

A guide to the *Workplace Health and Safety Act 1995*

Workplace Health and Safety Queensland



Think Safe – **Work Smart**

Queensland **the Smart State**



**Queensland
Government**
Department of
Industrial Relations

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Introduction

This booklet is a brief guide to the main features of the *Workplace Health and Safety Act 1995*, which sets out the laws about workplace health and safety in Queensland.

The Act applies to all:

- workplaces
- work activities
- specified high risk plant

except for mines and land used for obtaining, mining or conveying petroleum.

What is the objective of the Act?

The objective of the Act is to prevent anyone being killed, injured or contracting an illness because of a workplace, work activities or specified high risk plant. This is achieved by preventing or minimising exposure to risk.

Does the Act apply to you?

Yes, if you are:

- a person who conducts a business or undertaking (whether as an employer, self-employed person or otherwise)
- a person in control of workplaces
- a principal contractor
- a designer, manufacturer or supplier (including importer) of plant
- an owner of specified high risk plant
- a manufacturer or supplier (including importer) of substances
- a designer of a building
- a person in control of a building or structure used as a workplace
- a person in control of fixtures, fittings and plant situated in buildings or structures used as workplaces
- a worker
- a visitor to a workplace (for example a customer or sales representative).

What is the framework of the Act?

The Act provides a framework to prevent or minimise exposure to risk by:

- imposing obligations on people who have the capacity to affect the workplace health and safety of others by what they do, or by what they fail to do
- establishing industry benchmarks through regulations and codes of practice
- establishing a Workplace Health and Safety Board:
 - to allow industry to participate in improving workplace health and safety strategies
 - to promote community awareness of workplace health and safety
- providing for the election of workplace health and safety representatives and establishment of workplace health and safety committees to foster co-operation between employers, principal contractors and workers
- providing for the appointment of:
 - workplace health and safety officers to assist employers and principal contractors
 - accredited providers to assist industry to manage particular risks
 - inspectors to monitor and enforce compliance.

Some terms used in the Act

Workplace

A workplace is any place where work is, or is to be, performed by a worker or by a person conducting a business or undertaking.

Worker

A worker is a person who does work for, or at the direction of, an employer other than under a contract for services.

Employer

An employer is a person who, in the course of his or her business or undertaking, engages someone else to do work, other than under a contract for services.

Self-employed person

A self-employed person is someone who is not an employer or worker, and who does work for gain or reward.

Principal contractor

The principal contractor is the person in control of building or demolition work at the workplace (normally the builder). If no appointment is made, the owner is the principal contractor.

Specified high risk plant

The Act lists specific items of plant that may cause a risk to public health and safety (for example, lifts and escalators).

Your obligations at a workplace

The Act places an obligation on certain persons to ensure their own workplace health and safety and the workplace health and safety of others.

For persons who conduct a business or undertaking (including employers and self-employed persons), this obligation includes:

- identifying hazards, assessing risks, deciding on and implementing appropriate control measures, monitoring and reviewing the effectiveness of the measures
- providing and maintaining a safe and healthy work environment
- providing and maintaining safe plant
- ensuring the safe use, handling, storage and transport of substances
- ensuring safe systems of work
- providing information, instruction, training and supervision.

Work and workplaces

Persons who conduct a business or undertaking (whether as employers, self-employed persons or otherwise) are obliged to:

- ensure the health and safety of each person who performs a work activity for the business or undertaking.

Employers are obliged to:

- ensure the health and safety of each of their workers at work
- ensure their own health and safety
- ensure the health and safety of other people who are not workers (for example visitors, salespeople, passing pedestrians).

Self-employed persons are obliged to:

- ensure their own health and safety
- ensure the health and safety of other people who are not workers (for example visitors, salespeople, passing pedestrians).

Principal contractors (i.e. employers or self-employed persons) are also obliged to:

- ensure the orderly conduct of all construction work at a workplace so as to minimise the risk to health and safety
- ensure workplace operations do not endanger members of the public
- assist an employer to meet his or her workplace health and safety obligations
- provide safeguards and take safety measures under a regulation for principal contractors.

If nobody else owes a health and safety obligation for an item or a hazard at a workplace, then the principal contractor assumes that obligation. If a principal contractor believes an employer or a self-employed person is not meeting their health and safety obligations, the principal contractor must direct them to do so. If the person fails to obey, the principal contractor must direct work to stop until the obligation has been met.

