WorkSafe VICTORIA

GUIDE TO THE OHS ACT 2004

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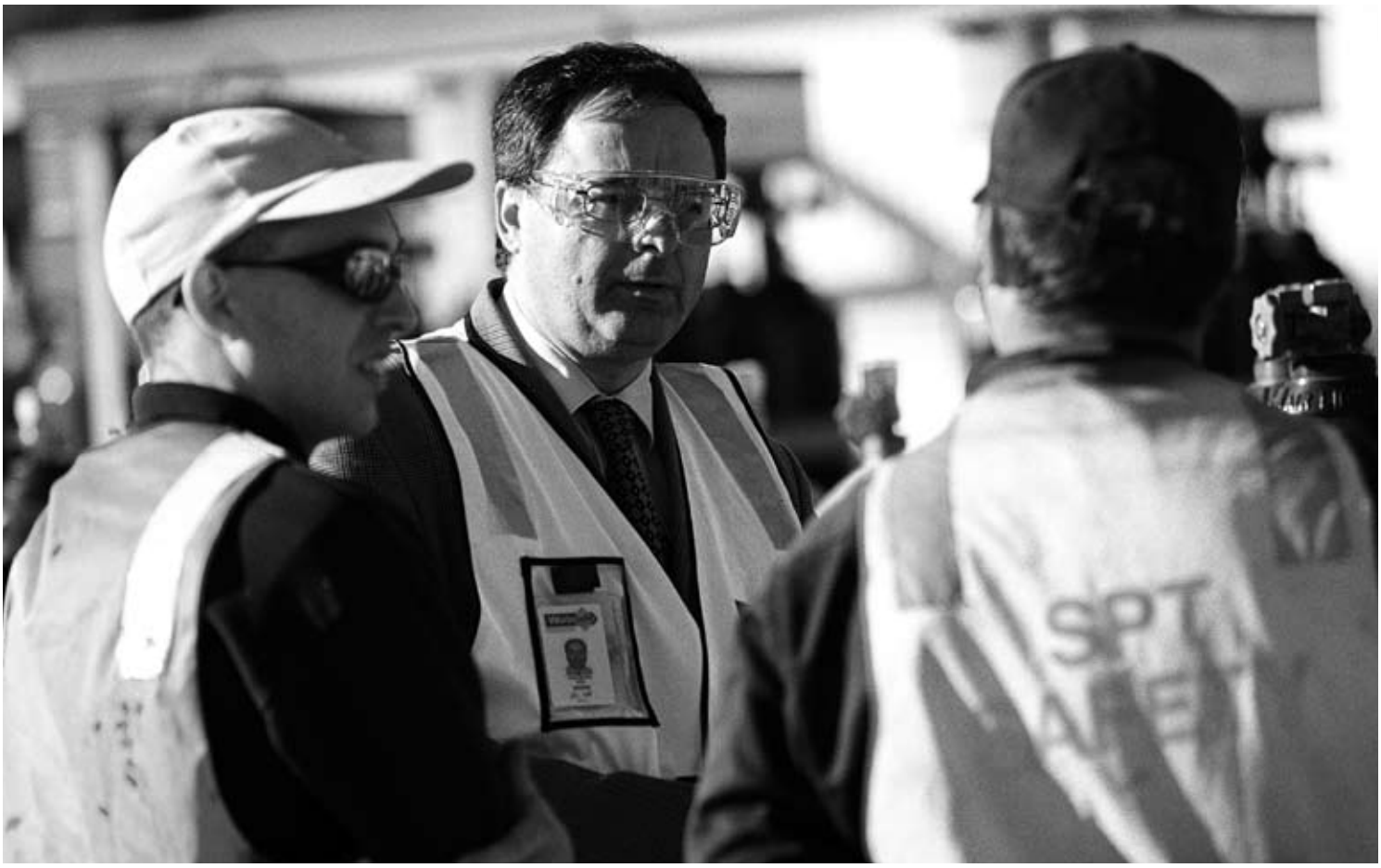

A guide to your responsibilities under the Occupational Health and Safety Act 2004

State Government Victoria

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WorkSafe Victoria is a division of the Victorian WorkCover Authority.

FOREWORD

Victorians are taking safety at work more seriously than ever before, and now they have some of the most modern and responsive laws and a constructive regulator to help them achieve even better results.

