

A quick start 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

Further information

For further information, contact Workplace Health and Safety Queensland on **1300 369 915** or visit the website on **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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What is the aim of the Act?

The *Workplace Health and Safety Act 1995* (the Act) sets out the laws about workplace health and safety for all workplaces, relevant workplace areas, work activities or by plant or substances for use at workplaces in Queensland.

It does not apply to mines or land used for obtaining petroleum or used for geothermal exploration.

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

Do you have obligations under the Act?

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

People who have an obligation are:

- a person who conducts a business or undertaking, whether as employers, self-employed persons or otherwise
- a person in control of workplaces
- a principal contractor
- a designer, manufacturer or supplier of plant
- an erector or installer of plant
- an owner of plant
- a manufacturer or supplier of substances
- a designer of structures to be used as workplaces
- a person in control of relevant workplace areas
- a person in control of fixtures, fittings or plant included in relevant workplace areas
- a worker
- a visitor to a workplace for example a customer or sales representative.

A **relevant person** who conducts a business or undertaking (including employers and self-employed persons) has obligations including:

- 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.

Workplace health and safety obligations

What are your obligations?

The **relevant person** who conducts a business or undertaking as an employer, self-employed person or otherwise must ensure that they and each of their workers and any other persons are not exposed to risks to their health and safety from the way they conduct their business or undertaking.

Persons in control of workplaces must ensure the risk of injury or illness is minimised for persons coming to work at the workplace. This includes the risk of injury or illness from plant and substances. A person in control of a workplace must also ensure there is safe access to and from the workplace for everyone.

If a **relevant person** is a **principal contractor**, then they have a number of additional obligations aimed at ensuring that all construction work is carried out so as to ensure workplace health and safety.

Designers, manufacturers and suppliers (including importers) of plant must ensure the plant is safe and does not pose a health risk when used properly. Obligations cover the design, manufacture, testing and examination of plant and the provision of information about its safe use.

Erectors and installers of plant must erect or install the plant using safe procedures. They must also ensure that nothing about the way the plant is erected or installed makes it unsafe or a risk to health when used properly.

Owners of plant must ensure it is maintained so as to be safe and without risk to health when used properly.

Manufacturers and suppliers (including importers) of substances to be used at workplaces must ensure the substances are safe and without risk to health when used properly.

They must also ensure the substances undergo appropriate examination and testing and that information about their safe use is available.

Designers of structures used as workplaces must ensure that people who subsequently use and maintain and repair the structure are not exposed to risks to their health and safety as a consequence of the design.

Persons in control of relevant workplace area must ensure that the relevant workplace area is safe and without risk to health.

Persons in control of fixtures, fittings or plant included in relevant workplace area must ensure that these are safe and without risk to health.

Workers and other persons at workplaces must follow instructions given by an employer or principal contractor. They must not deliberately put the workplace health and safety of anyone at risk, injure themselves or misuse anything provided for workplace health and safety. Workers must use personal protective equipment if it is provided by an employer and if they have been trained in its use

How to meet your obligations

You can have more than one set of obligations under the Act. For example, you may be an employer and a principal contractor at the same time and at the same workplace. In this case, you would have two sets of obligations - those of an employer and a principal contractor.

You must meet your obligations under the Act. This can be done in the following ways:

Regulations either prohibit exposure to a risk or prescribe ways to prevent or minimise exposure to a risk. To meet your obligations under the Act, you must comply with regulations.

Codes of practice state ways to manage exposure to risks common to industry. To meet your obligations under the Act, you must follow codes of practice or adopt another way that offers at least the same

level of protection as a relevant code if you think it is more suited to your business or work activity. This flexibility is designed to allow you to choose the most appropriate way to manage exposure to risks at your workplace.

Ministerial notices

The Minister may issue a Ministerial notice that prescribes ways of preventing or minimising exposure to a risk if an urgent situation arises where there is a risk or likely to be a risk of serious bodily injury, work caused illness or a dangerous event happening. To meet your obligations under the Act, you must comply with the notices.

Where there is no regulation, code of practice or Ministerial notice about exposure to a risk, you can meet your obligations by choosing any appropriate way to minimise exposure to a risk and you must take reasonable precautions and exercise proper diligence in making sure the risk is managed. To properly manage exposure to risks, the risk management process must be undertaken to identify hazards and determine appropriate control measures. The process is set out in the *Risk Management Code of Practice*.

What are the penalties for a breach of an obligation?

If you breach an obligation under the Act, you can be prosecuted. Penalties are substantial, ranging from \$37,500 or six months imprisonment for an individual or \$187,500 for a corporation, to

a maximum penalty for a breach causing death or grievous bodily harm of \$75,000 or two years imprisonment for an individual and \$370,000 for a corporation. If there are multiple deaths then the maximum penalty increases to \$150,000 or three years imprisonment for an individual and \$750,000 for a corporation.

Mitigating factors

By following a regulation, Ministerial notice or code of practice you will have a defence in a prosecution for a breach of an obligation.

It is also a defence if the breach happened over which you had no control.

If you do not follow a code of practice, you must show you took reasonable precautions and exercised proper diligence in choosing an appropriate way to manage exposure to the risk.

Workplace consultation

Workplace health and safety representatives are elected by fellow workers. Representatives are entitled to carry out inspections and review the circumstances of workplace incidents. They are also entitled to participate in the workplace health and safety committee. A workplace health and safety representative does not need any experience or special qualifications.

Workplace health and safety committees help in the cooperation between employers and workers. A member must be an employer, principal contractor

or worker at the workplace. A committee considers health and safety issues and reports on these to the employer. An employer may form a workplace health and safety committee on his or her own initiative, but must do so if the representative requests it.

Workplace health and safety officers

Workplace health and safety officers are appointed by employers and principal contractors where there are 30 or more workers at the workplace to provide advice about workplace health and safety. They carry out inspections and audits, set up educational programs about workplace health and safety, help investigate all workplace incidents and conduct annual workplace assessments. Workplace health and safety officers require special qualifications.

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 to QLeave and the fee paid.

Certification and licensing

In order to demonstrate their competence and safe handling of particular items of plant and certain processes, people 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, non-slewing mobile, slewing mobile, self-erecting tower crane, 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/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 or individuals undertaking the following ‘prescribed’ activities must be licensed under the Act:

- demolition work
- asbestos removal work.

Records and reports

The relevant person at the workplace, who can be an employer or self-employed person, and principal contractors, must make a record of every workplace incident that happens at their workplace.

Where there is a workplace incident that involves a serious bodily injury, a work caused illness or a dangerous event, a notice must be sent to Workplace Health and Safety Queensland in the approved form. The types of incidents are defined in Schedule 3 of the Act.

Inspectors

An inspector may visit your workplace:

- in the course of regular auditing duties to check the effectiveness of health and safety management programs
- to register high risk plant
- to investigate serious accidents or complaints
- to provide advice on managing health and safety risks.

It is an inspector's role to monitor and enforce compliance with workplace health and safety standards.

Each inspector is issued with an identity card containing a recent photograph and signature, which he or she must show you before exercising any power under the Act.

Even if it is inconvenient, you must give an inspector all reasonable help when asked to do so, unless you think you might incriminate yourself.

An inspector may inspect and search a workplace, inquire into the circumstances and likely causes of workplace incidents and take things from workplaces. They can also seize evidence and issue improvement and prohibition notices and on-the-spot fines.

Workplace Health and Safety Queensland

Telephone: 1300 369 915

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