

## Workplace Health and Safety Information

(with extracts from the WHS Act)

Every activity has its hazards and its risks. Some are avoidable while others are not. It is important to identify, assess and then eliminate or reduce these individual event or program risks. Consider the use of an activity risk assessment form to help assess and manage the individual risks in your program. Again, consider not only the physical but also the emotional and spiritual environment. We also recommend that you consult your insurance broker or insurance department for more information on assessing and managing program risks.

All employers have a general duty at common law to implement and maintain a “safe system of work” for both their employees and others.

In relation to the employer’s employees, this duty is often expressed as being a duty to take reasonable care to avoid exposing the employees to “reasonably foreseeable” risks of injury.

In assessing whether or not an employer has breached its duty of care to an employee, a court will generally consider a number of factors, including whether:

- the employer was aware of the risk of injury and, if not, would a reasonably prudent employer have been aware of such a risk
- the employer took all reasonable steps to avoid or reduce the risk
- the injury would have been prevented or minimised had the reasonable steps been taken.

The question of what is “reasonable” is ultimately determined by reference to community standards and expectations. Given the demanding statutory WHS obligations in each State and Territory, the standard is typically high.

The duty is simply to take reasonable care for their safety. Accordingly, at common law, the risk of injury must be real and not simply fanciful. Further, for an employer to be found liable, the employer must have failed to take reasonable steps.

In the church context in all States and Territories except Victoria and Western Australia, the WHS legislation applies. Victoria and WA operate on State based legislation.

WHS Legislation places particular responsibilities on Officers and Directors

Failure to comply with the Act and/or Regulations renders persons in management positions, i.e. those Persons Conducting the Business or Undertaking (PCBU), including Pastors, open to prosecution with penalties, which can include fines, imprisonment or both.

Pastors should familiarise themselves with the Legislation in their particular State or Territory (including staying abreast of any amendments to the applicable legislation) and ensure that pastors and employees, Committees of Management and other church leaders are aware of their responsibilities to maintain healthy and safe environments for pastors, employees and visitors.

## **Work Health and Safety Act 2011 (extracts)**

Note: not all States have come in line with the National Harmonised WHS legislation and some States have modified or passed regulations to run in tandem with the act.

### *Division 2—Object*

The main object of this Act is to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by:

- protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work; and
- providing for fair and effective workplace representation, consultation, cooperation and issue resolution in relation to Work Health and Safety; and
- encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment; and
- promoting the provision of advice, information, education and training in relation to Work Health and Safety; and
- securing compliance with this Act through effective and appropriate compliance and enforcement measures; and
- ensuring appropriate scrutiny and review of actions taken by persons exercising powers and performing functions under this Act; and
- providing a framework for continuous improvement and progressively higher standards of work health and safety; and
- maintaining and strengthening the national harmonisation of laws relating to Work Health and Safety and to facilitate a consistent national approach to Work Health and Safety in this jurisdiction.
- In furthering subsection (1)(a), regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work as is reasonably practicable.

### *Section 5 Meaning of person conducting a business or undertaking*

For the purposes of this Act, a person conducts a business or undertaking: whether the person conducts the business or undertaking alone or with others; and whether or not the business or undertaking is conducted for profit or gain.

### *Section 7 Meaning of worker*

A person is a worker if the person carries out work in any capacity for a person conducting a business or undertaking, including work as: an employee; or a contractor or subcontractor; or an employee of a contractor or subcontractor; or an employee of a labour hire company who has been assigned to work in the person's business or undertaking; or an outworker; or an apprentice or trainee; or a student gaining work experience; or a volunteer; or a person of a prescribed class.

## *Section 17 Management of risks*

A duty imposed on a person to ensure health and safety requires the person: to eliminate risks to health and safety, so far as is reasonably practicable; and if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable.

## *Section 18 What is reasonably practicable in ensuring health and safety*

In this Act, reasonably practicable, in relation to a duty to ensure health and safety, means that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters including:

- the likelihood of the hazard or the risk concerned occurring; and
- the degree of harm that might result from the hazard or the risk; and
- what the person concerned knows, or ought reasonably to know, about:
  - the hazard or the risk; and

(ii) ways of eliminating or minimising the risk; and the availability and suitability of ways to eliminate or minimise the risk; and after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

## *Section 19 Primary duty of care*

A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of:

- workers engaged, or caused to be engaged by the person; and
- workers whose activities in carrying out work are influenced or directed by the person;
- while the workers are at work in the business or undertaking.
- a person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

Without limiting subsections (1) and (2), a person conducting a business or undertaking must ensure, so far as is reasonably practicable:

- the provision and maintenance of a work environment without risks to health and safety;
- the provision and maintenance of safe plant and structures; and
- the provision and maintenance of safe systems of work; and
- the safe use, handling and storage of plant, structures and substances; and
- the provision of adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking, including ensuring access to those facilities; and
- the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking; and

- that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking.

## **Other responsibilities for workers**

### *Section 28 Duties of workers*

While at work, a worker must:

- (a) take reasonable care for his or her own health and safety; and
- (b) take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons; and
- (c) comply, so far as the worker is reasonably able, with any reasonable instruction that is given by the person conducting the business or undertaking to allow the person to comply with this Act; and
- (d) cooperate with any reasonable policy or procedure of the person conducting the business or undertaking relating to health or safety at the workplace that has been notified to workers.