The *Occupational Health and Safety Act 2004* came into place on July 1 2005, replacing the original Act which was introduced in 1985 and served Victorians well for nearly a generation.

The new Act is the culmination of a lot of work by a diverse range of committed people and signifies the great step we are all taking to change the way safety is approached at work.

It is designed to meet the challenges of the 21st century workplace, with one clear objective in mind: to save lives and avoid workplace injuries. It provides a pathway for us to achieve safer workplaces by demanding increased co-operation and consultation amongst all those at work.

As the regulator of workplace safety, WorkSafe Victoria has also changed the way it operates so it can better assist all key parties in the workplace meet their obligations, by providing greater practical assistance and advice.

When you get the balance right between regulation and advice, fewer workers are injured at work and employers are more likely to maintain safer workplaces.

As with other important policy areas for government, the key to effective regulation of workplace safety lies in increasing people's understanding of the their own responsibilities and those they share with others.

This Guide to the new Act provides a practical and easy to use overview of the key themes of the new Act and the responsibilities of all people in Victorian workplaces.

Together with the other information available about the Act, this Guide is a useful resource for employers, self employed persons, employees, managers, manufacturers as well as designers and installers of buildings or machinery.

The Guide has been developed by WorkSafe in partnership, and with support from, a diverse range of interested groups including trade unions, employers associations and industry experts. Without their assistance the huge welcome that the new Act has already received from Victorians would not have been possible.

I encourage employers, employees and their representatives from all parts of Victoria to become familiar with the new Act, to have training, and seek assistance from WorkSafe where needed.

That way we can all help Victoria remain one of the safest places to work and live.

JOHN LENDERS MP

Minister for WorkCover

1 THE GUIDE AND HOW TO USE IT

This is a quick guide to the new *Occupational Health and Safety Act 2004* (OHS Act 2004). It provides an overview of what the OHS Act 2004 aims to achieve as well as the responsibilities we all have to ensure that workplaces are safe and healthy.

Information sheets and other explanatory material provide more detailed information on the various aspects of the Act and its implementation. These can be obtained by contacting WorkSafe Victoria.

The Guide includes a table which sets out the key responsibilities under the OHS Act 2004 and will give you a snapshot of the key obligations that you might have.

It also includes a table of key powers under the OHS Act 2004 which will give you a basic understanding of the role and powers of health and safety representatives (HSRs), WorkSafe inspectors and authorised representatives of registered employee organisations.

2 THE NEW ACT

The OHS Act 2004 modernises Victoria's workplace health and safety laws. It provides:

- clearer accountability for everyone involved in the workplace;
- detailed requirements for consultation between employees, employee representatives and employers;
- more flexible arrangements for electing health and safety representatives; and
- clearer and more constructive enforcement.

It has been accompanied by the transformation of WorkSafe into a more constructive, accountable, transparent and effective regulator able to provide greater guidance and assistance to employers and employees to make workplaces safe and healthy.

3 WHAT THE NEW ACT SEEKS TO ACHIEVE

The OHS Act 2004 makes it clear that everyone involved in the workplace has a responsibility to prevent injury or ill health and the best way to meet this responsibility is by working together to progressively reduce the incidence, severity and cost to the community of work-related injury and disease.

The OHS Act 2004 provides a broad framework for improving standards of workplace health and safety to reduce work-related injury and illness. It aims to:

- secure the health, safety and welfare of employees and other people at work;
- protect the public from the health and safety risks of business activities;
- eliminate workplace risks at the source; and
- involve employers, employees and the organisations that represent them in the formulation and implementation of health, safety and welfare standards.

(Throughout the Act, the meaning of health includes psychological health as well as physical health.)

Five key health and safety principles underpin the Act. They are:

- all people – employees and the general public – should have the highest level of protection against risks to health and safety;
- those who manage or control things that create health and safety risks in the workplace are responsible for eliminating those risks. Where they can't be eliminated, they are responsible for reducing those risks so far as is reasonably practicable;
- employers should be proactive in promoting health and safety in the workplace;
- information and ideas about risks and how to control them should be shared between employees and employers; and
- employees are entitled – and should be encouraged – to be represented in relation to health and safety issues.

