



WORKSAFE ACT

A quick guide to the ACT's *Work Safety Act 2008*

Disclaimer

This Guide provides general information about the obligations of persons conducting a business or undertaking and/or persons in control of premises and workers under the Work Safety Act 2008. The Guide gives some suggestions for complying with these obligations. However, this Guide is not intended to represent a comprehensive statement of the law as it applies to particular problems or to individuals or as a substitute for legal advice. Full details of legal obligations and responsibilities are set out in the Work Safety Act 2008 referred to in this Guide. If you refer to the legislation you should take care to ensure that you use the most up-to-date version, available from www.legislation.act.gov.au. You should seek legal advice if you need assistance on the application of the law to your situation.

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PART 1. INTRODUCTION

Foreword

The *Work Safety Act 2008* replaces the *Occupational Health and Safety Act 1989* with a modern set of work safety laws that reflect the realities of working and doing business in the Territory.

Scope & Coverage

The Work Safety Act extends the current scope and coverage of the ACT's laws to better capture contemporary work arrangements that go beyond the bounds of the traditional employer-employee relationship. The concept of 'employee' has been replaced with the broader concept of 'worker' which includes employees, independent contractors, outworkers, apprentices, trainees and volunteers who work in employment-like settings.

The Work Safety Act has also introduced a number of safety duties and responsibilities upon those who are 'upstream', meaning those who design, produce and supply plant, workplaces and systems of work in order to ensure, as far as is reasonably practicable, that the risks associated with these products are eliminated or controlled at the source.

It is important to note that duty holders are only responsible for matters over which they have control, and that duty holders only owe a duty to the extent of that control. The intended effect is that there will be no gaps in the coverage of safety duties but that responsibility is not assigned to anybody in a way that is disproportionate to their actual level of control.

In particular, this Guide aims to:

- Explain the employers legal obligations to consult workers on work safety matters, and
- Provide guidelines for possible ways in which these obligations can be met by providing practical guidance on consultation options.

DISCLAIMER

The information provided in this publication is designed to address the most commonly raised issues in the workplace relating to the Work Safety Act 2008. This publication is intended to provide a summary of the subject matter covered. It does not purport to be comprehensive or to render legal advice. No reader should act on the basis of any matter contained in this publication without first obtaining specific professional advice.

Work Safety Act 2008

The Work Safety Act aims to secure and promote work safety, eliminate risks to work safety at the source, to protect people at work from injury and illness, to foster cooperation and consultation between employers and workers and to provide a framework for continuous improvement and higher standards of work safety.

Work Safety Regulation 2008

The Regulation has the effect of spelling out specific requirements in the legislation. The Regulation stipulates minimum standards and has a general application, as well as defining specific requirements in relation to a particular hazard or risk. Regulations have the force of law and must be adhered to. Failure to comply with a regulation may result in a criminal penalty or on-the-spot fine.

Codes of Practice

Codes of practice provide practical guidance on how to comply with general and specific duties under the legislation. The strategies outlined in codes of practice do not represent the only means of achieving a certain

standard however, it is recommended that duty holders either:

- Do what the code of practice says, or
- Adopt and follow another way that gives an equivalent, or higher level of protection against the hazard or risk.

The Work Safety Act gives codes of practice formal evidentiary status. This enables courts to consider compliance with a code of practice in order to determine whether a safety duty has been met.

