

The *Occupational Health and Safety Act, 2004* ("the Act") is the main piece of legislation providing Victorian workers with rights in occupational health and safety. The introduction of its predecessor in Victoria in 1985 was the result of many years of hard work on the part of the union movement.

The Act clearly sets out the duties of employers and workers, involvement of workers and consultation, the resolution of issues, protection for both workers and their representatives, the role and function of inspectors, and more.

#### Regulations and Codes

The Act empowers the Governor-in-Council to make regulations relating to occupational health and safety (Section 158). Duties under regulations are legal requirements. It is a breach of law not to comply.

The Act empowers the Minister to issue 'Compliance Codes' (Section 149). These are not law, but provide practical guidance to persons who have duties either under the Act or Regulations on how their duties may be complied with. Under the 1985 Act, a number of Codes of Practice were declared. These do not have any formal status under the 2004 Act, but are still available and contribute to the 'state of knowledge'. Until such time as Compliance Codes are declared, these remain useful for workplaces, workers and health and safety representatives.

You can find a summary of the main chapters of the 2007 OHS regulations at <http://www.ohsrep.org.au/law-rights/rights/workers-rights/the-occupational-health-and-safety-rights-of-workers/?a=47186>;

More information on the current Compliance Codes At <http://www.ohsrep.org.au/law-rights/ohs-legislation/compliance-codes>;

Previous Codes of practice at <http://www.ohsrep.org.au/law-rights/ohs-legislation/codes-of-practice-1985-act>.

#### Other legislation:

There are a number of other pieces of legislation which set out duties for employers and other parties, provide protection for employees and have health and safety implications. These include:

- Dangerous Goods Act 1985 (and Regulations)
- Road Transport (Dangerous Goods) Act 1995 (and Regulations)
- Equipment (Public Safety) Act 1994
- Accident Compensation Act 1985
- Accident Compensation (WorkCover Insurance) Act 1993

Further, there are other Acts of parliament that are not specific to workplaces or workers, but provide duties and protection to persons generally, including at the workplace:

- Victorian Equal Opportunity Act 2010
- Racial and Religious Tolerance Act 2001

To access the full text of any piece of Victorian legislation (Acts and regulations), visit <http://www.legislation.vic.gov.au/>

Last amended April 2015

**NOTE:** these tables are not a full list of the provisions of the law, they are a guide only.

## WORKERS' HEALTH AND SAFETY RIGHTS

YOUR RIGHTS	Victorian OHS Act, 2004 Which Section
To have your health and safety ensured.	Section 21
All workers have the right to raise an OHS issue.	Section 73
If an issue is not resolved with the employer, workers can call WorkSafe.	Section 75
Be consulted on health and safety issues that affect you including any proposed changes that the employer wants to make that may impact OHS.	Sections 35 & 36
Be represented by a Health and Safety Representative (HSR) elected by members of your designated work group. You can stand for election as a HSR.	Section 54
Be provided with safe systems of work, which includes plant or systems of work; the use, handling storage or transport of substances and plant [that includes equipment and machinery].	Section 21(2)
Be provided with facilities for your welfare at work like toilets, lunchrooms, first aid.	Section 21(2)(d)
Be provided with the information, instruction, training and supervision you need to do your job safely.	Section 21(2)(e) Section 39
Have the employer monitor your health and conditions at the workplace and be provided with facilities at work. [for certain exposures e.g. some chemicals and noise, employer has obligation to conduct health surveillance]	Section 22(1)
Request that the employer discuss with workers the establishment of a Designated Work Group or groups to elect a HSR.	Section 43
Have the union represent you in negotiations for the Designated Work Group/s. [Remember the union could be a delegate or union organiser or health and safety officer]	Section 44.5
Request the union to run HSR elections Workers in the group determine who and how the election will be conducted and they can decide that this will be their union delegate. [Remember union could be delegate or union organiser or health and safety officer]	Section 54(4)
Refuse to perform work you reasonably think would expose you to a serious risk that is also immediate and imminent	Common Law
Ask your HSR to direct that unsafe work cease	Section 74
Have your HSR present at any interview between you and your employer or a H&S Inspector	Section 58(1) (d) & (e)
Protection from discrimination, coercion or threats in relation to a health & safety matters. [This includes speaking with the union or WorkSafe about H&S matters]	Sections 76, 78(A) & 78(B)
Have your HSR seek the assistance of any person such as the union to assist with any of your OHS matters.	Section 58(1) (f)
Ask for the review of a Health and Safety Inspector's decision that affects you (including if the Inspector decides to do nothing). You need to get expert advice from the union when exercising this right, as it does not apply to all decisions an Inspector makes.	Part 10 (Sections 127 - 129)
Change your HSR, if the majority of members of the DWG resolve this in writing - but only if HSR has been in the role for more than 12 months.	Section 55(2)(d)
If needed, be provided with accommodation, which does not expose worker to hazard. [See the Compliance code on workplace amenities and environment]	Section 21(2)(d)

## WORKERS' HEALTH AND SAFETY OBLIGATIONS

YOUR OBLIGATIONS	Victorian OHS Act, 2004 Which Section
Take reasonable care and not willfully or recklessly endanger health and safety of yourself or others	Section 25
Cooperate with employer in respect to any action taken by the employer to comply with the Act or Regulations.	Section 25 (1)(c)
Report health and safety issues to the elected HSR/Deputy, including leaving your area of work to report the hazard/risk.	OHS Regulation 2.2.3

In **Disability Services**, Clause 43 of your Enterprise Agreement provides details on how your workplace OHS rights should be implemented.

In **Mental health Services**, Clause 55 of your Enterprise Agreement provides details on how your workplace OHS rights should be implemented