



ST JOHN
AMBULANCE AUSTRALIA

OCCUPATIONAL FIRST AID

The Authorized Text of
St John Ambulance Australia

St John Ambulance Australia
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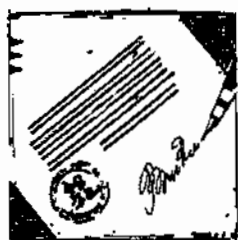
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LEGISLATION AND LEGAL ISSUES

1 Legislation

In recent times, the law has become more concerned with occupational health and safety. Prior to the industrial revolution, workers safety was considered a matter for the worker and the employer to negotiate. It was not until the end of the nineteenth century and the beginning of the twentieth century that the law began to impose obligations on employers to ensure the safety of workers, or to ensure that they were compensated for any injury that they may have suffered in the workplace.

All states and territories in Australia have enacted legislation regarding occupational health and safety. This legislation may be either 'general duties' legislation (setting out general obligations that must be met by all employers) or specific legislation dealing with particular risks or industries. Listed below are some examples of legislation that impact upon occupational health and safety.

Commonwealth

- 1 National Occupational Health and Safety Commission Act 1985
- 2 Occupational Health and Safety (Commonwealth Employment) Act 1991
- 3 Occupational Health and Safety (Maritime Industry) Act 1993
- 4 Coal Industry Act 1946
- 5 Environment Protection (Nuclear Codes) Act 1978
- 6 Industrial Chemicals (Notification and Assessment) Act 1989
- 7 Industrial Relations Act 1988
- 8 Navigation Act 1912
- 9 Petroleum (Submerged Lands) Act 1967
- 10 Quarantine Act 1908

Australian Capital Territory

- 1 Occupational Health and Safety Act 1989
- 2 Building Act 1972
- 3 Dangerous Goods Act 1984
- 4 Electricity Act 1971
- 5 Fire Brigade Act 1957
- 6 Machinery Act 1949
- 7 Public Health Act 1928
- 8 Radiation Act 1983
- 9 Scaffolding and Lifts Act 1957
- 10 Smoke-free Areas (Enclosed Public Places) Act 1994

New South Wales

- 1 Occupational Health and Safety Act 1983 (including the Occupational Health and Safety (First Aid) Regulation 1989)
- 2 Clean Air Act 1961
- 3 Clean Waters Act 1970
- 4 Coal Mines Regulation Act 1982
- 5 Dangerous Goods Act 1975
- 6 Electricity Act 1945
- 7 Environmentally Hazardous Chemicals Act 1985
- 8 Factories Shops and Industries Act 1962
- 9 Food Act 1989
- 10 Industrial Relations Act 1991
- 11 Liquefied Petroleum Gas Act 1961
- 12 Local Government Act 1993
- 13 Mines Inspection Act 1901
- 14 Mines Rescue Act 1994
- 15 Pesticides Act 1978
- 16 Petroleum (Onshore) Act 1991
- 17 Petroleum (Submerged Lands) Act 1982
- 18 Poisons Act 1966
- 19 Public Health Act 1991
- 20 Radiation Control Act 1990
- 21 Rail Safety Act 1993
- 22 Rural Workers Accommodation Act 1969
- 23 The Construction Safety Act 1912
- 24 Therapeutic Goods and Cosmetics Act 1972
- 25 Waste Disposal Act 1970

Northern Territory

- 1 Work Health Act 1986 (including the Code of Practice on First Aid in the Workplace)
- 2 Building Act 1993
- 3 Dangerous Goods Act 1980
- 4 Electrical Workers and Contractors Act 1978
- 5 Fire Service Act 1983
- 6 Marine Act 1981
- 7 Mine Management Act 1950

- 8 Petroleum (Submerged Lands) Act 1982
- 9 Radiation (Safety Control) Act 1978

Queensland

- 1 Workplace Health and Safety Act 1995 (Reprinted as in force on 18 January 1996) Reprint No. 2.
- 2 Building Act 1975 (Reprinted as in force on 26 June 1996) Reprint No. 2A.
- 3 Electricity Act 1994 (Reprinted as in force on 28 August 1996) Reprint No. 2A.
- 4 Environmental Protection Act 1994 (Reprinted as in force on 6 June 1996) Reprint No. 2.
- 5 Explosives Act 1965 (Reprinted as in force on 18 December 1995) Reprint No. 2A.
- 6 Gas Act 1965 (Reprinted as in force on 30 November 1995) Reprint No. 2.
- 7 Health Act 1937 (Reprinted as in force on 20 December 1995) Reprint No. 2.
- 8 Industrial Relations Act 1990 (Reprinted as in force on 22 February 1995) Reprint No. 2.
- 9 Mines Regulation Act 1964 (Reprinted as in force on 1 March 1996) Reprint No. 1.
- 10 Petroleum (Submerged Lands) Act 1982 (Reprinted as in force on 28 October 1994) Reprint No. 1.
- 11 Petroleum Act 1923 (Reprinted as in force on 3 June 1996) Reprint No. 3.
- 12 Radioactive Substances Act 1958 (Reprinted as in force on 10 July 1996) Reprint No. 1A.
- 13 Transport Operations (Marine Safety) Act 1994 (Reprinted as in force on 24 January 1996) Reprint No. 3.