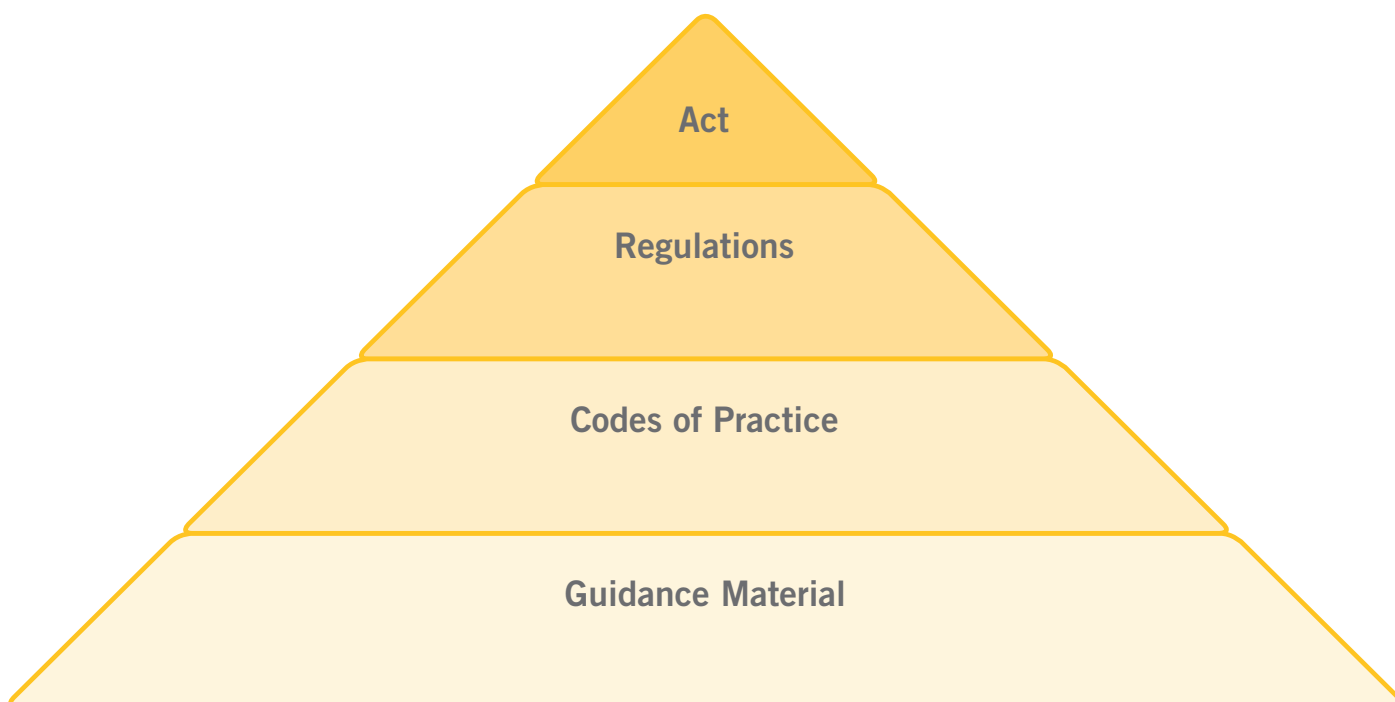
Guidance Material

Guidance materials do not establish mandatory requirements; they do however provide valuable guidance to people working in particular industries and occupations on what is reasonable and practicable. They can also sometimes be observed in court in relation to what an employer knew or should have known. However they have no formal legal status.

National Standards and Australian Standards

National Standards and National Codes of Practice are developed by the Australian Safety and Compensation Council. These, as well as ACT developed Codes of Practice are often declared to apply in the ACT - they are then model documents and legally enforceable. Australian Standards are separate, technical guides which may also assist a person in complying with a particular work safety duty.

Legislative Framework for Work Safety



PART 2. WORK SAFETY DUTIES

Who is an employer?

Under the Work Safety Act 2008 an employer includes a person who engages a worker to carry out work in the person's business or undertaking. A business or undertaking includes a not-for-profit business and an activity conducted by a local, state or territory government.

The concept of business or undertaking is intended to capture all activities that are carried out in the course of conducting a business or enterprise. This concept is not confined to the physical boundary of a 'workplace'.

A principal contractor is an employer of a subcontractor and a host organisation is an employer of a labour hire worker.

A safety duty of a person conducting a business or undertaking also extends to self-employed persons, municipal corporations, subcontractors and franchisors.

Who is a worker?

A worker is an individual who carries out work in relation to the business or undertaking, whether for reward or otherwise, under an arrangement with the person conducting the business or undertaking. Examples of worker can include an employee or independent contractor.

Outworkers are also included as workers under the new Act. An outworker may be defined as someone who does work in his or her home. This may be work carried out for a central factory or organisation. Outworkers tend to be people working in the clothing industry including packing, processing, finishing or working on any type of garment or apparel.