4 SOME KEY CONCEPTS

Your responsibilities to ensure health and safety

The OHS Act 2004 imposes general OHS duties on employers, the self-employed, employees, designers, manufacturers, suppliers and others.

You may have more than one duty. For example, you may have duties as an employer and as designer or supplier or as an employer and as a sub-contractor or supplier of plant. (The accompanying table sets out in broad terms the duties of each duty holders.)

These general OHS duties require a person, in most instances, to ensure health and safety so far as is reasonably practicable. This 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 reduce those risks to far as is reasonably practicable.

Reasonably practicable

A duty holder is not expected to do the impossible. What is 'reasonably practicable' in a given situation is to be determined objectively. The duty holder must do what a reasonable person would do in the particular circumstances by putting in place reasonably practicable measures.

In determining what is 'reasonably practicable', account must be taken of:

- the probability of a person being exposed to harm;
- the potential seriousness of injury or harm;
- what is known, or ought to be known, about the risk (people responsible for health and safety are required to inform themselves of current and relevant information) and how to eliminate it; and
- the availability, suitability and cost of eliminating or reducing the risk.

The term 'reasonably practicable' in the Act has the same practical effect on how duties are to be met as the term 'practicable' had in the *Occupational Health and Safety Act 1985.*

Officers of organisations are accountable

Only those people at the most senior levels of organisations who are genuinely in a position to prevent contraventions of the Act will be held to be 'officers'. The duty of an officer is to exercise reasonable care. They must use the level of sound judgement, prudent decision-making and taking of action that any reasonable person would, to prevent and reduce hazards and risks to health and safety. (Officers who are volunteers are not liable.)

No one may put another person at a workplace in danger

It is an offence, without lawful excuse, for any person to recklessly engage in conduct that exposes, or may expose, a person at a workplace to the risk of serious injury.

5 KEY RESPONSIBILITIES UNDER THE OHS ACT 2004

The table overleaf identifies and broadly describes responsibilities held by duty holders under the OHS Act.

The following definitions will help you to work out which responsibilities you have under the OHS Act:

If you have one or more employees, you are an employer. Employers can be individuals, companies, partnerships or unincorporated associations.

If you work for gain or reward but not under an employment contract or training contract, you are a self-employed person.

If you are employed under an employment contract or a training contract (e.g. an apprenticeship) you are an employee.

If you are an officer under the Corporations Act, you are an officer under the OHS Act. Officers are people who make, or participate in making, decisions that affect the whole, or a substantial part, of a business. Officers are people at the most senior levels of a business who are genuinely in a position to prevent contraventions of the OHS Act.

Those who manage or control a workplace are required to ensure the workplace is safe (so far as reasonably practicable). This may include an employer, the building or site owner and the property management or lessee of a building or site that is a workplace.

If you manufacture plant including machinery, equipment and tools or their parts, you are a manufacturer of plant. Duties apply where a manufacturer knows or should know that the plant is to be used in a workplace.

If you manufacture, mix, dilute or repackage substances you are manufacturer of substances. Duties apply where a manufacturer knows, or should know, that the substance is to be used in a workplace.

Designers of plant, buildings or structures are those who do the design work for plant, buildings or structures.

If you place plant in position, connect the plant to services or adjust plant prior to first use or re-use you are an installer of plant.

If you construct, dismantle or alter plant's structure, you are an erector of plant.

If you perform the necessary adjustments, tests and inspections to ensure plant is in full working order in accordance with the specified design requirements, you are a person who commissions plant.

