

Xchanging Safety Sheet

Number 01

OHS Law and You

In Victoria:

- If you do not comply with the legislative requirements for Workers Compensation and Occupational Health and Safety, you may be found guilty of an offence and fined
- If you are found negligent in a court of law, following an injury or illness in your workplace, your company may be fined in a Common Law action
- In very serious cases, there is a prospect of a jail sentence for an offender (company or individual)
- Ignorance of a law is no defence in a court case.

Sources of Law

There are two sources of law in the Australian legal system: laws or rules made by judges in our courts of law (Common Law) and law passed in the Parliament (Legislative law).

Some matters in Australia are the subject of Commonwealth legislation, some state legislation and a few matters are covered by both levels. Occupational Health and Safety is generally a state (Victorian) legislative matter.

Occupational Health and Safety Common Law is primarily concerned with *Negligence* actions.

Victorian legislation covers both Workers Compensation and Occupational Health and Safety. Legislation includes the broad Acts of Parliament and more specific regulations. In Victoria, there are legally enforceable *Ministerial Compliance Codes*.

Advisory publications

WorkSafe Victoria publishes a range of advisory material, including 'Your Health and Safety Guides', Health and Safety Solutions, Workplace Handbooks, Safety Solutions as well as Codes of Practice and Guidance Notes.

Australian Standards

Australian Standards have been developed by a private company (Standards Australia) to provide guidelines and advice. When an Australian Standard is referred to in a regulation, the Australian Standard then has the full force of the law. When an Australian Standard is **NOT** called up by a Regulation, it does not have the force of law, but it is still good practice to follow.

Common Law

All employers have a general 'duty of care' to take reasonable care for the safety of their employees, contractors and the general public. In particular, employers must provide for their employees with safe premises, safe plant and a safe system of work. Employers must protect employees from injury from other employees.

The key tests for the common law action (court action) of negligence are:

Causation	There must be demonstrated a chain of events or combination of factors leading to the injury or ill health
Foreseeability	Could a reasonable and prudent employer have foreseen the risk?
Preventability	What is the probability that an employer could have prevented the injury?
Reasonableness	Did the employer take all reasonable steps to prevent injury or ill health, including the common practice of the industry?

Legislation

WorkSafe Victoria has easy-to-read booklets covering all the legislation listed below. Contact WorkSafe publications: 03 9641 1444, Website www.worksafe.vic.gov.au or email info@workcover.vic.gov.au

- Accident Compensation Act 1985 (Principal Act)
- Accident Compensation (WorkCover Insurance) Act 1993
- Accident Compensation (Occupational Health and Safety) Act 1996
- Accident Compensation Regulations 2001
- Dangerous Goods Act 1985 (Principal Act)
- Dangerous Goods (Storage and Handling) Regulations 2000
- Dangerous Goods (Transport by Rail) Regulations 1998
- Dangerous Goods (Transport) Regulations 1987
- Occupational Health and Safety Act 2004
- Occupational Health and Safety Regulations 2007, incorporating
 - Asbestos
 - Hazardous Substances
 - Issue Resolution
 - Lead
 - Manual Handling
 - Noise
 - Prevention of Falls
 - Confined Spaces
 - High Risk Work
 - Plant
 - Major Hazard Facilities
 - Mines
 - Construction

Services Available

Xchanging can provide you with advice and assist with the following services:

- OHS Law training for managers, supervisors and staff
- Develop and implement various Policies and Procedures.

Please contact the OHS Risk Consultants at risk.management@au.xchanging.com for further information.