

Workplace Health and Safety Issues

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1. Introduction

Office work environments have traditionally been regarded as "safe". However, WorkCover statistics for Victoria suggest that this may not be so, revealing that office workers account for approximately 15% of all compensation claims. The figures are likely to be similar nationally. The following is an overview of the duties prescribed by law to ensure a safe working environment

An area of particular importance in the context of libraries is the duty placed upon employers to provide a safe workplace not only for their employees but for all who enter work premises. Children and people with disabilities who attend libraries may be at greater risk of injury than others. This risk is foreseeable and the duty of the employer as the occupier of the premises is to ensure that the way the undertaking is conducted will not expose others to risk

2. Legislative and regulatory framework

All states and territories have passed legislation regarding occupational health and safety issues. The provisions of the legislation are similar in concept and in the nature of the general duties, but vary considerably in the detail of specific regulatory requirements. The move towards greater national uniformity in workplace legislation has been espoused in principal by all States, but is progressing very slowly. The national body, WorkSafe Australia, has a coordinating role and devises national Advisory Codes of Practice which can be adopted by the States. In Victoria the principal legislation is the *Occupational Health and Safety Act 1985*. The Act is supported by an extensive regulatory framework. In addition to the Occupational Health and Safety Act and Regulations made under that Act, *Codes of Practice* and relevant *Australian Standards* provide practical guidance on how to comply with duties imposed by the legislation. This basic framework applies in all states and Territories.

While compliance with *Codes of Practice* is not mandatory in most states, failure to comply with existing industry standards is a factor that can be considered when an employer's liability for breach of occupational health and safety legislation is being considered.

In addition to the legislative developments, Australian courts have developed the common law to impose stringent duties upon employers to provide a safe working environment for their employees.

3. *Liability*

(i) **Civil**

A breach of the duties placed upon employers to provide a safe working environment for their employees may result in civil liability to pay compensation, and in certain circumstances, damages, to an injured worker. This is covered by compulsory employers' liability insurance in all states and territories. In Victoria the scheme is known as WorkCover, administered under the *Accident Compensation Act 1985*.

(ii) **Criminal**

A breach of the duties imposed under the occupational health and safety legislation constitutes a criminal offence and may result in a prosecution before the Magistrates' Court (or District Courts), or in more serious cases, the superior courts. Some states have a designated industrial court which presides over all these cases

In Victoria, where the person breaching the duties imposed by the Act or Regulations is a body corporate, the penalty for a first offence can be up to \$40,000, or for an individual, \$10,000. There is provision under the Act for higher penalties to be imposed for second and subsequent offences. These penalties range up to \$250,000 for a corporation, and \$50,000 for an individual. Penalties vary between the states and in New South Wales the maximum penalty for a corporation is \$250,000 or \$500,000 for a second or subsequent offence

(iii) **Personal liability**

Where an offence against the occupational health and safety legislation is committed by a body corporate, an officer of the body corporate may also be guilty of the offence and liable to a penalty under specific circumstances. In Victoria, these are if the offence has been committed with the consent or connivance of, or attributable to any willful neglect on the part of that officer. An "officer" is broadly defined and can extend to a person concerned in the management of the body corporate. Similar provisions exist in other States. Although the language varies, the requirement is for some conscious and deliberate conduct

(iv) **Crimes Act prosecutions**

Under the occupational health and safety legislation, it is not strictly necessary that any injury has resulted from the conduct breaching the duties imposed in order for a prosecution to result. However, in practice prosecutions generally only follow an injury.

Where a worker has been killed or injured, there is also scope under the state Crimes Acts for an employer to be prosecuted with criminal offences such as manslaughter or negligently causing injury. The prosecution may be directed at the corporation, or individuals within it whose conduct falls within the scope of conduct proscribed that is, deliberate, willful conduct or gross negligence.

4. Duties

General

The general duties under the occupational health and safety legislation specify that an employer must ensure a working environment that is safe and without risk to health. In some States the general duty provision is qualified by the requirement to do only that which is practicable. In other states, the duty is absolute, but it is a sustainable defence to conviction if the employer can establish that all that was practicable in the circumstances was done.

(i) Specific duties

- (a) To provide and maintain plant and systems of work;
- (b) To ensure safety and absence of risks to health in the use, handling, storage and transport of plant and substances;
- (c) To maintain the workplace;
- (d) To provide facilities for the welfare of employees;
- (e) To provide information, instruction, training and supervision.

