

Rights and obligations

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What are your obligations?

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General information

In order to understand the requirements and your obligations for workplace health and safety you must consider and understand relevant legislation and codes of practice.

General health and safety obligations

To understand your obligations and safety requirements you must be familiar with the:

- *Workplace Health and Safety Act 1995* which imposes obligations on people at workplaces to ensure workplace health and safety.

The *Workplace Health and Safety Act 1995* also helps you to meet your workplace health and safety obligations through the:

- *Workplace Health and Safety Regulation 1997* which describes what must be done to prevent or control certain hazards which cause injury, illness or death
- codes of practice (or prior to 18 November 2004, advisory standards) which are designed to give practical advice about ways to manage exposure to risks common to industry.

Every Queensland employer must have **workers' compensation** insurance. Most employers insure with WorkCover Queensland, while a small number of large organisations have their own insurance. This insurance coverage ensures that employees injured at work receive financial support.

What you must do

If the *Workplace Health and Safety Regulation 1997* describes how to prevent or minimise a risk at your workplace you **must** do what the regulation says.

If there is a code of practice (or prior to 18 November 2004, an advisory standard) that describes how to prevent or minimise a risk at your workplace you **must** do what the code says or adopt and follow another way that gives the same level of protection against the risk.

If there is no regulation or code of practice about a risk at your workplace you **must** choose an appropriate way to manage exposure to the risk. People must, where there is no regulation or code of practice about a risk, take reasonable precautions and exercise proper diligence against the risk.

See the *Risk Management Advisory Standard 2000* (now known as a Code of Practice) for further information.

Who has obligations?

Everyone has a part to play in ensuring their workplace health and safety and the workplace health and safety of others in Queensland...

The *Workplace Health and Safety Act 1995* specifies workplace health and safety obligations for individuals in their various roles.

This means **you may have multiple obligations**.

For example:

A person may be an employer, principal contractor and supplier of plant at the same time. In this case, the person has obligations in each of these capacities.

The *Workplace Health and Safety Act 1995* specifies the obligations for:

People who conduct a business or undertaking

Workplace health and safety obligations for people who conduct a business or undertaking, including employers, self-employed people and relevant persons

People in control of a workplace

Workplace health and safety obligations for people in control of a workplace, including owners

Principal contractors

Workplace health and safety obligations for principal contractors

People in control of relevant workplace areas

Workplace health and safety obligations for people in control of relevant workplace areas, including owners

People in control of fixtures, fittings or plant included in relevant workplace areas

Workplace health and safety obligations for people in control of fixtures, fittings or plant included in relevant workplace areas, including owners

Designers of plant

Workplace health and safety obligations for designers of plant

Manufacturers of plant

Workplace health and safety obligations for manufacturers of plant

Hirers, importers and suppliers of plant

Workplace health and safety obligations for hirers, importers and suppliers of plant

Owners of plant

Workplace health and safety obligations for owners of plant

Erectors and installers of plant

Workplace health and safety obligations for erectors and installers of plant

Manufacturers of substances

Workplace health and safety obligations for manufacturers of substances

Suppliers and importers of substances

Workplace health and safety obligations for suppliers and importers of substances

Designers of structures

Workplace health and safety obligations for designers of structures, including building designers

Workers

Workplace health and safety obligations for workers

Workplace visitors

Workplace health and safety obligations for workplace visitors

Volunteers

Workplace health and safety obligations for volunteers and volunteer organisations

People who conduct a business or undertaking

A person who conducts a business or undertaking is considered a relevant person and can include:

- employers
- self-employed people
- volunteer organisations

A relevant person has an obligation to ensure the workplace health and safety of:

- all workers carrying out work for the business or undertaking
- volunteers who perform work activities for the business or undertaking
- all other people including customers, visitors to the workplace, passers by and neighbours
- themselves

Meeting your workplace health and safety obligations involves:

- 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 to ensure health and safety.

For more details on your workplace health and safety obligations, refer to part 3 of the *Workplace Health and Safety Act 1995*.