Persons in control of a workplace are obliged to:

- ensure people can come to work at the workplace with minimum risk of injury or illness

- ensure safe access to the workplace for all people, including those who are not workers
- ensure any plant or substance they provide for work by people who are not their workers is safe when properly used.

Workers (and all other persons at a workplace) are obliged to:

- obey the instructions of an employer or principal contractor regarding their health and safety and the health and safety of others
- use personal protective equipment (PPE) if it is provided and they have been trained to use it.

They **must not**:

- deliberately interfere with or misuse anything that has been provided for workplace health and safety
- deliberately endanger the workplace health and safety of any person or deliberately injure themselves.

Plant

Designers of plant are obliged to:

- ensure plant is designed so as to be safe when used properly.

Manufacturers of plant are obliged to:

- ensure plant is constructed so as to be safe when used properly
- ensure plant is appropriately tested and examined.

Suppliers of plant are obliged to:

- examine and test plant or provide a manufacturer's assurance that the plant has been tested.

Designers, manufacturers and suppliers (including importers) of plant are obliged to:

- make available all operating instructions and directions for safe use
- take steps to prevent the use of unsafe plant, including recall if necessary.

Erectors and installers of plant are obliged to:

- erect or install the plant safely
- ensure that nothing about the way the plant was installed makes it unsafe or a risk to health when used properly.

Owners of specified high risk plant are obliged to:

- ensure the plant is maintained so as to be safe and without risk to health when used properly.

Substances

Manufacturers and suppliers (including importers) of substances are obliged to:

- ensure the substances are safe when used properly
- ensure substances are accompanied by appropriate information regarding their safe use
- take steps to prevent an unsafe substance being used.

Manufacturers of substances are obliged to:

- ensure they have been appropriately tested.

Buildings

Designers of buildings are obliged to:

- ensure persons who work in the building or who maintain the building are not exposed to any risk as a consequence of the design.

Persons in control of buildings or structures used as workplaces are obliged to:

- ensure the building or structure and any adjacent area associated with the use of the building is safe and without risk to health.

Persons in control of fixtures, fittings and plant included in buildings or structures used as workplaces are obliged to:

- ensure the fixtures, fittings or plant are safe and without risk to health.

Meeting your obligations

You must meet your obligations regarding health and safety as specified under the Act. If you don't, you are in breach of the law and may be charged with an offence.

Multiple obligations

It is possible for a person to have several obligations. For example, a person can be an employer, a principal contractor and a supplier of plant at the same time at the same workplace.

Defences

If charged with an offence under the Act, you must prove one of the following:

- that you complied with the relevant regulation or ministerial notice
- that you complied with the relevant code of practice
- that you adopted an appropriate way to prevent or minimise exposure to risk and took reasonable precautions and exercised proper diligence
- that the offence was due to causes beyond your control.

Penalties (maximum)

- if the breach caused multiple deaths:
 - \$150,000 or three years imprisonment for an individual
 - \$750,000 for a corporation
- if the breach caused death or grievous bodily harm:
 - \$75,000 or two years imprisonment for an individual
 - \$375,000 for a corporation
- if the breach involved exposure to a substance that is likely to cause death or grievous bodily harm:
 - \$56,250 or one year imprisonment for an individual
 - \$281,250 for a corporation
- if the breach caused bodily harm:
 - \$56,250 or one year imprisonment for an individual
 - \$281,250 for a corporation

- otherwise:
 - \$37,500 or six months imprisonment for an individual
 - \$187,500 for a corporation.

Regulations, ministerial notices and codes of practice

Regulations

Regulations set out legal requirements affecting performance of work that must be followed.

A regulation may do one of the following:

- deal with administrative matters (for example the need to register a workplace)
- prohibit exposure to risk (for example stopping work during the removal of asbestos if the concentration of asbestos fibre exceeds 0.5 of the national exposure standards)
- prescribe ways to prevent or minimise exposure to risk (for example ensuring proper labeling of hazardous substances).

Ministerial notices

If an urgent situation arises where there is a risk of serious bodily injury, work-caused illness or a dangerous event occurring:

- at or near a workplace because of workplace activity
- at any place because of specified high risk plant

the Minister may issue a ministerial notice that prescribes ways of preventing or minimising exposure to the risk.

Codes of practice

Codes of practice state ways to manage exposure to risks in workplaces. You may choose another way, but it will then be up to you to show that you took the proper steps to meet your obligations.