Since the concept of worker has been extended to work carried out for 'reward or otherwise', a person doing a work experience placement which would include an unpaid

trainee is now also covered under the new Act.

Likewise, volunteers will now be represented in the Work Safety Act 2008. Factors to be considered with coverage of workers in a voluntary capacity may be the nature, duration and frequency of their work.

What is a workplace?

Workplace is a place where work is, has been, or is to be carried out by or for someone conducting a business or undertaking. The concept of a business or undertaking is not confined to the physical boundary of the previous concept of 'workplace'.

Premises include a structure, a building, an aircraft, a vehicle, or a vessel. It includes a place whether it is built on or not.

What must employers do for workers?

Among other things an employer has a duty to ensure work safety by managing risk. A person may be subject to more than one safety duty to ensure a safe workplace.

What does managing risk mean?

Managing risk means taking reasonably practicable steps to identify, eliminate or minimise risk. If it is not reasonably practicable (or feasible) to eliminate a risk then a risk may be minimised.

Minimisation of risk may involve isolation of the source of risk or substitution of the source of risk with something that involves less risk. This can also be done in various ways including engineering means and ensuring that personal protective equipment (PPE) is used. It is also necessary to inform anyone else who has a duty about the possible

risks. Administrative strategies may also be implemented to facilitate safe working practices including the provision of suitable training, instruction or information.

Risk management is an essential element of work safety. It helps employers focus on the risks that have the potential to cause harm and to put reasonable measures in place to protect workers and other people.

In many organizations the risks are well known and the necessary control measures are often relatively straight-forward to apply. Workers are often very aware of workplace risks and consultation is a valuable tool for the identification of risks and measures to control them.

Risk Management Strategies

- **Think** about what may affect worker's health, safety or wellbeing (identify hazards and assess the risks they pose)
- **Talk** with employees (consult about matters that may affect workers health, safety or wellbeing)
- **Do** what is necessary to make the workplace safe (implement risk controls)
- **Review** and monitor Work Safety measures (ensure risk controls are effective)

For further information regarding risk management and worker involvement strategies see the publication entitled *6 Steps to Risk Management* available at www.worksafe.act.gov.au.

What does the term reasonably practicable mean?

The courts have said that whether or not something is reasonably practicable is a value judgment in the light of all the facts – put another way, if a precaution is practicable

it must be taken unless, in the whole circumstances, that would be unreasonable.

In essence, the duty holder must weigh up the risk of causing harm to a worker against the cost and time of removing or reducing that risk.

What is a hierarchy of control approach to risk management?

This is a systemic approach which involves strategies to identify and address risks to work safety which may be contained in their work safety policy. In this sense a systemic approach would include a process, procedure, or method for undertaking work¹.

What are some of the penalties for breaching safety duties?

Penalties relate to the severity of offences ranging from a general failure to comply with safety duties to reckless or negligent exposure to substantial risk of serious harm. This may extend to recklessly or negligently causing serious harm.

The penalties for the five categories of offences range from up to \$10 000 for individuals (or \$50 000 for corporations) for a general failure to comply with a safety duty to up to \$200 000, imprisonment for 7 years or both for individuals (or \$1 000 000 for corporations) for a failure to comply with a safety duty and recklessly causing serious harm².

- 1 Examples demonstrating strategies for risk management which relate to various work safety duties using a systematic hierarchy of control approach are contained in "Appendix 2 – How To Consult" on page 19 of this guide.
- 2 A table of offences for failure to comply with safety duties, their associated penalties and alternative verdicts are outlined in "Appendix 3 – Summary Of Penalties" on page 21.

What work safety duties does the worker have?

A worker has a duty not to expose themselves or other people who may be affected by the worker's work, to work safety risks due to their work.

Examples of this duty may include the following;

- Cooperating with a person conducting the business or undertaking in relation to Work Safety
- Complying with instructions given by a person conducting the business or undertaking in relation to Work Safety
- Using equipment supplied for Work Safety at the Workplace properly
- Reporting any risk, illness and injury, connected with work, which the worker is aware of

- Person in control of design
- Person in control of manufacture
- Person in control of import and supply

Some examples of upstream duty holders' roles are included at the end of this guide.