These are the specific duties imposed by the Victorian Act, other states' provisions vary slightly in thrust and language

(ii) Extent of Duties

The Acts generally provide that the employer owes the duties mentioned above to its employees. Usually however, the definition of "employee" generally includes an independent contractor engaged by an employer and any employee of the independent contractor. The nature of the duty is extremely onerous and has been construed by the courts to apply even when the injury results from the aberrant acts of an employee, where better supervision or training might have prevented injury.

The duties are also extended to invitees to the workplace who are not engaged in employment there

(iii) Practicability

An employer must do everything that is practicable to discharge each of the duties mentioned above. "Practicable" is not defined in every state, but where it is defined, either by the Act or the interpretation of the courts, it means practicable having regard to:

- (a) the severity of the hazard or risk;
- (b) the state of knowledge about that hazard or risk and any ways of removing or mitigating that hazard or risk;
- (c) the availability and suitability of ways to remove or mitigate that hazard or risk; and
- (d) the cost of removing or mitigating that hazard or risk.

5. Accident Compensation Act 1985

Employers' liability schemes vary from state to state, particularly in the formulation of entitlements. Without going into jurisdictional detail, a short description of the Victorian provisions will illustrate how the schemes operate in general terms.

The *Accident Compensation Act* came into effect in Victoria on 1 September 1985 replacing (except for certain transitional provisions) the *Workers' Compensation Act 1958*. The major change introduced by the legislation was the replacement of the old system of multiple private insurers. The Victorian

WorkCover Authority became the single insurer acting through designated agents. This scheme was again amended in 1992 and 1993 when licensed private insurers were reintroduced as part of the government's intention to reprivatise employers' liability insurance. The WorkCover Authority maintains a regulatory role.

The Act sets out a scheme for compulsory employers' liability insurance. There is cover for both:

- common law claims;
- statutory payments.

To qualify for statutory payments (weekly payments, medical and like expenses, limited lump sum payments and death benefits) a claimant must demonstrate:

- (i) employment (either actual or deemed in the case of some independent contractors);
- (ii) injury resulting either in incapacity or the need for treatment, to which the employment was a significant contributing factor.

To qualify for common law damages (which have been substantially curtailed by the 1992 amendments), a claimant must show:

- (i) employment;
- (ii) injury which results in a significant (or greater than 30%) impairment;
- (iii) negligence;
- (iv) damage.

In addition, the Accident Compensation Act requires that:

- all employers must maintain a register of injuries at the workplace;
- employers must provide notice of injury to the WorkCover Authority;
- employers must re-employ any worker injured in a position similar to the one occupied before the injury;
- all employers with payrolls over \$1,000,000 must maintain and establish an occupational rehabilitation, and a risk management program.

6. Risk management

The following action should be taken to minimise the likelihood of a corporation or its officers being liable under the occupational health and safety legislation, or the criminal legislation:

- (a) Formulate an appropriate health and safety policy;
- (b) Identify all acts, regulations, codes of practice and Australian Standards affecting the employer's operations;
- (c) Establish an appropriate hierarchy of safety management combining cross-sectional committees, managerial supervision and board level responsibility;
- (d) Audit all risks, both operational, and organisational;
- (e) Establish the priority of all risks and commence addressing them systematically;
- (f) Assess the risk of each proposed undertaking and consider how best to manage that undertaking safely (eg. HAZOP);
- (g) Establish a tailored programme of induction, training and supervision of employees;

- (h) Record occupational health and safety data, to enable the employer to assess its performance;
- (i) Conduct appropriate, regular monitoring and review of all aspects of the risk management programme, including reports to senior executives.

7. Regulations, Standards and Codes of Practice potentially relevant to libraries

The Ergonomics Unit of the Health and Safety Organisation, Victoria (now the Health and Safety Division, Victorian WorkCover Authority) has produced a comprehensive 90 page guide to health and safety in the office. It is titled *Officewise*. It details a large number of the Standards relevant to the office environment including Codes of Practice for:

- Manual handling;
- Air quality including prevention of Legionnaires' disease;
- Electrical safety with reference to trip hazards;
- Storage, shelving and use of compactus;
- Use of VDUs;
- Radiation hazards;
- Ergonomics for office design;
- Injury reporting;
- Stress issues;
- Sick building syndrome;
- Policy development.

Some specific regulations, codes of practice and Australian Standards relevant to the library/office environment are listed below.

Regulations have the force of law and compliance is mandatory. Compliance with a code of practice is not strictly mandatory but will be evidence of compliance with mandatory general duties. Standards are not mandatory unless they are incorporated into legislation by reference.

