

# WorkSafe Victoria inspectors

How inspectors support and  
enforce health and safety at work

April 2012



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The information presented in this handbook is intended for general use only. It should not be viewed as a definitive guide to the law, and should be read in conjunction with the Occupational Health and Safety Act 2004 (Vic)/Accident Compensation Act 1985 (Vic). Whilst every effort has been made to ensure the accuracy and completeness of this handbook, the advice contained herein may not apply in every circumstance. Accordingly, the Victorian WorkCover Authority cannot be held responsible, and extends no warranties as to the suitability of the information for your specific circumstances; or actions taken by third parties as a result of information contained in this handbook.

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# WorkSafe Victoria inspectors

## Introduction

WorkSafe Victoria is the key regulator of occupational health and safety (OHS) laws in Victoria. We aim to reduce workplace incidents, injuries, disease and death through 'constructive compliance', a prevention strategy that balances positive motivation with strong deterrents. Our inspectors target unsafe workplace activity, respond to notifiable incidents, provide guidance and advice on how to comply with health and safety laws, and enforce those laws.

This guide explains the role, powers and activities of WorkSafe inspectors.



## Health and safety laws

In general terms, Victoria's health and safety laws aim to:

- create and maintain safe and healthy work environments that give the highest level of protection to workers and members of the public (that is reasonably practicable)
- eliminate risk to the health, safety and welfare of workers and the public
- protect the public from risks associated with dangerous goods, high-risk equipment and unsafe work practices
- involve workers and their representatives in health and safety issues in the workplace.

There are three main Acts of Parliament dealing with health and safety. They are:

- *Occupational Health and Safety Act 2004* (OHS Act), which deals with health, safety and welfare in the workplace
- *Dangerous Goods Act 1985*, which deals with dangerous goods and explosives
- *Equipment (Public Safety) Act 1994*, which deals with high-risk equipment used on private property or in public places.

These Acts:

- impose responsibilities on, and give legal rights to, people and organisations in relation to health and safety

- define offences and set maximum penalties
- allow inspectors to be appointed and give them the powers they need to inspect, give advice, investigate and enforce the law.

In addition, the Acts allow Regulations to be made. Regulations set out specific duties for all people with a role in workplace health and safety.

Go to [worksafe.vic.gov.au](http://worksafe.vic.gov.au) for a list of Victorian health and safety legislation.

## Role of WorkSafe inspectors

The primary role of WorkSafe inspectors is to ensure duty holders (eg employers) comply with health and safety legislation. They do this by:

- providing advice and information
- inspecting workplaces
- enforcing the law.

### Information and education

WorkSafe inspectors work with duty holders to improve workplace health and safety. They also have a key role in implementing WorkSafe's constructive compliance strategy and can:

- advise you of employer and worker responsibilities and rights under OHS law
- provide practical and accessible guidance material on hazard identification and risk control
- promote consultation and representation of workers in health and safety matters.



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They encourage:

- commitment from management to a planned approach to, and continuous improvement of, health and safety
- effective workplace communication and meaningful worker involvement at all levels
- control of hazards at their source
- appropriate provision of training, information, instruction and supervision
- integration of health and safety into broader enterprise systems and practices.

WorkSafe encourages employers and workers to develop an effective mechanism for resolving workplace health and safety problems. An inspector can provide advice for a resolution procedure.

## Workplace inspections

WorkSafe's inspection and enforcement activities focus on poor-performing industry sectors and organisations, specific hazards that pose serious risks, and the causes of common injury. Inspectors generally conduct planned inspections in these areas.

Inspections are conducted after 'reportable' workplace incidents - fatalities, serious injuries, dangerous incidents and emergencies. If necessary, WorkSafe inspectors will direct that the incident scene be left undisturbed prior to an investigation or while seeking assistance from an expert.

Inspectors will also attend workplaces in response to reports of unsafe work conditions and to make decisions about:

- disputed provisional improvement notices (PINs) issued by health and safety representatives (HSRs)
- unresolved matters from designated work group negotiations
- disputed work stoppages due to alleged immediate threats to health and safety
- issues unable to be resolved through agreed or prescribed issue resolution procedures.

WorkSafe inspectors may be asked to assist in elections for HSRs. They may also be asked to resolve disputes about the exercise of powers by authorised representatives of registered employee organisations (ARREOs) if these disputes relate to Victorian health and safety legislation.

For information about ARREOs, see the WorkSafe publication *Guide to right of entry by authorised representatives*.