People in control of a workplace

The person in control of a workplace is usually the owner unless a lease or contract arrangement puts the effective control of the area in someone else's hands.

You must ensure:

- the workplace is safe and without risk of injury or illness to anyone coming to your workplace to work
- the workplace is safe and without risk of illness or injury from any plant or substance used properly in the course of work
- appropriate safe access to and from the workplace

For more details on your workplace health and safety obligations, refer to part 3 of the *Workplace Health and Safety Act 1995*.

Principal contractors

Principal contractors must:

- assist employers and/or self-employed people at the workplace to discharge their workplace health and safety obligations
- protect people at the workplace from exposure to risks arising from something provided for general use at the workplace and a hazard for which no one else owes a workplace health and safety obligation
- protect members of the public from injury or illness caused by work activities at or near the workplace
- provide safeguards and take safety measures under a regulation made for principal contractors
- ensure people at the workplace comply with their workplace health and safety obligations

For more details on your workplace health and safety obligations, refer to part 3 of the *Workplace Health and Safety Act 1995*.

People in control of relevant workplace areas

The ***person in control***, of a relevant workplace area, is either the owner or person who has been given control over the area, for example through a contractual arrangement with the owner.

You must ensure the relevant workplace area is safe and without risk to health.

This obligation does not apply to workplace areas which are also domestic premises of the person in control.

For more details on your workplace health and safety obligations, refer to part 3 of the *Workplace Health and Safety Act 1995*.

People in control of fixtures, fitting or plant in relevant workplace areas

The person in control of fixtures, fittings or plant is usually the owner unless a lease or contract arrangement puts the effective control in someone else's hands.

For example:

A business leases a building from a building owner, but installs its own plumbing and lighting. The business owner is then considered to be in control of the fixtures and fittings at that workplace

You must ensure that the fixtures, fitting or plant are safe and without risk to health.

For more details on your workplace health and safety obligations, refer to Part 3 of the *Workplace Health and Safety Act 1995*.

Designers of plant

You must ensure that the plant for use at a workplace is:

- designed to be safe and without risk to health when used properly
- accompanied by information about how it is to be used to ensure health and safety

For more details on your workplace health and safety obligations, refer to part 3 of the *Workplace Health and Safety Act 1995*.

Manufacturers of plant

You must ensure that the plant for use at a workplace is:

- manufactured to be safe and without risk to health when used properly
- upon manufacture is tested and examined to ensure it has been manufactured to be safe and without risk to health when used properly
- accompanied by information on how it must be used to ensure health and safety

For more details on your workplace health and safety obligations, refer to part 3 of the *Workplace Health and Safety Act 1995*.

Hirers, importers and suppliers of plant

Importers and suppliers of plant for use at a workplace have the same obligations, and a hirer of plant must have information about the safe use of the plant available at the point of hire.

If you supply **new plant**, you must:

- examine and test the plant to ensure it is safe and without risk to health when used properly
- ensure the manufacturer has given an assurance that the plant is safe and without risk to health when used properly

If you supply **used plant**, you must:

- take all reasonable steps to ensure that the plant is safe and without risk to health when used properly. For example, you might test the plant yourself to establish it is safe and without risk to health
- ensure information accompanies the plant on how to use it safely if the information is available

For more details on your workplace health and safety obligations, refer to part 3 of the *Workplace Health and Safety Act 1995*.

Owners of plant

Owners of plant must ensure the plant is maintained in a condition that ensures it is safe and without risk to health when used properly.

For more details on your workplace health and safety obligations, refer to part 3 of the *Workplace Health and Safety Act 1995*.

Erectors and installers of plant

You must ensure that plant erected or installed at a workplace:

- is erected or installed in a way that is safe and without risk to health, and that
- nothing about the plant's installation or erection makes it unsafe or a risk to health when used properly

For more details on your workplace health and safety obligations, refer to part 3 of the *Workplace Health and Safety Act 1995*.

Manufacturers of substances

You must ensure that the substance is:

- safe and without risk to health when used properly
- tested and examined to ensure it is safe when used properly
- accompanied by relevant information about its use when supplied to another person

For more details on your workplace health and safety obligations, refer to part 3 of the *Workplace Health and Safety Act 1995*.