What is an Upstream Duty Holder?

The 'upstream' duty holders concept contained in the Work Safety Act reflects the principle that responsibilities for work safety should also be allocated 'upstream' to those who design, produce and supply plant, workplaces and systems of work, in order to ensure that the risks emanating from these products are eliminated or **controlled at the source**.

These people have a duty to ensure work safety by managing risk in relation to plant or a structure that is used or could reasonably be expected to be used, at work or at a workplace. Plant includes machinery, equipment or a tool, or a component of, or accessory to machinery, equipment or a tool. Structure is also defined to include the whole or part of a building, whether permanent or temporary. Upstream duty holders include the following people;



PART 3. WORKPLACE ARRANGEMENTS

Duty of employers to consult

An employer has a duty to consult with workers to allow them to contribute to matters directly affecting their work safety (health, safety and wellbeing). The duty to consult applies to all employers regardless of the number of workers they have.

The Work Safety Act 2008 provides greater flexibility regarding how consultation can occur to enable a consultative approach without attempting to be too onerous on the business.

How consultation is arranged and undertaken is flexible. Together employers and workers can establish arrangements that will cater for the interests of a small number of workers or manage the complexity of multi-faceted workplaces.

What is meaningful Consultation?

Consultation is the method by which management and workers and/or their representatives jointly consider and discuss work safety issues. It involves seeking acceptable solutions to problems through a genuine exchange of views and information.

Consultation is not negotiation and it is not just giving information or telling workers what management has already decided to do. Consultation does not remove the right of managers to manage – they must still make the final decision – and does not always require managers and workers to agree. It does, however, oblige managers to seek and listen to the views of workers before decisions are taken.

The Work Safety Act 2008 supports the traditional roles of Health and Safety Representatives and Health and Safety Committees (now may also be referred to as Work Safety Representatives and Work

Safety Committees) but also broadens the possibilities to include:

- Roving Work Safety Representatives
- Broadened eligibility for Work Safety Representatives
- Multiple business and site arrangements and
- Any other stated method of meaningful consultation.

Straightforward consultation arrangements are often the most effective. The simplest way to consult workers is to talk and listen. This could be done directly with workers or indirectly through representatives.

What are the benefits of Work Safety Consultation?³

Workers often know best about the health and safety issues in the workplace and how to deal with them. There is evidence to show that businesses that involve workers in managing work safety actually have better health and safety standards, better productivity and a more motivated workforce.

Effective consultation can result in:

- Improved management decisions through gathering a wider source of ideas about work safety
- Greater worker commitment to work safety through a better understanding of work safety decisions and worker ownership of the outcomes of consultation
- Greater openness, respect and trust between management and workers through developing an understanding of each other's points of view
- Higher worker morale and job satisfaction through the employer

³ Guides to aid the facilitation of consultation for employers and workers have been included in "Appendix 2 – How To Consult" on page 19 of this guide.

demonstrating that worker views are valued and taken into account

- Healthier working environments and increased productivity
- Opportunities for learning through sharing of information, concepts and ideas, and
- Reduced injury and disease with consequent savings to the employer, workers and the general community.

What sort of things do workers need to be consulted about?

- Identification or assessment of risks
- Measures which need to be taken to manage these risks
- Adequacy of facilities
- Proposition of changes that may directly affect work safety.

Worker Consultation Unit

A Worker Consultation Unit is a group representing all of the employer's workers to allow them to contribute to matters directly affecting their work safety. It is similar to a Designated Work Group in the previous OHS Act however, it provides for an unlimited set of possibilities for the way in which workers can be grouped.

It may be established in different ways at different workplaces but must represent and safeguard the work safety interests of workers in an effective and convenient manner taking into account the following matters:

The number and grouping of workers

Workers' working hours, including the representation of workers on shift work

The pattern of work of workers, including the representation of part-time, casual, seasonal or short-term workers

The geographic location of workplaces, including any dispersed locations, home-based work or transport work

The nature of different kinds of work carried out by workers, work arrangements and the levels of responsibility.