KEY RESPONSIBILITIES UNDER THE OHS ACT 2004

KEY THEMES	EMPLOYERS
Protect the health and safety of people at workplaces and the public	Provide and maintain for employees[1] a working environment that is safe and without risks to health* (s21) Not recklessly endanger a person at a workplace (s32) Monitor the health of employees, keep records and get advice* (s22) Protect other people from risks arising from employer's business* (s23) Hold licences, registrations or permits as required (Part 6)
Involve workplace parties	Consult with employees[1] on health and safety issues* (Part 4)[3] On request, negotiate with employees to establish Designated Work Groups (DWGs) (Part 7, Divisions 1, 2) On request, allow HSRs to attend initial and annual refresher OHS training (s67) Give HSRs paid time off for other approved training and to exercise their powers (s69(1)(d)) Allow HSRs access to information and provide necessary facilities and assistance (s69(1)(a)(e)) Allow HSR to be present at interviews with members of DWG on health and safety (with their members' consent) (s69(1)(b)(c)) Allow person assisting HSR access to workplace (s70) Keep and display a list of HSRs for each DWG (s71) On request, establish a health & safety committee (s72) Not discriminate against those involved in health and safety (s76)
Deal with health and safety issues	Attempt to resolve OHS issues with employees (and HSRs, if any) (s73) Direct that work is to cease (s74) Report incidents to WorkSafe as required (Part 5) Comply with PINs issued by HSRs and PINs affirmed by inspectors (s62, 63) Display notices and bring notices to the attention of employees (s115(2)) Co-operate with WorkSafe inspectors (Part 9) Co-operate with authorised representatives (Part 8)
More information	For more information refer to WorkSafe's information sheet for employers (www.workcover.vic.gov.au)

[1] And any independent contractors (and their employees) for matters under the control of the employer.
** So far as reasonably practicable.*
[2] This responsibility only applies to manufacturers.
[3] Applies from 1 January 2006. Employers must continue to consult, if practicable, with HSRs about all proposed changes that affect the health and safety of the HSR's DWG. (s164)

KEY RESPONSIBILITIES UNDER THE OHS ACT 2004

KEY THEMES	SELF-EMPLOYED PERSONS	EMPLOYEES	OFFICERS	THOSE WHO MANAGE AND CONTROL WORKPLACES
Protect the health and safety of people at workplaces and the public	Protect other people from risks arising from self-employed person's business* (s24) Hold licences, registrations or permits as required (Part 6) Not recklessly endanger a person at a workplace (s32)	Take reasonable care for self and others (s25(1)(a)(b)) Co-operate with employer with regard to actions taken to comply with requirements of the Act and regulations (s25(1)(c)) Hold licences, permits or qualifications as required (Part 6) Not recklessly endanger a person at a workplace (s32)	Take reasonable care to ensure organisation complies with OHS obligations (s144) Not recklessly endanger a person at a workplace (s32)	Keep the workplace, including entrances and exits, safe and without risks to health* (s26) Not recklessly endanger a person at a workplace (s32)
Involve workplace parties		Co-operate with employer with regard to actions taken to comply with requirements of the Act and regulations (s25(1)(c)) If DWGs are requested, Negotiate with employers to establish DWGs (Part 7, Divisions 1, 2) Elect HSRs (s54)		
Deal with health and safety issues		Attempt to resolve OHS issues with employer (s73) Co-operate with WorkSafe inspectors (Part 9) Co-operate with authorised representatives (Part 8) Co-operate with employer with regard to actions taken to comply with requirements of the Act and regulations (s25(1)(c))		Co-operate with WorkSafe inspectors (Part 9) Co-operate with authorised representatives (Part 8)
More information		For more information refer to WorkSafe's information sheet for employees (www.workcover.vic.gov.au)	For more information refer to WorkSafe's information sheet for senior officers of organisations (www.workcover.vic.gov.au)	For more information refer to WorkSafe's information sheet for occupiers and those who manage or control workplaces (www.workcover.vic.gov.au)

[1] And any independent contractors (and their employees) for matters under the control of the employer.
** So far as reasonably practicable.*
[2] This responsibility only applies to manufacturers.
[3] Applies from 1 January 2006. Employers must continue to consult, if practicable, with HSRs about all proposed changes that affect the health and safety of the HSR's DWG. (s164)

