

Prosecution of Government Agencies

Government Departments have always had obligations under the *Workplace Health and Safety Act 1995* and the *Electrical Safety Act 2002*, however on 1 January 2009 amendments to this legislation commenced which enable government departments to be prosecuted for breaches of this legislation in the same way as private sector employers. This amendment has been referred to as 'removing the shield of the crown'.

As a result of these legislative changes, should there be a significant breach of the *Workplace Health and Safety Act 1995* or the *Electrical Safety Act 2002* by the Department of Education and Training (DET), Workplace Health and Safety Queensland (WHSQ) and the Electrical Safety Office (ESO) through the Director-General, Department of Justice and the Attorney-General (JAG), may consider prosecuting the following obligation holders:

1. The Employer (Queensland State Government)
2. A Person in Control of a Workplace
3. Workers and Others

It should be noted that prosecutions are a last resort in WHSQ and ESO's enforcement framework and are generally only used where there are significant breaches of the legislation e.g. an incident that results in a serious injury or death.

Prosecution of the Employer (Queensland State Government)

Should a significant incident occur at a departmental workplace, such as a school or TAFE institute, due to a breach of the *Workplace Health and Safety Act 1995* or the *Electrical Safety Act 2002*, JAG may choose to prosecute the department (as the employer) in accordance with Part 12, Division 3 of the *Workplace Health and Safety Act 1995* or Part 13, Division 2A of the *Electrical Safety Act 2002*.

Should JAG be successful in their prosecution, the department may be fined up to \$750,000 for serious breaches of the Act (e.g. an event that leads to multiple deaths).

Case Study - All Souls St Gabriels School 2004

On 18 May 2004 a year 11 student at All Souls St Gabriels School in Charters Towers, Queensland, was killed when a 205 litre metal drum that he was cutting with a plasma arc cutting torch exploded. The drum had previously contained diesel engine oil and the student was cutting it to make a feed bin as part of an agricultural skills course supervised by his teacher

When hearing this case, the Industrial Magistrates magistrate considered the obligations imposed by section 28 of the *Workplace Health and Safety Act 1995* - *an employer has an obligation to ensure other persons are not exposed to risks to their health and safety arising out of the conduct of the employer's business or undertaking.*

The Industrial Magistrate found the cutting of the drums was extraordinarily dangerous; there were clear warnings of the dangers of the activity on the drums; residual oil in the drum was not purged; there was little instruction to students to prevent the hazard and there was no supervision of the student while using the cutting torch. As a result, the Industrial Magistrate found the circumstances of the incident were "in all respects damning" of ASSG School Incorporated (the employer) and imposed a penalty of \$80,000.

Upon appeal by ASSG School Incorporated, the Industrial Court again stressed the 'absolute' obligation of the employer to ensure the safety of the pupils within its care. The teacher had been subject to the schools' authority, yet he had been permitted to develop a module within his course curriculum without any scrutiny by the school of its content. On the basis of the warning labels on the drums, the fact that the teacher's action had involved reckless exposure of his students to an extreme danger and the employer's ignorance of such a risk, the Industrial Court confirmed the Industrial Magistrates decision.

Prosecution of Persons in Control of a Workplace

The *Workplace Health and Safety Act 1995* and the *Electrical Safety Act 2002* impose obligations on a person in control of a workplace. A person in control of a workplace is usually considered to be the person who is

best placed to implement measures to control exposure to a risk. Within DET, this may include Assistant Director-Generals, Regional Executive Directors, Principals or Institute Directors. In terms of commencing a prosecution, each situation is assessed on its facts and on the relative conduct of each duty holder involved in the incident. The obligations of a person in control of a workplace is limited to ensuring the risk of injury or illness is minimised for persons coming to work at the workplaces, minimising the risk of injury from plant and substances and ensuring safe access to and from the workplace for everyone.

Prosecution of Workers and Others

Workers and others (e.g. parents, contractors, visitors and volunteers) also have an obligation to comply with all reasonable instructions that are given by an employer or principal contractor (e.g. using personal protective equipment when directed, not placing themselves or others at risk of injury). If they do not comply with the instructions, or engage in reckless behaviour (e.g. practical jokes), JAG could commence proceedings against the individual, where the breach is serious. This is not a new amendment as proceedings against Queensland Government employees and others have been able to occur for a number of years.

Case Study - All Souls St Gabriels School 2004

In the case study presented above, the teacher involved in the incident was also prosecuted. The teacher pleaded guilty to breaching section 36(d) of the *Workplace Health and Safety Act 1995*, in that he wilfully placed at risk the health and safety of another person. As a result, he received a 12 month suspended prison sentence for this incident.

What Should Workplaces Do To Minimise their Risks?

While these amendments now clarify the enforcement aspects of these Acts on government workplaces, it should have little effect on how we manage workplace health and safety on a day to day basis. All departmental workplaces, including Central Office, Regions, Schools and TAFE Institutes should continue to manage health and safety as required by the legislation and in line with departmental policies, ensuring they minimise the risk of injury to their staff, students and other visitors to their workplace.

You can ensure your workplace has the basic health and safety systems in place to prevent injuries and illness occurring by ensuring the following has been implemented:

- Appoint and train a Workplace Health and Safety Officer (WHSO) if your workplace has 30 or more employees (larger workplaces may require more than one), and provide them with adequate time and resources to undertake their duties.
- Encourage and facilitate the election of Workplace Health and Safety Representatives (WHSRs) by your staff and arrange appropriate training for the elected WHSRs.
- Ensure your workplace has an effective Workplace Health and Safety Committee, chaired by a senior member of staff, that meets at least four times a year.
- Undertake a workplace health and safety annual assessment and incorporate the findings of this assessment into your workplace's strategic planning documents.
- Ensure all new employees participate in a workplace health and safety induction. All employees should receive refresher training on an annual basis.
- Ensure risk management processes (including risk assessments and the implementation of control measures) have been undertaken for all activities where staff, students or others are exposed to risk both at and away from the worksite. These processes should be reviewed when any significant variation occurs, or at least on an annual basis. A significant variation may include any changes to an activity, new information being received regarding the health of a student, or the commencement of a new inexperienced staff member who will be undertaking a high risk activity.
- Ensure all incidents that result in an injury, or any near misses, are reported.
- Ensure your WHSO investigates, or assists with the investigation, of all incidents to ensure that corrective actions are implemented to avoid injuries re-occurring.

Other information

Creating Healthier Workplaces Website
<http://education.qld.gov.au/health>

Workplace Health and Safety Queensland
<http://www.deir.qld.gov.au/workplace/index.htm>