Worker Consultation Unit review

An employer must review a worker consultation unit every two years or if a worker makes a request to consider the effectiveness of the unit. The employer must make changes to the unit if the review shows that changes are necessary in the interests of work safety.

Worker Consultation Unit review

An employer must keep records of the following activities on relation to a Worker Consultation Unit:

- The unit's establishment
- The unit's activities
- Any change to the unit
- Each review of the unit

The records must be available upon request to workers in the unit, any representative of the unit, and an inspector.

How does the Worker Consultation Unit relate to Work Safety Representatives and Work Safety Committee?

Together the employer and worker consultation unit may decide that the employer will consult workers in the unit using either a Work Safety Representative or a Work Safety committee. A representative or committee can be elected by members of the unit dependant on a greater than 50% outcome.

A Chief Executive may also direct an employer to arrange for a Work Safety Committee to be elected by workers in a Worker Consultation Unit if they are satisfied that the

establishment of the unit will improve work safety.

Work Safety Representatives

Role of Work Safety Representative

Work Safety Representatives have the following roles:

- Represent the worker consultation unit
- Notify the employer about potential risks and dangerous occurrences
- Notify the employer about other work safety matters

What is the Work Safety Representative entitled to do?

A Work Safety Representative is entitled to:

- Inspect all or part of the workplace
- Issue a provisional improvement notice
- Exercise emergency powers.

Work Safety Representative has protection from liability

A Work Safety Representative does not incur civil or criminal liability for an act or omission done honestly and without recklessness⁴.

Work Safety Representative has protection from liability

If a work safety representative thinks there is an immediate threat to the health or safety of an employee, the representative must tell a supervisor about the threat to health or safety or if no supervisor can be contacted immediately, direct the employee to cease,

to perform the work in a safe way, and, tell a supervisor that the direction has been given as soon as practicable.

In cases where there is disagreement on the immediacy and the severity of the hazard or threat, either party may request a WorkSafe ACT inspection. An employer may direct a worker to perform alternate work if the worker has stopped their usual work because of an emergency or an immediate threat to work safety.

Work Safety Committee

Role of the Work Safety Committee

Health and Safety Committees have the following roles:

- To facilitate cooperation between an employer and workers in relation to work safety
- To assist the employer to consult workers on proposing and developing changes to work or other policies, practices or procedures that may directly affect work safety
- To assist the employer to resolve work safety matters
- To establish, review and publish procedures in relation to work safety.

Authorised Representatives

What is an authorised representative?

An authorised representative is a person authorized under section 62(1) of the Work Safety Act 2008.

⁴ See footnote 8 page 21 for a definition of recklessness.

Who is eligible to become an authorised representative?

A registered organisation may authorise any person for this purpose provided they are:

- An employee or office⁵ holder of an organisation registered under the *Workplace Relations Act 1996* and,
- Has undergone training prescribed by regulation.

Authorised representative's entry to premises

An authorised representative may enter a workplace only in the following circumstances:

- If there are reasonable grounds to suspect that a contravention of the *Work Safety Act 2008* may have happened, may be happening or is likely to happen.
- It is at a time when work is carried out or is usually carried out.
- The premises are not used only for residential purposes.

Aspects of entry for authorised representatives

- An authorised representative may enter premises without notice
- They must notify the occupier of the premises of their arrival as soon as reasonably practicable
- This is not necessary if notification would compromise an investigation
- However, they must not remain on the premises if they do not produce authorisation for inspection when asked by the occupier

⁵ *office*, in an organisation, means an office of the organisation, or a branch of the organisation, under the *Workplace Relations Act 1996* (Cwlth), schedule 1, section 9.