South Australia

- 1 The Occupational Health, Safety and Welfare Act 1986 (including the 'Approved Code of Practice for Occupational Health and First Aid in the Workplace' and also the Occupational Health, Safety and Welfare Regulations 1995, cl. 2.11.1 'Occupational Health and First Aid in the Workplace')
- 2 Agricultural Chemicals Act 1955
- 3 Building Act 1971
- 4 Dangerous Substances Act 1979
- 5 Electrical Products Act 1988
- 6 Environment Protection Act 1993
- 7 Explosives Act 1936
- 8 Harbours and Navigation Act 1993
- 9 Industrial and Employee Relations Act 1994
- 10 Local Government Act 1934
- 11 Mines and Works Inspection Act 1920
- 12 Petroleum Act 1940
- 13 Petroleum (Submerged Lands) Act 1982
- 14 Public and Environmental Health Act 1987
- 15 Radiation Protection and Control Act 1982
- 16 WorkCover Corporation Act 1994

Tasmania

- 1 Workplace Health and Safety Act 1995 (including the Industrial Safety, Health and Welfare (Administrative and General Regulations) 1979, Division 9, 'First aid and health facilities')
- 2 Dangerous Goods Act 1976
- 3 Fire Service Act 1979

Victoria

- 1 Occupational Health and Safety Act 1985 (including the First Aid in the Workplace Code of Practice)
- 2 Agricultural and Veterinary Chemicals (Control of Use) Act 1992
- 3 Building Act 1993
- 4 Coal Mines (Pensions) Act 1958
- 5 Dangerous Goods Act 1985
- 6 Drugs, Poisons and Controlled Substances Act 1981
- 7 Environment Protection Act 1970
- 8 Equipment (Public Safety) Act 1994
- 9 Extractive Industries Act 1966
- 10 Fertilizers Act 1974
- 11 Health Act 1958
- 12 Labour and Industry Act 1958
- 13 Local Government Act 1989
- 14 Marine Act 1988
- 15 Mineral Resources Development Act 1990
- 16 Petroleum (Submerged Lands) Act 1982
- 17 Petroleum Act 1958
- 18 Pipelines Act 1967
- 19 State Electricity Commission Act 1958

Western Australia

- 1 Occupational Safety and Health Act 1984 (including the Occupational Safety and Health Regulations 1996, cl. 3.12 'First Aid').
- 2 Coal Miners Welfare Act 1947
- 3 Electricity Act 1945
- 4 Environmental Protection Act 1986
- 5 Explosives and Dangerous Goods Act 1961
- 6 Fire Brigades Act 1942
- 7 Health Act 1911
- 8 Industrial Relations Act 1979
- 9 Mines Safety and Inspection Act 1994
- 10 Petroleum Act 1967
- 11 Petroleum (Submerged Lands) Act 1982
- 12 Poisons Act 1964
- 13 Radiation Safety Act 1975
- 14 Shearer's Accommodation Act 1912

- 15 Timber Industry Regulation Act 1926
- 16 Western Australia Marine Act 1982

An occupational first aid officer should make sure that he or she is familiar with, and has access to, the general duties legislation that applies in their state and any particular legislation that applies to their industry.

2 Legal issues

A number of legal issues can arise in the context of occupational first aid. These issues can include:

- consent to first aid treatment,
- respect for the casualties privacy and the confidentiality of first aid records, and
- liability for the improper, or negligent, administration of first aid.

Consent to first aid treatment

As a general rule, a mentally competent, adult patient has the right to refuse any treatment even if that treatment is necessary to save their life. Treatment given to a person without their consent is an assault.

Consent may be implied or it may be expressed. It will be implied where a person attends a first aid room for treatment and co-operates with the first aid officer, for example, if a person attends the first aid room for treatment and holds their arm out and lets the first aid officer apply a bandage. Consent is expressed where the patient says that they consent, for example, where the first aid officer asks for permission to apply a dressing and the casualty says that they agree to that treatment.

Although a person has the right to refuse treatment, any objection by a patient who has suffered a serious illness or injury should be considered with caution as they may not understand the seriousness of their injuries or the consequences of their refusal. In these circumstances, medical aid should be sought and, if their condition deteriorates, reasonable treatment should be administered.

If a person is suffering from a long-term medical condition, and has discussed the matter with their doctor and decided that further treatment is not warranted, then that decision must be respected even if it means that the person will die. This situation is unlikely to apply in a first aid situation.

In some situations a person cannot give consent to treatment, for example where their injury or illness has affected their ability to make an informed choice, or they are unconscious, or they are very young or mentally disabled. In these cases consent is not required and a qualified person may administer any necessary treatment to save the person's life or to prevent serious illness or injury. Treatment, without consent, will be justified when:

- there is a necessity to act when it is not practicable to communicate with the casualty; and
- the treatment is reasonable (i.e. what a reasonable person, given their level of training, would do in the circumstances).

