODES OF PRACTICE

WHAT ARE REGULATIONS?

The function and purpose of regulations is to give details of requirements that must be observed in the workplace.

Regulations are the second tier of legislation. While they are subordinate to the Act, they still represent legal requirements, and failure to comply will generally be an offence punishable by a fine.

The Act broadly outlines the legal obligations employers and workers have to workplace health and safety. The Regulations set out goals for meeting these legal obligations and making workplaces safe.

Employers and workers can tailor safety measures to the needs of individual workplaces — provided the outcomes specified in the Regulations are achieved.

WHAT ARE THE REGULATIONS ABOUT?

Risk management is a key element of the Regulations. All Tasmanian businesses must have processes in place to regularly monitor the workplace for hazards and eliminate (or at least minimise) safety risks.



The 'Play it SAFE' steps are an easy way to remember the risk management process:

For more information about Playing it SAFE, call the Workplace Standards Tasmania Helpline on 1300 366 322 for your copy of GBo81 *Hazard Management: Play it SAFE*.

Other important issues outlined in the Regulations include the need to:

- communicate with all parties at the workplace, including health and safety committees or employees' safety representatives and those responsible for managing workplaces — particularly whenever any proposed change to a workplace is likely to affect health or safety
- keep records relating to a number of workplace matters
- make any relevant health and safety information available to workers.

REGULATIONS AND CODES OF PRACTICE

WHAT ARE CODES OF PRACTICE?

Codes of practice may consist of any code, standard, rule, specification or provision for workplace health and safety.

The Act enables the Minister of the Department to approve codes of practice that give practical guidance on workplace health and safety to employers and employees.

Before approving a code of practice, the Minister must consult with employer and employee organisations, and advertise his or her intention to approve the code of practice.

Codes of practice may be used as evidence in legal proceedings to show that a person has failed to meet a duty of care. Failure to follow a code of practice does not necessarily mean a breach of the Act.

If a person has not adopted the method described in the code, however, it is up to them to show they have met their duty of care by alternative methods which are equivalent to or better than those in the code.

This approach allows those who have a duty of care under the Act to choose the method best suited to the conditions prevailing in their workplace. In other words, codes of practice are advisory. If, following a risk assessment, a person can meet the duty of care imposed on them in a better way, it is appropriate and lawful for them to do so.

EXEMPTIONS FROM REGULATIONS

Exemptions or variations from the provisions of the regulations can be granted by the Director of Industry Safety where:

- applying the regulations in a modified form does not adversely affect the health or safety of any person in the workplace
- the Director is satisfied there are health and safety management policies and training programs in place that satisfy the intent of the regulations.

WORKCOVER TASMANIA

WHAT IS THE ROLE OF WORKCOVER TASMANIA

WorkCover Tasmania works together with Tasmanian employers and workers in injury management, workplace health and safety, and workers compensation.

To achieve this, WorkCover:

- promotes prompt and effective injury management
- promotes safer and healthier workplaces, through practical information and personal guidance
- manages the workers compensation scheme and monitors the performance of scheme participants.

WorkCover is funded through a levy on workers compensation premiums. It is an independent body with responsibilities under the *Workers Rehabilitation and Compensation Act 1988* and *Workplace Health and Safety Act 1995*.

The WorkCover Board is established under the *Workers' Rehabilitation and Compensation Act 1988* and has eight members:

- the chair who is the Secretary of the Department of Justice
- two people nominated by the Minister from a list of names submitted by the Tasmanian Chamber of Commerce and Industry Ltd
- two people nominated by the Minister from a list of names submitted by Unions Tasmania
- a legal practitioner with experience in workers rehabilitation and compensation matters nominated by the Minister
- a person with extensive experience in the workers compensation insurance business nominated by the Minister
- a medical practitioner nominated by the Minister.

More information on the structure and activities of WorkCover Tasmania can be found at www.workcover.tas.gov.au

ADMINISTRATION OF THE WORKPLACE HEALTH AND SAFETY ACT

WORKPLACE STANDARDS TASMANIA

Workplace Standards Tasmania is responsible to the Minister for the administration of the Act.

Workplace Standards Tasmania has many roles. It:

- administers government policy on preventing injury and illness in the workplace
- provides a technical and advisory service to industry, the unions and the general public
- ensures compliance with the minimum standard of protection required by law, either in terms of the general duties set out in the Act or in terms of specific technical requirements set out in regulations
- promotes a raised awareness of workplace health and safety issues in conjunction with WorkCover Tasmania
- acts as a specialist arbitrator in disputes between employers and workers over what constitutes unsafe working conditions.

ROLE OF DIRECTOR OF INDUSTRY SAFETY

The Director of Industry Safety has the power to:

- review certain decisions affecting workplaces
- declare a workplace (or class of workplaces) to be a 'designated workplace'
- receive information about the appointment of responsible officers
- determine disputes about health and safety committees
- review inspectors' decisions when formally requested by people with a right of appeal.