KEY RESPONSIBILITIES UNDER THE OHS ACT 2004

KEY THEMES	MANUFACTURERS AND SUPPLIERS OF PLANT AND SUBSTANCES	DESIGNERS OF PLANT, BUILDINGS OR STRUCTURES	INSTALLERS, ERECTORS OR COMMISSIONERS OF PLANT
Protect the health and safety of people at workplaces and the public	Manufacture and supply plant and substances to be safe when used for their intended purpose* (s29(1)(a)) Test plant and substances to confirm health and safety requirements[2] (s29(1)(b)) Provide OHS information when providing plant/substance or when asked (s29(1)(c), 30(1)(b)) Not recklessly endanger a person at a workplace (s32)	Design buildings or structures to be safe for persons using them for their designed purpose as a workplace.* (s28) Design plant to be safe when used for its designed purpose* (s27(1)(a)) Test plant to confirm health and safety requirements (s27(1)(b)) Provide OHS information when providing plant design or when asked (s27(1)(c)) Not recklessly endanger a person at a workplace (s32)	Ensure that nothing about the way plant is installed, erected or commissioned makes it unsafe for use* (s31) Not recklessly endanger a person at a workplace (s32)
Involve workplace parties			
Deal with health and safety issues	Co-operate with WorkSafe inspectors (Part 9) Co-operate with authorised representatives (Part 8)	Co-operate with WorkSafe inspectors (Part 9) Co-operate with authorised representatives (Part 8)	Co-operate with WorkSafe inspectors (Part 9) Co-operate with authorised representatives (Part 8)
More information	For more information refer to WorkSafe's information sheet for manufacturers and suppliers of plant and/or WorkSafe's information sheet for manufacturers and suppliers of substances (www.workcover.vic.gov.au)		For more information refer to WorkSafe's information sheet for installers, erectors and commissioners of plant (www.workcover.vic.gov.au)

[1] And any independent contractors (and their employees) for matters under the control of the employer.
** So far as reasonably practicable.*
[2] This responsibility only applies to manufacturers.
[3] Applies from 1 January 2006. Employers must continue to consult, if practicable, with HSRs about all proposed changes that affect the health and safety of the HSR's DWG. (s164)

6 KEY POWERS UNDER THE OHS ACT 2004

The OHS Act 2004 gives powers to WorkSafe inspectors, health and safety representatives (HSR's) and authorised representatives of registered employee organisations to enable them to deal with health and safety issues in a workplace as they arise.

The table overleaf provides an overview of the role and powers of inspectors, HSR's and authorised representatives.

WorkSafe inspectors

WorkSafe's approach to administering the Act is to balance positive motivators and deterrents to improve workplace health and safety.

WorkSafe inspectors have a wide ranging role and extensive powers under the Act including the monitoring and enforcement of compliance with OHS laws. They also provide guidance and advice to help employers and other duty holders deal with health and safety risks in the workplace.

Health and Safety Representatives (HSR's)

The best way to tackle health and safety issues in the workplace is for all parties to participate in an ongoing dialogue. Employees have a basic right to be represented and take part in all aspects of health and safety in their workplace. Employees are entitled to request the establishment of designated work groups which then allow for the election of HSR's. HSR's provide a collective voice for employees to raise their health and safety issues. The Act gives HSR's a range of powers that can be used to:

- Represent members of their work group (and anyone else they are authorised to represent);
- Monitor the measures taken by the employer to comply with OHS laws;
- Inspect and enquire into anything that may pose a threat to the health and safety of the employees they represent; and
- Attempt to resolve OHS issues at the workplace.

HSR's can also represent employees outside their workgroup, if there is an immediate threat or if their assistance is requested and it is not practical to refer the matter to the relevant HSR.

Authorised representatives of registered employee organisations

The OHS Act 2004 gives authorised representatives of employee organisations, such as unions, the right to enter Victorian workplaces during working hours where they reasonably suspect a breach of the Act has occurred or is occurring. The suspected contravention must affect employees which the authorised representative is entitled to represent.

The Act does not give authorised representatives a broad right of access to a workplace, but enables access to parts of the workplace necessary to consult the affected employees and the employer, and to enquire into the suspected contravention. They are not allowed to enter a private home, even if that home is also used as a workplace. The authorised representative must comply with any reasonable safety and security requirements of the workplace.

Authorised representatives must take all reasonable steps to give a notice setting out the suspected contravention to the employer/manager as well as any HSR's before beginning enquiries.

It is critical that the right of entry powers are exercised appropriately and promote co-operation in the workplace. Abuse by employers, authorised representatives or employees will not be tolerated and tough sanctions apply.