Codes of practice may be used as evidence in legal proceedings against a person under the Act.

Where there is no regulation, ministerial notice or code of practice

Where there is no regulation, ministerial notice or code of practice about exposure to a risk, you can meet your obligations by choosing any appropriate way to minimise exposure to a risk. However, you must take reasonable precautions and exercise proper diligence in making sure the risk is managed. At the very least, a risk assessment needs to be conducted to identify hazards and determine appropriate control measures. The process for conducting a risk assessment is set out in the *Risk Management Code of Practice 2000*.

Registration

The following things must be registered with Workplace Health and Safety Queensland:

- registrable plant
- registrable plant design.

The *Workplace Health and Safety Regulation 1997* lists what must be registered, the fees that must be paid and the procedures for applying for registration.

Also, certain building and construction work costing \$80,000 or more must be notified and the fee paid. The notification and fee is payable at the same time the levy is payable to QLeave.

Certification and licensing

In order to demonstrate their competence and safe handling of particular items of plant and certain processes, persons working in the following ‘prescribed’ occupations are required to undertake training and be licensed under the Act:

- crane operators—tower, derrick, portal boom, bridge or gantry, vehicle loading, nonslewing mobile, slewing mobile, elevating work platform, concrete placing boom, personnel hoists and material hoists
- load shifting equipment operators—dozer, excavator, forklift truck, order-picking forklift truck, front-end loader, front-end loader/backhoe, grader, road roller, skid steer and scraper

- pressure equipment operators—boiler, turbine and steam engine
- riggers
- doggers
- scaffolders.

In addition, in order to demonstrate their ability to safely handle certain dangerous work situations, businesses undertaking the following ‘prescribed’ activities must be licensed under the Act:

- demolition work
- asbestos removal work.

Records and reports

Employers, self-employed people and principal contractors must make a record of every work injury, work-caused illness and dangerous event that happens at their workplace.

Where there is a serious injury, work-caused illness or dangerous event, a notice must be sent to Workplace Health and Safety Queensland.

Consultation

The Act provides for consultation about workplace health and safety at both industry and workplace levels. Consultation develops partnerships and promotes cooperation among government, employers and workers to influence the future of workplace health and safety in Queensland.

Industry consultation

The Workplace Health and Safety Board and Industry Sector Standing Committees provide a forum for consultation at the industry level.

The Workplace Health and Safety Board is appointed by the Minister and consists of a chairperson, who must be representative of industry, and at least six other members, who must be chosen because of their practical experience and competence in the management of workplace health and safety.

Industry Sector Standing Committees give advice and make recommendations to the Workplace Health and Safety Board relating to workplace health and safety in the industry they represent.

An Industry Sector Standing Committee is appointed by the Minister,

and consists of a chairperson and at least six other members, who must be chosen because of their practical experience and competence in the management of workplace health and safety.

Workplace consultation

The Act provides for employers and workers to deal with workplace health and safety issues together.

Workplace health and safety representatives

Workers may elect co-workers to represent them on health and safety issues. No special qualifications or experience are required to be a representative. Extra representatives can be elected after negotiations with the employer.

Workplace health and safety representatives are entitled to:

- carry out regular workplace health and safety inspections
- be told by the employer of any workplace incident
- be present when an employer interviews a worker about a workplace incident (if invited by the worker)
- review the circumstances of any workplace incident, to advise the employer of the findings and to make resulting recommendations
- be consulted by the employer regarding proposed changes that may affect workplace health and safety in the area they represent
- help resolve workplace health and safety issues
- be told by the employer when a workplace health and safety inspector is at the workplace
- report any issue affecting workplace health and safety to the workplace health and safety officer or the employer
- expect the employer to cooperate in remedying the issue and if this does not happen, to report the issue to an inspector
- ask the employer to establish a workplace health and safety committee, and to be a member
- attend prescribed training and to have all reasonable costs of attendance, including course fees and the representative's usual remuneration, met by the employer.

An employer:

- may not appoint workplace health and safety representatives
- must facilitate elections
- must negotiate with workers, or at the worker's request, their union about workplace health and safety representatives for the workplace
- may allow representatives to inspect the workplace and exercise their other entitlements during normal working hours
- must help conduct elections for representatives if asked by their workers
- must provide health and safety information.

Workplace health and safety committees

The main function of a **workplace health and safety committee** is to promote cooperation between employers, principal contractors and workers to ensure workplace health and safety.