Powers available on entry for authorised representatives

An authorised representative may investigate a contravention by doing any of the following:

- Inspecting materials or systems
- Interviewing workers with their consent
- Taking measurements and making any kind of records
- Requesting the production for inspection of documents relating to work safety and copying, or taking extracts from any of these documents
- Requiring the occupier or a worker to give the authorised representative any reasonable assistance

Rights of the occupier of premises being entered by authorised representatives

During entry the authorised representative must take all reasonable steps to ensure that as little as possible inconvenience, detriment and damage is caused

Compensation may be claimed if loss or expense is suffered due to exercises of this nature

The occupier and chief executive of an organisation must be notified in writing within two days of entry by an authorised representative informing them if it is believed there has been a contravention of the *Work Safety Act 2008* at their premises

PART 4. ENFORCEMENT POWERS

The Role And Powers Of Inspectors Under Work Safety Legislation

WorkSafe ACT Inspectors play an integral role in ensuring that the Territory's Work Safety legislation is complied with and ultimately contributing to the health, safety and wellbeing of workers in this jurisdiction. More information regarding WorkSafe ACT can be found at

www.worksafe.act.gov.au

or by telephoning 6207 3000.

Where can inspectors go?

At any reasonable time, (normally during business hours and when the business is operating) an Inspector can enter:

- Premises believed to be a workplace
- Premises that the public is either entitled to use, or are open to the public

An Inspector may also stop and detain vehicles that the Inspector thinks is a workplace and direct the driver to move the vehicle to another location. An Inspector must not detain a vehicle longer than is reasonably necessary.

Finally, an Inspector can enter premises where the circumstances are of such seriousness and urgency as to require immediate entry to the premises without the authority of a search warrant.

How must an Inspector enter premises?

An Inspector must show an occupier of premises their identity card when asked, while at premises they have entered. An inspector may, without the consent of the occupier of premises, enter land around

the premises to ask for consent to enter the premises.

Entering premises with a person's consent

Some special conditions apply where an Inspector is seeking to enter premises with the occupier's consent, other than workplaces or public premises.

An Inspector must produce his or her identity card and tell the occupier:

- The purpose of the entry
- That anything found and seized under this part may be used in evidence in court
- And that their consent may be refused

If the occupier consents, the Inspector must ask the occupier to sign a written acknowledgment to that effect, complete with time and date.

When can an Inspector enter premises?

An Inspector may enter premises during normal business hours or any other time when the premises are being used as a workplace.

Matters relating to search warrants

In most circumstances, when entering under a search warrant, an Inspector must:

- Announce that the Inspector is authorised to enter the premises
- Give anyone at the premises an opportunity to allow entry to the premises
- If the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify himself or

herself to the person, and give them a copy of the warrant and a document setting out the rights and obligations of the person.

- Provide a document setting out the rights and obligations of the person

In most circumstances, a representative of the occupier is entitled to observe the search.

What else can an Inspector do?

An Inspector can:

- Examine anything
- Examine and copy, or take extracts from, documents relating to a contravention or possible contravention of Work Safety legislation
- Take measurements, conduct tests, take drawings, photographs, videos or other kinds of recordings.
- Open or operate (or require to be opened or operated) plant or a system
- Take on to the premises any people, equipment or material the Inspector needs to assist them in exercising their power under Work Safety legislation
- Take samples, or otherwise carry out any other examination to find out whether Work Safety legislation has been, or is being, complied with
- Seize or control things considered to be something connected with an offence under Work Safety legislation
- Require the occupier, or anyone at the premises, to give information, answer questions, or produce documents or anything else, reasonably needed to exercise the Inspector's functions
- Require anyone suspected of breaking Work Safety legislation to provide their name and address
- Require someone who has, or may have done, something, to show they are allowed to do it. For example, driving a forklift

- Require the occupier, or anyone at the premises, to give the Inspector reasonable assistance to exercise a function under this part.
- Someone who claims they have suffered loss or expense because of the way an Inspector has exercised a power can seek compensation in a court of competent jurisdiction. The court can order compensation where it is just to do so.

In emergencies

Where an Inspector thinks that:

- Premises are a workplace
- There is an imminent risk of serious harm to a person at or near the premises and,
- It is necessary for the Inspector to take action without delay to prevent or minimise the risk
- The Inspector may (with someone who the Inspector believes has appropriate knowledge and experience to assist, if necessary) enter premises to prevent or minimise the risk
- However, when deciding what to do, the Inspector must do all things reasonably practicable to consult with the occupier of the premises and the chief executive
- Where this occurs, costs may be able to be recovered by the Territory from employers, the owner or lessee of the premises or the person who caused the risk.