Suppliers and importers of substances

You must ensure that:

- all reasonable steps are taken to guarantee the substance is safe and without risk to health when properly used
- the substance is accompanied by relevant information about its use

For more details on your workplace health and safety obligations, refer to part 3 of the *Workplace Health and Safety Act 1995*.

Designers of structures

You must ensure that the buildings and other structures you design as workplaces **can be used, repaired and maintained in a safe way for relevant persons when used as a workplace and for the purpose for which it was designed.**

You need to take particular note of:

- adequate ventilation
- adequate lighting in plant rooms
- availability of anchorage points for window cleaners
- ease of access to the building for maintenance purposes
- provision for maintenance and servicing of air-conditioning units

The building designer's obligation is restricted to the design of the building; it does not extend to the building's subsequent use or alteration.

The obligations don't apply to residential premises or to building designs initiated before 1 June 2004.

For more details on your workplace health and safety obligations, refer to part 3 of the *Workplace Health and Safety Act 1995*.

Workers

You have a workplace health and safety obligation to yourself and to others.

You must:

- comply with instructions given for workplace health and safety
- use personal protective equipment if the employer provides it and if you're properly instructed in its use
- not wilfully or recklessly interfere with or misuse anything provided for workplace health and safety at the workplace
- not wilfully place others at risk
- not wilfully injure yourself

For further details on your workplace health and safety obligations, refer to part 3 of the *Workplace Health and Safety Act 1995*.

Workplace visitors

You have a responsibility regarding your own health and safety when visiting a workplace, and an obligation to others at that workplace.

You must:

- follow directions given by an employer to maintain workplace health and safety
- do what a principal contractor tells you, if at a construction workplace
- not wilfully misuse or recklessly interfere with anything provided for workplace health and safety
- not wilfully place the safety and well-being of others at risk
- not wilfully injure yourself

For more detail on your workplace health and safety obligations, refer to part 3 of the *Workplace Health and Safety Act 1995*.

Volunteers

Both volunteers and volunteer organisations have obligations under the *Workplace Health and Safety Act 1995*.

For example:

A surf lifesaving club provides a service to the community. The surf lifesavers are usually volunteers who perform work activities for the club. The club has an obligation to the surf lifesavers to ensure the workplace health and safety of all who perform work for the club – whether they are paid or not.

Volunteers have the same workplace health and safety obligations as a worker and must:

- comply with instructions given for workplace health and safety by the employer
- not wilfully or recklessly interfere or misuse anything provided for workplace health and safety
- not place anyone else at risk of injury or illness at the workplace
- not wilfully injure yourself

For more detail, refer to part 3 of the *Workplace Health and Safety Act 1995*.

Meeting your obligations

How to meet your obligations

You can meet your workplace health and safety obligations by following the law.

- If a regulation or ministerial notice tells you how to prevent or minimise exposure to a risk, you must comply.
- If a regulation or ministerial notice prohibits exposure to a risk, you must comply.
- If a code of practice states a way of managing exposure to a risk, you must adopt and follow that approach or one that gives you at least the same level of protection against the risk.

If there is **no regulation, ministerial notice or code of practice to guide you** in managing a particular risk or preventing exposure to it, **you still have a workplace health and safety obligation**. You can meet your obligation by taking reasonable precautions and exercising due care in your work activities.

Otherwise you are breaching the law. Penalties may be imposed for breaching the workplace health and safety laws.

See the *Risk Management Advisory Standard 2000* (now known as a Code of Practice) for further information.

Protection for speaking up

As a workplace health and safety officer, workplace health and safety representative or worker, you may have a concern about a workplace health and safety issue at your workplace.

The *Workplace Health and Safety Act 1995* encourages you to speak up, protecting you from victimisation.

Amendments to the Act in 2003 particularly protect:

- workplace health and safety officers;
- workplace health and safety representatives; and
- members of a workplace health and safety committee.