(i) Managing occupational health and safety in the office

Occupational Health and Safety (Manual Handling) Regulations and Manual Handling Code of Practice 1988. Health and Safety Organisation Victoria

Health and Safety Organisation Victoria, *Code of Practice for Manual Handling (Occupational Overuse Syndrome) 1992.*

Approved Code of Practice for Workplace Injury and Disease Recording incorporating:

Standards Australia, *Workplace Injury and Disease Recording Standard AS 1885.1 (1990)*

(ii) Worksafe, national standards for workplace injury and disease recording

Standards Australia, *AS 1985 1 - Workplace and Disease Recording (1990).*

Guidance Notes of Prevention of Occupational Overuse Syndrome in Keyboard Employment.

(iii) Lighting

Lighting at Work - Health and Safety Organisation (1993)

Standards Australia, AS 2713 - *Lighting and the Visual Environment for Screen Based Tasks* (1984)

Standards Australia, AS 1680 - *Interior Lighting, Part 1 General Principles and Recommendations* (1990)

Standards Australia, AS 1680.2 0 - *Interior Lighting: Recommendations for Specific Tasks and Interiors* (1990)

Standards Australia, AS 1680.2 1 - *Interior Lighting: Circulation Space and other General Areas* (1993).

Standards Australia, AS 1680.2 2 - *Interior Lighting: Office and Screen Based Tasks* (1994)

(iv) General comfort air quality

Standards Australia, AS 1668 2 - *The Use of Mechanical Ventilation and Airconditioning in Buildings, Part 2: Mechanical Ventilation for Acceptable Indoor Air Quality* (1991).

Standards Australia, AS 3666 - *Air Handling and Water Waste Systems of Buildings: Microbial Control* (1989)

Comcare Australia, *Airconditioning and Thermal Comfort in Australian Public Service Offices: An Information Booklet for Health and Safety Representatives*.

Worksafe Australia, *Office Copying Machines* (1989)

(v) Office layout, work stations and equipment

Standards Australia, AS 2466 - *Guide to the Design of Microform Work Stations* (1981)

Standards Australia, AS 3590.1 - *Screen Based Work Stations, Part 1, Visual Display Units* (1990)

Standards Australia, AS 3590 2 - *Screen Based Work Stations, Part 2, Work Station Furniture* (1990).

Standards Australia, AS 3590.3 - *Screen Based Work Stations, Part 3, Input Devices* (1990)

Worksafe Australia, *Ergonomic Principles and Checklist of Office Furniture and Equipment* (1990).

(vi) Working with VDU's

Comcare Australia, *Guidelines for Eyesight Testing and Optical Corrections for Visually Demanding Tasks* (1994).

Worksafe Australia, *Technical Report of the Study Group on Eyesight Testing over Users of Screen Based Equipment*.

(vii) Radiation

Australian Radiation Laboratory, *Video Display Terminal Health Concerns and Radiation Emissions: Technical Report*.

(viii) Emergencies in the office

Standards Australia, AS 3745 - *Emergency Control Organisations and Procedures for Buildings* (1990)

Standards Australia, AS 3504 - *Fire Blankets* (1989).

Standards Australia, AS 1851 - *Maintenance of Fire Protection Equipment* (1987)

Standards Australia, AS MP24 - *Use of Lifts in Emergencies* (1989).

(ix) Electrical equipment

Standards Australia, *AS/NZS 3260: Approval and Test Specification - Safety of Information Technology Equipment including Electrical Business Equipment* (1993)

This standard specifies the safety requirements for information technology equipment, including electrical business equipment computers and equipment connected to telecommunications networks.

Standards Australia, *AS3000/1991 - Electrical Safety, all electrical appliances and fittings must conform to this standard that relates to wiring* (1991)

This body of information provides an extensive resource on how to provide a safe working environment

Guidelines for the reduction of workplace stressors

The guidelines build on the Australian Medical Association "Stress Hazard" List
Fourteen major causes of workplace stress are:

1. Job security Threat of dismissal or downsizing.
2. Workload unchallenging. Includes monotonous or boring work.
3. Excessive workload. Increased hours. Pressure from unrealistic deadlines
Lack of backup.
4. Excessive responsibility. Accountability without authority.
5. Lack of control over work Pressure from new management, technology
structures or level of work.
6. Lack of training.
7. Lack of supervision Includes management's inability to deal with workplace
issues.
8. Failure to deal with interpersonal conflict. Dealing with the public Threats
of violence Conflicts with supervisors
9. Inappropriate management practices Includes poor management staff.
10. Lack of support from management or peers.
11. Harassment and discrimination based on grounds such as race, gender,
disability, etc.
12. Geographic isolation Such as when the employee works on a site without
contact and support from fellow workers or administrative support.
13. Degree of physical restriction. Lack of breaks, windows or personal space.
Uncomfortable working environment. Lack of facilities.
14. Trauma