Where a dangerous occurrence has, or may be happening

Where an Inspector thinks that:

- Damage to a boiler, pressure vessel, plant, equipment or other thing that endangers or is likely to endanger the health or safety of people at a workplace
- Damage to, or failure of, a load-bearing member or control device of a crane, hoist, conveyor, lift, escalator, moving walk, plant, scaffolding, gear, amusement device or public stand.
- An uncontrolled fire, explosion, or escape of gas, a dangerous substance or steam
- Another occurrence involving imminent risk of the following:
 - Fire, explosion, or an escape of gas, a dangerous substance or steam, or
 - Death of, or serious personal injury to, anyone or
 - Substantial damage to property

If the above has happened, is happening or is about to happen at premises, an Inspector may enter the premises, with force if necessary, to:

- Investigate
- Ensure the premises are safe
- Prevent the concealment, loss or destruction of anything reasonably relevant to the investigation of the occurrence.

If an Inspector acts under this section in the absence of the occupier of the premises, the Inspector must leave a notice setting out the following:

- The Inspector's name
- The time and date of the entry
- The purpose of the entry and
- Details of how to contact the Inspector.

Enforcement powers conferred on Inspectors by Work Safety legislation are:

- Compliance agreements
- Improvement notices
- Prohibition notices

Private Prosecution of Offences

This form of prosecution relates to an offence of failing to comply with work safety duties⁶. Private prosecution of offences may be commenced by the secretary of a registered organisation established to represent the interests of workers or the chief executive of a registered organisation established to represent the interests of employers.

It is important to note that The Director of Public Prosecutions has the right to intervene, take over or discontinue a private prosecution at any time. With regard to taking over proceedings, this can be done whether the person conducting general proceedings consents or not. More information about this form of prosecution can be found in the *Director of Public Prosecutions Act 1990*.

⁶ Please see "What must employers do for workers?" on page 7 of this guide

⁷ See sections 8, 13 and 15 Director of Public Prosecutions Act 1990.

APPENDIX 1 – EXAMPLES

The following examples demonstrate strategies for risk management which relate to various work safety duties using a systematic hierarchy of control approach.

Safe conduct of business or undertaking

For example, a person operating a supermarket has a duty to ensure the health, safety and wellbeing of all of its workers by taking reasonably practicable steps to manage risk. This may involve developing a work safety policy and identifying and addressing risks such as manual handling and slips, trips and falls.

Person in control of premises

The owner of a shopping mall has a duty to ensure the health, safety and

wellbeing of workers and patrons at the mall by taking reasonably practicable steps to manage risk. This would involve ensuring safe entry and exit routes within the complex. Concurrently, the person in control of an individual store premises in the mall has a duty to ensure safe entry and exit routes for those parts of the premises that they have control, for example, entry into the staff tearoom and amenities.

Person in control of plant or systems

1. A person operating a mechanic repair business has a duty to ensure the health, safety and wellbeing of workers in relation to machines and systems of work over which they have control. This may involve maintaining equipment in good working order and repair and having a system for reporting faulty equipment and reviewing this system.
2. Another example is where the head franchisor of a hotdog chain mandates

a system for cleaning hotdog machines in each franchise. The head franchisor has a duty to ensure the health, safety and wellbeing of workers who carry out the cleaning of the machines. This may involve ensuring the system is safe, providing guidance and training to those that use it and reviewing the system's effectiveness and safety.

Upstream Duty Holders

Person in control of design

A designer of a meat slicer has a duty to ensure the health, safety and wellbeing of workers who might operate the machine by taking all reasonably practicable steps to manage risk. This may involve ensuring the machine has safety guards to prevent injury and that guidance on how to safely operate the machine with the guarding is provided. The designer of an office building also has a duty to ensure the health, safety and wellbeing of workers and other patrons in relation to the design. This may involve ensuring the design of the office building encompasses safe entry and exit, adequate facilities and adequate environmental controls.