In addition to the general duty of care, an employer is vicariously liable for injuries, loss or damage caused by the negligence of a worker, provided the act was performed “in the course of the employment” or was “reasonably incidental to the course of the employment”. An act will generally be in the course of employment if it is authorised by the employer irrespective of whether the employee performs the act in a negligent or unlawful way.

At common law, where an employer is vicariously liable to pay damages as a result of the negligence of a worker, the employer may be able to recover these damages from the negligent worker.

An employer who fails to perform its legal duty, or is vicariously liable for the conduct of a negligent employee, is liable to pay damages for a resultant loss or damage, including any injury or disease suffered by the injured employee. These damages are primarily assessed with a view to compensating the injured employee for his or her loss. In each state and territory, an employer's common law liability must be read in conjunction with the relevant workers compensation legislation.

## **Responsibility to all people on site**

### *Section 29 Duties of other persons at the workplace*

A person at a workplace (whether or not the person has another duty under this Part) must:

- (a) take reasonable care for his or her own health and safety; and
- (b) take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons; and
- (c) comply, so far as the person is reasonably able, with any reasonable instruction that is given by the person conducting the business or undertaking to allow the person conducting the business or undertaking to comply with this Act.

Employers also owe a common law duty of care to persons other than their employees in relation to anything arising out of their business or “undertaking”. As noted below, employers will be vicariously liable for the actions of their employees.

An example of an employer's common law duty arises where the employer is an occupier of premises. As such, employers will be liable to the world at large under the common law concept of “occupier's liability”. Since 1987, occupier's liability is no longer dependent upon the relationship between the occupier and the injured person. For example, under old principles, the duty of care owed to a trespasser was less than the duty owed to an invitee. Under modern principles,

occupier's liability is not dependent on this relationship and liability will be determined by ordinary negligence principles of foreseeability.

### **Workplace Rehabilitation Procedure**

Employees who sustain a work related injury are entitled to assistance in the workplace.

To ensure workplace rehabilitation is effective, it is expected that all employees will be supportive of and committed to the rehabilitation program.

To facilitate this process, rehabilitation will commence as soon as practicable after the injury, with the approval of the injured worker's treating doctor.

Suitable duties are provided as an integral part of this process. The goal, through an individualised rehabilitation plan, is to return the injured worker to their normal duties.

A team approach to rehabilitation will be used, with cooperation, consultation and confidentiality being key requirements for all persons involved.

To ensure ongoing effectiveness, this procedure will be regularly reviewed and improved.

### **Health & Safety responsible positions**

For each workplace there are a number of positions of responsibility in relation to WHS operations. These are not full time positions and should be sourced by trusted, responsible employees. Each local church must have a Safety Team, who, depending on the number of employees, may have the following roles: WHS Officer, Chief Warden, first aid officer. Again, check your state requirements on the relevant WorkCover websites.

### **Responsibilities of workers at a workplace**

Each state and territory legislation has guidelines for employee responsibilities. In general terms here are some good practice guidelines. If in doubt, please use your State or Territory WHS website for more information about employee responsibilities. To comply with the instructions given for the Workplace Health and Safety at the workplace by the employer at the workplace and, if the workplace is a construction workplace, the principal contractor for Workplace Health and Safety at the workplace.

- For a worker – to use personal protective equipment if the equipment is provided by the worker's employer and the worker is properly instructed in its use;
- Not to wilfully or recklessly interfere with or misuse anything provided for the Workplace Health and Safety at the workplace.
- Not wilfully place at risk the Workplace Health and Safety of any person at the workplace;
- Not to wilfully injure him or herself.

Make sure you:

- Follow methods of work you have been trained in;
- Let your employer or Workplace Health and Safety representative know of any symptoms such as pain and discomfort that you think is caused by your work;
- Make suggestions to your employer about how tasks could be arranged to break up repetitive work.

### **Responsibility of others**

Visitors to workplaces must obey health and safety directions applied at the workplace.

Principal contractors should; ensure the orderly conduct of all work at the construction workplace to the extent necessary: - to ensure Workplace Health and Safety at the workplace; and to assist the discharge of Workplace Health and Safety obligations of an employer or self-employed person. To ensure that persons at the workplace are not exposed to risks from: something that has been provided for the general use of persons at the workplace for which no other person owes a Workplace Health and Safety obligation; or a hazard at the workplace for which no other person owes a Workplace Health and Safety obligation, to ensure that workplace activities at the workplace are safe and without risk of injury or illness to members of the public at or near the workplace; to provide safeguards and take safety measures prescribed under a regulation made for principal contractors.

Version 20200907

## **Copyright © 2020 Safe Ministry Resources Pty Ltd**

The **Safe Ministry Framework** is developed and owned by SMR Pty Ltd. This document cannot be modified without express written permission through a licence agreement. Please contact SMR Pty Ltd at email [info@safercommunities.net.au](mailto:info@safercommunities.net.au) to seek permission. SMR can also provide customisation of the **Safe Ministry Framework** for your church or denomination.

**Disclaimer:** This publication is not legal advice. The ideas and procedures herein are based on nationally recognised good practice advice for Safe Ministry and have been written with due regard to Australian legislation March 2020.

Legal advice may need to be sought when responding to individual incidents.