## Enforcement action

If an inspector forms a reasonable belief that OHS laws have been contravened or there is an immediate risk to health and safety, they will take action to enforce the law, using:

- *improvement notices* – written directions requiring a person to remedy a contravention of the law within a specified time
- *prohibition notices* – written directions prohibiting any activity that will, or is likely to, involve an immediate risk to the health and safety of any person.

Inspectors will reach their decision after making enquiries, as appropriate, with the people responsible for providing a safe workplace (ie duty holders), any HSRs and other relevant parties. Their decisions also take into account:

- the nature and circumstances of the alleged contravention
- the principles of health and safety protection
- the characteristics of the duty holder
- WorkSafe's strategic enforcement priorities (eg target areas).

An inspector may recommend a comprehensive investigation if there is evidence of a contravention of OHS laws. WorkSafe will consider whether there will be a prosecution or another form of enforcement action taken.

In determining the most appropriate enforcement action to take, WorkSafe will apply its enforcement criteria of:

- *sufficient evidence* – whether there is sufficient evidence to support an enforcement action
- *public interest* – whether the nature and circumstances of the breach make it appropriate to take enforcement action.

For further information, see the publication *WorkSafe compliance and enforcement policy*, incorporating *WorkSafe's general prosecution guidelines*.



## Inspectors' powers

WorkSafe inspectors have legislated powers to enter a workplace during working hours, or when they have formed a reasonable belief of an immediate risk to anyone, to assess compliance with health and safety laws. They may also enter workplaces in other cases by execution of a search warrant issued by a magistrate.

When a WorkSafe inspector considers it necessary, they may inspect workplaces and some public places at all reasonable times, day or night, and have the authority to:

- issue improvement notices, prohibition notices or directions
- require names and addresses
- conduct interviews and make enquiries

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- take photographs, recordings and measurements
- take possession of items for examination, testing or use as evidence
- take samples of substances or objects
- require the production of, examine and copy documents.

Other people, including technical or scientific experts, interpreters or police officers, may be called on to assist a WorkSafe inspector and must be allowed access to the workplace during an inspection.

An inspector can also:

- review a PIN issued by an HSR and affirm (with or without modifications) or cancel it
- review a decision to cease work, which may include the issuing of a prohibition notice
- issue a non-disturbance notice, to prevent disturbance to an incident scene.

## Obligations on inspectors

WorkSafe inspectors carry an official identification card. They must show this identification if asked to do so, when performing a function or exercising a power, and when the relevant legislation requires them to do so. This identification lists the Acts of Parliament under which they have been appointed and given inspectorial powers.

All WorkSafe inspectors are appointed inspectors under the:

- OHS Act
- *Equipment (Public Safety) Act 1994*.

Many are also appointed as inspectors or authorised officers under the:

- *Dangerous Goods Act 1985*.

When WorkSafe inspectors enter a workplace or site, they will take all reasonable steps to notify the employer or occupier (eg person with management or control of the workplace), and relevant HSRs, of their presence. The only time this might not be done is if to do so would defeat the purpose of their entry, or cause unreasonable delay, or if the relevant duty holders are already aware of their presence.

HSRs are entitled to speak to the inspector and participate in the inspection. An inspector may talk to several HSRs if the inspection crosses a number of designated work groups at the workplace.

As they are leaving, or as soon as practicable after they have left the workplace, WorkSafe inspectors will give a written entry report to the employer or occupier, and relevant HSRs. If there is no HSR, a copy will be given to a worker who is a member of the health and safety committee (HSC) if there is one.

Health and safety legislation sets out what is to be included in this entry report, including:

- purpose of the visit
- times of entry and departure

- summary of what the inspector has observed
- description of things done by the inspector
- powers used by the inspector
- if photographs, sketches or recordings were taken and, if so, where these are available
- procedure for internal review.

WorkSafe inspectors are required to provide certain warnings or information to the relevant person when exercising their powers to require:

- a name and address
- production of documents
- answers to questions.

## Achieving compliance

WorkSafe inspectors deal with a variety of people who have health and safety responsibilities. Under the OHS Act, these duty holders include employers, self-employed people, workers, contractors and company officers. Other people who have a legal responsibility to prevent injury or disease in the workplace include:

- those who manage or control workplaces
- designers of plant, buildings or structures
- manufacturers and suppliers of plant and substances
- people installing, erecting or commissioning plant.

When a WorkSafe inspector detects a contravention of OHS laws, the inspector will take action to ensure the contravention is remedied by the duty holder. The inspector will do one or more of the following:

- get immediate voluntary compliance and take no further action
- issue an improvement notice requiring the contravention to be fixed by a certain date
- issue a prohibition notice where there is an immediate risk and the activity must stop until the risk is removed
- direct that a certain action be taken where an immediate risk exists, or if the inspector deems this appropriate.