Person in control of manufacture

The manufacturer of a photocopier has a duty to ensure the health, safety and wellbeing of workers who might operate the machine by taking all reasonably practicable steps to manage risk. This may involve ensuring the photocopier is built to specification and using appropriate materials.

Person in control of import and supply

An example of where a person has control of import and supply includes a hire company that supplies compactors to a construction site who has a duty to ensure the health, safety and wellbeing of workers who might operate a compactor, or third parties that might be affected by its use, by taking all reasonably practicable steps to manage risk. This would involve ensuring the compactor is provided in a safe working condition, complies with Australian safe design standards and that regular maintenance has been carried out.

APPENDIX 2 – HOW TO CONSULT

An Employer's Guide

Steps	
3. Identify decisions that have work safety implications.	
4. Identify when decisions are made that have work safety implications.	
5. Consider how you can ensure meaningful consultation.	
6. Discuss the consultation options and provide workers with information to enable them to come to an informed view.	
7. Together decide on the most appropriate and effective consultation arrangement.	
8. Where it is necessary to establish a worker consultation unit, consult workers about it's composition.	
9. Establish the agreed consultation arrangements ie: <ul style="list-style-type: none"> Set up a Work Safety Committee; and/or Set up a Work Safety Representative; and/or Set up Other Agreed Arrangements. 	
10. Organise Work Safety Consultation Training.	
11. Record how consultation will occur.	
12. Consult workers on the timeframes and means for monitoring and evaluating the consultation arrangements.	

A Worker's Guide

Steps	
1. Be aware of your duty to report any work safety risks to your employer.	
2. Become familiar with how to identify hazards and the principles for controlling risks.	
3. Understand your right to be consulted about decisions that may have implications for your work safety.	
4. Become familiar with the consultation options such as a Work Safety Committee, Work Safety Representative, other arrangements or a mix of these. Consider the relative merits of the options.	
5. Consider which consultation option best suits your workplace. Be aware that the majority of workers can request a WS Committee or WS Representative.	
6. Where a Worker Consultation Unit is necessary consider who should be in it.	
7. Support the employer in establishing the agreed Consultation Arrangements.	
8. Participate in or conduct elections if necessary.	
9. Consider Work Safety Consultation training needs.	
10. Monitor whether the consultation arrangements ensure all worker know about and can comment on matters that may affect their health and safety.	

APPENDIX 3 – SUMMARY OF PENALTIES

Offence	Section	Maximum Penalty
Failure to comply with safety duty— general	s 30	\$10 000 Individual \$50 000 Corporation
Failure to comply with safety duty— negligent exposure to substantial risk of serious harm	s 31	\$100 000 Individual \$500 000 Corporation Imprisonment for 2 years, or both
Failure to comply with safety duty— ⁸ reckless exposure to substantial risk of serious harm	s 32	\$150 000 Individual \$750 000 Corporation Imprisonment for 5 years or both
Failure to comply with safety duty— ⁹ negligently cause serious harm	s 33	\$150 000 Individual \$750 000 Corporation Imprisonment for 3 years or both
Failure to comply with safety duty— recklessly cause serious harm	s 34	\$200 000 Individual \$1 000 000 Corporation Imprisonment for 7 years or both

Alternative verdicts

Item	Prosecuted offence	Alternative offence
1	s 31 (Failure to comply with safety duty - negligent exposure to substantial risk of serious harm)	s 30 (Failure to comply with safety duty—general)
2	s 32 (Failure to comply with safety duty - reckless exposure to substantial risk of serious harm)	s 30 s 31
3	s 33 (Failure to comply with safety duty - negligently cause serious harm)	s 30 s 31 s 32
4	s 34 (Failure to comply with safety duty—recklessly cause serious harm)	s 30 s 31 s 32 s 33

⁸ To be Reckless involves a lack of concern for the consequences which a person foresees as the probable consequence of his or her action

⁹ Negligence involves a duty, a breach of that duty and damage or harm caused by a breach of that duty. There is a duty to avoid causing harm, and it arises where harm is foreseeable if due care is not taken.



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