The committee also provides information to workers and advice to the employer or principal contractor on workplace health and safety matters.

A health and safety committee will be established:

- if required by an employer or principal contractor
- if the workplace health and safety representative asks for one
- if the work is particularly hazardous.

A committee must have at least two members including:

- the workplace health and safety officer and any workplace health and safety representative
- others as negotiated between the worker and the employer or principal contractor.

Workplace health and safety officers

A health and safety officer must be appointed:

- when there are 30 or more workers normally employed at a workplace (i.e. for a total of 40 days or more per year)
- if there are fewer than 30 workers and the employer or principal contractor considers it necessary

- if the principal contractor has 30 or more people working during a 24 hour period or has built 30 or more houses during the past year.

A principal contractor can appoint a workplace health and safety officer in other circumstances if it is considered necessary. An employer or principal contractor can appoint a person to be the workplace health and safety officer for more than one workplace, if the person can carry out the duties at each workplace.

Workplace health and safety officers:

- advise on health and safety at the workplace
- carry out inspections to detect unsafe conditions and practices
- report unsafe conditions, work practices, work injuries, work-related illness and dangerous events to the employer or principal contractor
- investigate work-caused injuries, illness and dangerous events
- set up educational programs in workplace health and safety
- assist workplace health and safety inspectors as requested
- conduct workplace assessments
- assist inspectors.

Workplace health and safety inspectors

The main role of inspectors is to monitor compliance with the Act. Each inspector is issued with an identity card containing a signature and a recent photograph, which he or she must show you before exercising any power under the Act. Even if it is inconvenient, you must give an inspector reasonable help when asked to do so, unless you think you may incriminate yourself.

Entering a place

An inspector can enter a place only if it meets one of the following conditions:

- it is a workplace
- the inspector reasonably suspects it is a workplace
- it is land around domestic premises which provides access to a workplace
- the occupier consents to entry
- the entry is authorised by a warrant.

An inspector does not need a warrant or the occupier's consent to enter a public place or the land around premises.

If it is possible, an inspector must first tell the occupier of domestic premises that he or she intends to gain access to the workplace on or near the premises.

General powers of inspectors

Inspectors may:

- enter a workplace and search any part of it
- inspect, measure, test, photograph and film anything in the workplace
- take things or samples
- copy documents
- conduct tests
- take any necessary person or equipment into the workplace
- ask for reasonable help.

An inspector can seize an item if he or she believes it constitutes evidence of an offence, and seizure is consistent with the reason for entry to the occupier when asking for consent to enter the premises.

Seizure is necessary to prevent the item being hidden, lost, destroyed or used to continue to commit the offence.

An inspector can require a person who has committed, or who is about to commit an offence under the Act, to supply his or her name and address.

Improvement notices

If an inspector believes that a person is contravening the Act, or has contravened the Act, and is likely to do so again, he or she may issue an improvement notice which must state:

- what is wrong
- what must be done to fix it
- a deadline.

A person must obey an improvement notice.

Prohibition notices

If an inspector believes that a substance, process or activity poses an immediate threat to health and safety in a workplace, he or she may issue a prohibition notice, directing an employer or principal contractor to stop.

The notice must state:

- what is causing the risk
- the relevant part of the legislation
- what must be done before the prohibition will be lifted.

A person must obey a prohibition notice.

On-the-spot fines (infringement notices)

On-the-spot fines can only be issued for workplace health and safety offences contained in the *State Penalties Enforcement Regulation 2000*.

The schedule includes a number of offences from the *Workplace Health and Safety Act 1995* and the *Workplace Health and Safety Regulation 1997*.

Different penalties exist for individuals and corporations. The penalties for on-the-spot fines range from \$150 to \$1,500.

Appeals

If your interests are affected by a decision made under the provisions of the Act, you may appeal the decision in two ways:

- you can apply for a review by the chief executive of the Department of Industrial Relations
- you may appeal to the Industrial Court.

Further information

For further information, contact Workplace Health and Safety Queensland –
Telephone: 1300 369 915
Website: www.dir.qld.gov.au

Disclaimer

The information provided in this publication is distributed by the Queensland Government as an information source only. The information is provided solely on the basis that readers will be responsible for making their own assessment of the matters discussed herein and are advised to verify all relevant representations, statements and information.

For specific information on matters discussed in this publication please refer to the *Workplace Health and Safety Act 1995*.

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