WorkSafe inspectors include information in the notice about how to comply with the law. The person receiving the notice or direction is responsible for achieving compliance with legislation or dealing with an immediate risk.

If a prohibition notice has been issued, a prohibited activity cannot recommence until an inspector certifies in writing that the risk has been remedied.

Where there has been a breach of conditions associated with a licence, approval, certificate, permit, authorisation etc, issued by WorkSafe, an inspector can recommend its revocation, suspension or cancellation.

## Review of inspectors' decisions

A WorkSafe inspector may form a reasonable belief that an activity in a workplace is a risk to health and safety and may issue a notice. Alternatively, the inspector may form a reasonable belief that an activity is safe and decide not to take action. Decisions such as these can be independently reviewed through a process set up by WorkSafe.

If there is any query regarding health and safety matters raised by the WorkSafe inspector's entry report or in a notice, the inspector named in the report should be contacted. However, if an employer, an HSR, or another eligible person wants to contest a reviewable decision, an application may be lodged with WorkSafe's Internal Review Unit.

For further information about making an application for internal review, what a reviewable decision is, or who is eligible to apply for a review, see WorkSafe's publications *Internal review of inspector's decisions* and *How to apply for a review of an inspector's decision*. Alternatively, contact the Internal Review Unit on (03) 8663 5450. Information on how to apply for an internal review is also included on every notice and entry report issued by an inspector.



## Offences in relation to Worksafe inspectors

It is a serious offence for anyone to:

- refuse access to a WorkSafe inspector or anyone assisting the inspector
- intentionally hinder or obstruct, or induce others to hinder or obstruct, inspectors in the course of their duties
- intentionally conceal from the inspector the location or existence of a person, plant, substance or thing
- refuse to provide assistance to an inspector or prevent others from assisting
- assault, intimidate or threaten, or attempt to intimidate or threaten an inspector or person assisting an inspector.

## Feedback or complaints in relation to inspectors' actions

WorkSafe inspectors are expected to comply with legislated obligations and WorkSafe operational procedures. They are also expected to be professional, objective and consistent when enforcing the law and they are accountable for how they do their job. If there is a need to inform WorkSafe of any aspect of an inspector's performance, the appropriate manager's contact details appear on the inspector's entry report.

Complaints about inspector conduct will be investigated independently of the inspector and their line management.

To comment on WorkSafe's activities or health and safety legislation, you may provide feedback to:

General Manager, Operations

WorkSafe Victoria

GPO Box 4306

Melbourne Victoria 3001

Ph: (03) 9641 1215

Fax: (03) 9641 1711

Email: [generalmanageroperations@worksafe.vic.gov.au](mailto:generalmanageroperations@worksafe.vic.gov.au)

## Emergency response

WorkSafe seeks widespread community support for securing healthy and safe workplaces. If dangerous situations are observed in workplaces or public places, the Advisory Service should be contacted (see contact details at the end of this booklet). In emergencies the WorkSafe Victoria Emergency Response Service should be contacted on 13 23 60.

WorkSafe operates a 24-hour emergency response service for health and safety incidents. Inspectors will attend incidents requiring immediate response, including the following types of emergencies:

- workplace deaths
- state disaster plan operations
- serious incidents involving the transport, use, storage or handling of dangerous goods and chemicals
- workplace and work-related incidents that result in injury or have the potential for injury
- health and safety disputes where work activity has stopped
- other urgent prevention activity.

**In an emergency, contact WorkSafe at any time on 13 23 60.**

## WorkSafe Victoria

### WorkSafe Agents

Agent contact details are all available at [worksafe.vic.gov.au/agents](http://worksafe.vic.gov.au/agents)

### Advisory Service

Phone.....(03) 9641 1444  
Toll-free..... 1800 136 089  
Email.....[info@worksafe.vic.gov.au](mailto:info@worksafe.vic.gov.au)

### Head Office

222 Exhibition Street, Melbourne 3000  
Phone.....(03) 9641 1555  
Toll-free..... 1800 136 089  
Website.....[worksafe.vic.gov.au](http://worksafe.vic.gov.au)

For information about WorkSafe in your own language, call our Talking your Language service

廣東話.....	1300 559 141
Ελληνικά.....	1300 650 535
Македонски.....	1300 661 494
Italiano.....	1300 660 210
普通话.....	1300 662 373
Српски.....	1300 722 595
Español.....	1300 724 101
Türkçe.....	1300 725 445
Việt Ngữ.....	1300 781 868
العربية.....	1300 554 987
English.....	1300 782 442
Other.....	1300 782 343