KEY POWERS UNDER THE OHS ACT 2004

TYPE OF POWER	INSPECTOR
Entry	Enter: • a workplace during working hours • any place at any time if the inspector reasonably believes that there is an immediate risk to the health and safety of a person (s98)[4]
Enquiries/ investigation powers	Inspect, examine and make enquiries at the place, and inspect or examine any thing (s99(a)(b)) Bring equipment/ materials that may be required (s99(c)) Seize things that may be used as evidence (s99(d)) Seize things for examination/ testing (s99(e)) Take photos/ measurements or make sketches/ recordings (s99)(f) Require a person to produce a document (s100(1)(a)(b)) Require a person at the place to answer any question (s100(1)(c)) Take samples for analysis (s101) Take copies of any document (s124) Enquire into issues relating to the exercise of powers by an authorised representative (s89(4))
Notices and stopping work	Affirm, modify or cancel a Provisional Improvement Notice (PIN) (s63(3)) Issue non-disturbance notice (s110) Issue an improvement notice (s111) Issue a prohibition notice (s112) Attend a workplace to enquire, where work has been directed to cease (s74)
Representation of employees	Determine unresolved issues concerning DWGs (s45) On request, conduct the election of a HSR, or appoint another person to conduct the election (s54(4))
Other	Give advice on how to comply with OHS laws (s18) Apply to a Magistrate for the issue of a search warrant (s104) Ask a person his/ her name or address (s119) Give directions to a person at a workplace because of an immediate risk to the health or safety of any person (s120) Seek assistance from others (s122) Take affidavits (s123)

[4] Powers of an inspector in relation to entering a place are not exercisable in respect of any part used for residential purposes (except with the consent of the occupier/authority of a search warrant) (s107)
[5] Authorised representatives may not enter any part of a place used for a residential purpose, except with the consent of the occupier (s90(1)(a). An authorised representative's right of entry is also subject to restrictions on entry imposed by other Acts (s90(1)(b))

KEY POWERS UNDER THE OHS ACT 2004

TYPE OF POWER	HEALTH AND SAFETY REPRESENTATIVE (HSR)	AUTHORISED REPRESENTATIVE OF A REGISTERED EMPLOYEE ORGANISATION (AUTHORISED REPRESENTATIVE)
Entry	N/A	Enter a workplace during working hours if: • reasonably suspects a contravention; and • has the right to represent the affected workers (s87)[5]
Enquiries/ investigation powers	Accompany an inspector during an inspection (s58(1)(b)) Inspect any part of a workplace at which a member of the DWG works (s58(1)(a))	No investigative powers, only powers to enquire Inspect plant, substance or things (s89(1)(a)) Observe work (s89(1)(b)) Talk to employees (with their consent) who are members of, or eligible to be members of their organisation (s89((1)(c)) Talk to the employer (s89(1)(d))
Notices and stopping work	Issue a PIN (s60, s61) Direct that work is to cease (s74)	No powers to issue notices or cause work to stop Can warn an employee(s) of an immediate and significant risk of serious injury or death (s90(2)(3))
Representation of employees	Require the establishment of a health and safety committee (s58(1)(c)) With the employee's consent, attend an interview concerning OHS between a DWG member and an inspector or the employer (s58(1)(d))	
Other	Seek assistance from others (s58(1)(f))	

[4] Powers of an inspector in relation to entering a place are not exercisable in respect of any part used for residential purposes (except with the consent of the occupier/authority of a search warrant) (s107)
[5] Authorised representatives may not enter any part of a place used for a residential purpose, except with the consent of the occupier (s90(1)(a). An authorised representative's right of entry is also subject to restrictions on entry imposed by other Acts (s90(1)(b))

WORKSAFE VICTORIA

Advisory Service

222 Exhibition Street
Melbourne 3000

Phone 03 9641 1444
Toll-free 1800 136 089
Email . . . . . info@workcover.vic.gov.au

Head Office

222 Exhibition Street
Melbourne 3000

Phone 03 9641 1555
Toll-free 1800 136 089
Website . . . www.workcover.vic.gov.au

Local Offices

Ballarat. 03 5338 4444
Bendigo 03 5443 8866
Dandenong 03 8792 9000
Geelong 03 5226 1200
Melbourne
(628 Bourke Street) 03 9941 0558
Mildura. 03 5021 4001
Mulgrave 03 9565 9444
Preston 03 9485 4555
Shepparton 03 5831 8260
Traralgon 03 5174 8900
Wangaratta 03 5721 8588
Warrnambool 03 5564 3200

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