In these cases the treatment may be given even though the patient has not, and cannot, give consent to the treatment.

Respect for the casualty's privacy and the confidentiality of first aid records

It is essential that accurate records are maintained for all first aid treatment given. These records may be required by law (for example, the Workers Compensation Act or Occupational Health and Safety Act for your state may require certain records to be retained). They also serve other purposes, for example they:

- ensure the continuity of care by allowing others who have the care of the person to see what has been done before;
- protect employer and employee by ensuring that a record of the injury is made and that the circumstances of the treatment and injury are recorded;
- protect the first aid officer; and
- assist in any investigation.

If the records are to serve any useful purpose, they must be:

- legible
- accurate, and
- written at the time that the treatment is given, or as soon as possible afterwards.

When completing records:

- use only approved and standard abbreviations;
- do not use whiteout — instead, cross out errors with a single line so that the original writing can still be read, sign and date the correction and then add the correct record; and
- do not write value judgements and conclusions.

A number of bodies may be involved in the investigation of workplace illness or injury, these can include the employer, the police, the coroner, the relevant workplace inspection authority and the courts. All of these bodies may refer to the records retained in relation to an accident, including the records maintained by the first aid officer.

Documents, including medical records, are the property of the person who created them. Where documents are produced by an employee in the course of their employment, then the records remain the property of the employer.

An employer may have a legitimate interest in inspecting first aid records for example, to ensure that the injury was work related or to assist in identifying the cause of the accident or illness. Where a claim is made by an employer for Workers Compensation, the employer will be required to produce the relevant records to the insurance company that will handle the claim.

Although there is generally no obligation to disclose information about a fellow employee, an occupational first aider may be required to disclose information that indicates that another employee is at risk or poses a risk to others in their current occupation (for example, where a forklift driver discloses that he or she is epileptic).

Under occupational health and safety legislation, worker representatives or occupational health and safety committees may have the right to inspect records relating to safety and particular incidents. You will need to look to the relevant legislation in each state to determine the extent of such powers. Legislation also requires that incidents at work that cause serious injury or death must be reported to the relevant government body. You will need to look at the legislation in your state to determine what type of matters must be reported, and to whom. The legislation usually provides that it is the employer's responsibility to report matters, but the occupational first aider may be asked to complete the notices required by the legislation.

It will not be a breach of confidence to pass on medical information to medical aid, for example, ambulance officers or a treating doctor, provided that the information is necessary for the ongoing care of the person and the patient has not expressly refused such permission. If providing information to a doctor, the patient should be given a referral letter to take with them. Information should not be given by telephone except in an emergency and only when the identity of the caller can be positively established.

The first aider and the patient should understand that many people may legitimately have access to the first aider's records, but still the privacy of a patient should be respected to the greatest extent possible. The employer's expectations and requirements should be discussed and included in any relevant duty statement or job description. Who is authorised to have access to the records, and under what circumstances, should be clearly established. An occupational first aider or other person

who has control of the records should ensure that records are only released to people with appropriate authority and on a 'needs to know' basis. A record should be maintained to show who has had access to any particular documents, when they had access, and why they had access.

Destruction of records

There are no general rules regarding the destruction of records, though the occupational health and safety legislation in your state may say how long accident records should be kept.

All states have a limitations period after which a case cannot be brought to court. Generally these range from 3 to 6 years (or if the person was under 18 years at the time of the accident, 3 to 6 years after their 18th birthday). It is good practice to keep records for at least this period and longer if possible. Workers Compensation claims may be brought much later and it may be advisable to keep records for the estimated life of the worker or for at least 6 years after the worker has ceased employment. Many government departments keep records for up to 30 years.

Liability

A first aider (and his or her employer) will only be liable for any injury done to a worker, by the first aider, if it can be shown the first aider was negligent. To establish negligence the person who is suing must show, amongst other things, that there was a duty of care and that the treatment given was not 'reasonable' in the circumstances.

A duty of care arises when it can be seen that a person's actions can affect another person. There will always be a duty of care between an occupational first aider and a casualty that he or she is called to treat.

There is a breach of duty if the occupational first aider fails to provide treatment that is reasonable. What is reasonable depends on the circumstances of each case, however you should feel confident that adhering to the treatment recommended by a reputable body, such as St John Ambulance Australia, will be considered reasonable. Treatment should be limited to treatment that is within your training.

The best protection against legal liability is to ensure that treatment is provided in accordance with this manual and your training; that complete and legible records are maintained; and that your skills are maintained by on-going and up-to-date training.

Conclusion

This chapter provides a brief overview of some legal issues that could arise in the field of occupational first aid. Where a particular legal issue, or questions about the scope of obligations under particular legislation arise, then the matter should be referred to your employer, workplace committee or to a legal practitioner for specific advice.

Recommended further reading

Brooks, A., *Occupational Health and Safety Law in Australia* (4th Ed) CCH, Sydney, 1993

Edginton, J., *Law for the Nursing Profession and Allied Health Care Professionals* (3rd Ed) CCH, Sydney, 1995

MacFarlane, P., *Health Law* (2nd Ed), Commentary and Materials, Federation Press, Sydney, 1995