By law, an employer cannot dismiss or victimise you for:

- making a complaint about an issue concerning exposure to a risk of illness or injury; or
- contacting or helping a workplace health and safety inspector.

Refer to Section 174 of the *Workplace Health and Safety Act 1995* for more information.

Failing to meet obligations

If you fail to meet your workplace health and safety obligations, you are breaking the law.

Putting people's health and lives at risk in a workplace may be detected during an inspection, prompted by a complaint, or as a result of a workplace health and safety audit.

Penalties can be imposed.

You can face prosecution.

Defences

If you are alleged to be in breach of the *Workplace Health and Safety Act 1995*, you will need to show that:

If a regulation or ministerial notice has been made about way/s to manage exposure to the risk

- you followed the way prescribed in the regulation or notice to prevent the contravention.

If a code of practice has been made stating how to manage the risk

- you adopted a way of managing the risk as stated in the code **or**
- you adopted another way of managing the risk, took reasonable precautions and exercised proper diligence.

If no regulation, ministerial notice or code of practice has been made about exposure to the risk

- you adopted a way of managing the risk, took reasonable precautions and exercised proper diligence.

It is also a defence if you can prove that the causes of offence were beyond your control.

Union right of entry

Authorised representatives of employee organisations (e.g. unions) have powers under the *Workplace Health and Safety Act 1995* to enter workplaces to:

- discuss workplace health and safety matters; and
- investigate suspected contraventions of workplace health and safety law.

Representatives are authorised to exercise these powers under both state and federal laws if they hold the appropriate identification card or permit. For workplaces covered by the federal *Workplace Relations Act 1996*, for example workplaces occupied by a corporation, **both** state and federal authorisation is required for a representative to enter a workplace.

A representative is authorised in Queensland by the Industrial Registrar. An authorised representative is then provided with an identification card under the *Workplace Health and Safety Act 1995*.

A federal permit is issued under the *Workplace Relations Act 1996* by the Australian Industrial Registrar. It is referred to as a permit to enter and inspect premises.

Entry to discuss workplace health and safety matters

An authorised representative may enter a workplace to discuss workplace health and safety matters:

- if a worker working at the place is a member, or is eligible to be a member, of the representative's employee organisation
- after giving 24 hours written notice of the entry and reasons for the entry
- only with eligible members who wish to take part in the discussions
- only during work break times, such as meal breaks, periods immediately before or after work commences

There are also requirements for notification of entry by a representative and expectations for the conduct of both occupiers (e.g. employers) and representatives.

Penalties (including disciplinary action) exist under state and federal laws if an occupier (e.g. employer) or representative contravenes these requirements.

For detailed information on the powers of representatives, notification requirements, expectations of conduct and penalties refer to the Legislative Application: Union Right of Entry

Entry to investigate suspected contraventions of workplace health and safety law

An authorised representative may enter a workplace to investigate suspected contraventions of workplace health and safety law:

- if a worker working at the place is a member, or is eligible to be a member, of the representative's employee organisation; and
- if they reasonably suspect a contravention has happened or is happening at the place that relates to or affects the eligible member

There are also requirements for notification of entry by a representative, including giving a written notice of the entry and reasons for the entry, and expectations for the conduct of both occupiers (e.g. employers) and representatives.

After entry an authorised representative has a number of powers to investigate the suspected contravention. This includes the power to:

- inspect plant, substances or other things relevant to the suspected contravention outlined in their written notice;
- observe work being carried on;
- speak to eligible members with their consent;
- speak to the occupier about matters relevant to the suspected contravention outlined in the written notice;
- require documents to be produced or copied only if the documents are relevant to the suspected contravention outlined in the written notice. If these documents are employment records then the representative must give 24 hours written notice of their intention to inspect these records including reasons; and
- require the occupier to give reasonable help to exercise these powers.

Penalties (including disciplinary action) exist under state and federal laws if an occupier (e.g. employer) or representative contravenes these requirements.

For detailed information on the powers of representatives, notification requirements, expectations of conduct and penalties refer to the Legislative Application: Union Right of Entry