



THE OHSW LEGISLATION

The OHSW Legislation is designed to protect the health, safety and wellbeing of our University community by requiring safe systems of work to eliminate, or minimise the risks to health, safety and welfare.

Responsibilities outlined in the legislation apply to Managers, Supervisors, employees and others such as designers, contractors and volunteers.

The health and safety legislation is made up of three parts:

1. **The OHSW Act 1986 (The Act);**
 - Sets out the general requirements for protecting health and safety in the workplace;
 - Requires Managers/Supervisors to consult with employees and their representatives and work together to resolve any health and safety issues;
 - Gives powers to government inspectors from SafeWork SA to inspect workplaces and investigate health and safety issues. Inspectors can initiate prosecutions which can result in penalties and fines depending on how serious the offence.
 - Sets out responsibilities for the Responsible Officer (the Vice Chancellor and President of the University).
2. **The OHSW Regulations 2010 (The Regulations)**
 - Set out the general principles and practical steps that should be followed in order to prevent injury and illness at work.
3. **Approved Codes of Practice made under the Act.**
 - Set out practical guidance on how to comply with legal requirements. The University is required to follow the requirements in the Approved Codes of Practice unless another solution can be applied which is as good or better.
 - Any Australian Standard which is listed in the box at the end of a Division of the Regulations is classified as an Approved Code of Practice.

Other Australian Standards (AS)

- If they are included in the Regulation then they become a regulatory requirement and must be followed.
- All other AS should be considered as general information that is available to assist in meeting OHSW obligations.

Employer Duties

Every employer has a duty to each employee to “ensure so far as is reasonably practicable that the employee is, while at work, safe from injury and risks to health”. All managers/supervisors are deemed under the Legislation to be acting as a representative of the employer and therefore have similar legal OHSW responsibilities under Section 19 of the OHSW Act. Examples may include supervising post-graduate students, managing a laboratory, lecturing students, co-ordinating field trips.

This has a wide-range of responsibilities including taking action to control risks associated with hazards in the workplace.

In determining what is reasonably practicable, Managers/Supervisors must take into account the severity of the risk, knowledge about the hazard and ways to remove or reduce the risk.

As a minimum, Managers/Supervisors are required to:

- Provide and maintain a safe working environment;
- Have in place safe systems of work (eg safe operating procedures);
- Provide and maintain any equipment used;
- Keep substances in a safe condition;
- Provide information, instruction, training and supervision as necessary; and
- Consult with employees and Health and Safety Representatives (if they are elected) on HSW where they could be impacted.

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Employees' duties

- Employees must take reasonable care to protect their own health and safety, and the health and safety of others that may be affected by their actions or omissions at work.
- Employees' responsibility for health and safety only extends to things that they have control over. However, they must cooperate with their employer in ensuring health and safety in the workplace.

In particular, employees must:

- use equipment provided to protect health and safety
- follow reasonable instructions the employer gives on health and safety
- ensure they are not so affected by alcohol or another drug to endanger their own or any other persons' health and safety
- report any problems if they believe the work to be unsafe.

How the Legislation is enforced

The Act assigns responsibility to SafeWork SA inspectors to ensure the legislation is followed. Inspectors do not need an appointment to make a visit to a workplace. They may call at a workplace at any time to carry out an inspection, investigate an injury or incident that has occurred, audit health and safety systems or take other action.

Inspectors have the power to examine records, take photographs or films, make measurements and interview any person about health and safety at the workplace. It is an offence to hinder or obstruct an inspector doing their job [Act: 38].

Inspectors' notices

If an inspector finds that the Act or Regulations have been breached, they may issue a legal notice.

There are two types of legal Notices

1. Improvement Notice
An Improvement Notice states that the Act or Regulation is being breached and may include directions about action required to resolve the problem.
2. A Prohibition Notice
A prohibition notice may be issued where there is an immediate risk or potential for an immediate risk to health and safety. The notice prohibits the performance of unsafe work. This unsafe work cannot recommence until the inspector is satisfied that adequate steps have been taken to eliminate or minimise the risk to health and safety. Where work is suspended because of a Prohibition Notice, a person employed in that work may be assigned to suitable alternative work [Act: 57] or if no suitable work is available, is entitled to be paid so that they do not suffer any loss of income [Act: 44]. More information on Improvement and Prohibition Notices can be found in sections 39 to 45 of the Act.

Prosecution and penalties

Inspectors can initiate prosecutions for breaches of the Act or Regulations, which may result in substantial penalties or fines. The amount of the fine depends on the type and severity of the offence. In the Act and Regulations, fines are identified from Division 1 to 7. A jail term may also apply for serious offences where a person recklessly breaches their duty of care (as an employer or employee), knowing that their action is likely to seriously endanger another person's health and safety.

The role of the Industrial Court and Commission

The Industrial Court and Commission have an important role to play in the resolution of health and safety disputes and legal proceedings under the Act.

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Conciliation

If a dispute arises between an employer and employees during the formation of work groups, election of HSRs or establishment of health and safety committees, this dispute may be referred, in the last resort, to the Industrial Commission.

The Industrial Commission will attempt to resolve the dispute by conciliation. The conciliation process involves bringing the parties together to discuss the issues in order to arrive at an acceptable solution for all parties.

Review

If a dispute cannot be resolved by the Commission within a reasonable period of time, it is referred to the Industrial Court, which establishes a review committee to resolve the issue. The review committee is made up of three members — a judge or magistrate, an employer nominee and a union nominee.

The review committee evaluates and determines a resolution to the dispute. For example, a dispute about a HSR's Default Notice or order to stop unsafe work, or an inspector's Improvement or Prohibition Notice may also be referred to the Industrial Court for determination by a review committee.

Legal proceedings

All prosecutions taken by SafeWork SA inspectors for a breach of the Act or Regulations are heard and determined by a magistrate in the Industrial Court. If the magistrate's decision is appealed, a judge or full panel of judges in the Industrial Court hears the appeal.

Further information

For copies of the legislation, please refer to the SafeWork SA website <http://www.safework.sa.gov.au/>

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