The Director has all the powers of an inspector.

ADMINISTRATION OF THE WORKPLACE HEALTH AND SAFETY ACT

ROLE OF THE SECRETARY

The role of the Secretary of the Department is to:

- ensure compliance with the Act
- develop and implement policies and strategies relating to health and safety in industry
- advise the Minister on the operation and administration of the Act
- consult with WorkCover Tasmania
- collect, interpret and report information relating to health and safety in industry
- consider and determine appeals against decisions made by the Director of Industry Safety and others.

APPEAL AND REVIEW

A person who has been served with:

- an improvement notice
- a prohibition notice
- a notice to remedy a defect, or
- a notice to recall, destroy or prevent the use of any plant, substance or structure

may appeal to the Secretary of the Department if aggrieved by the notice. If a person is aggrieved by a decision of the Secretary, they may apply to the Magistrates Court (Administrative Appeals Division) for a review of the decision.

INSPECTORS AND COMPLIANCE

WHAT IS THE ROLE OF AN INSPECTOR?

Inspectors can:

- assist on workplace health and safety matters
- investigate incidents
- enforce provisions of the Act where necessary
- issue notices that require hazards be fixed or that specified work be stopped until a hazard is fixed
- issue infringement notices if an offence (as prescribed in the regulations) is committed
- arrange for interpreters to handle matters relating to employers and employees from non-English speaking backgrounds.

Inspectors have the power to:

- enter non-residential premises at reasonable hours without a warrant
- inspect and take samples
- examine any record
- take photographs
- issue certain notices.

Inspectors are to carry and produce their identification on request.

NOTICES

The legislation allows the Director of Industry Safety and inspectors to issue notices that require improvement, prohibit activity or direct that certain actions occur.

A notice requiring an improvement can be issued if the inspector finds non-compliance

with the Act. This notice sets out the provision not being met, why the inspector considers there is a failure, its nature and the time by which the failure must be corrected.

A notice prohibiting an activity can be issued if the inspector finds non-compliance with the Act and the failure to comply has resulted in, or is likely to result in, serious bodily injury. All work or circumstances which have created the risk of injury must stop until the inspector is satisfied the hazard has been removed or reduced.

A notice can direct that if any plant, substance or structure is unsafe or dangerous then the plant, substance or structure may require a designer, manufacturer, importer or supplier to recall, destroy or prevent the use of such things.

Notices such as those detailed in this section are subject to appeal provisions, which are explained on page 14.

HOW IS THE ACT ENFORCED?

Any breach of duty under the Act or its regulations may be prosecuted. Penalties for offences may include fines for companies and individuals.

The Act also allows an inspector to issue infringement notices (see over page) for certain offences under the Act and regulations.

Other enforcement arrangements enable the Secretary of the Department to enter into a formal agreement with a person. This agreement would contain conditions

INSPECTORS AND COMPLIANCE

or terms to undertake matters under the Act. For example, if an employer had not provided training to employees in manual handling, rather than prosecute the employer on a breach under section 9 of the Act, the Secretary could enter into an agreement where the training is provided to a particular standard within a certain timeframe.

Currently the maximum penalties for a breach of the Act are:

- for a body corporate: 1500 penalty units (\$180,000)
- for a person: 500 penalty units (\$60,000).

The maximum penalties for a breach of a regulation are:

- for a body corporate: 250 penalty units (\$30,000)
- for a person: 100 penalty units (\$12,000).

Correct at January 2008

INFRINGEMENT NOTICES

Workplace Standards Tasmania began using infringement notices as an additional enforcement tool during 2007.

Generally infringement notices are used in cases where:

- the offence that has occurred is obvious and clear-cut
- the offence is of a less serious nature
- the breach of the law is not committed by a repeat offender.

Using infringement notices has a number of positive features; for example:

- they are less complicated than the court process
- they save time for the offender, and reduce administrative work for the Department

- there are reduced legal costs for the offender and the Department
- the penalty has an immediate effect, and, it is anticipated, an immediate change in the offender's behaviour
- in the case of a dispute, matters can be remedied through the courts.

DANGEROUS INCIDENTS AND ACCIDENTS CAUSING DEATH OR SERIOUS INJURY

Information kept by the employer about dangerous incidents and accidents should include:

- the name and address of the employer
- the date and time of the incident or accident
- the location of the workplace where the injury or incident occurred
- the apparent cause and circumstances surrounding the incident or injury
- the work being carried out at the time of the incident or accident (including the duties of any injured person)
- the name and address of any eyewitness.

If bodily injury or death resulted from the accident, the information should also include:

- the name, age and address of the injured person
- the nature, extent and bodily location of the injury
- the estimated period of incapacity
- if death has occurred, the cause, date, time and place of death.

1300 366 322
www.wst.tas.gov.au

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Tasmanian
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