

Ask Renata Live Webinar Q&A



HEAT

1: Are there regulations/standards in Australia regarding maximum temperatures at work?

There is no regulated maximum temperature in any Australian legislation - but this does not mean the employer has no duties in regard to workplace temperatures. There is also no regulation requiring a heat policy, but the employer has a legal duty to all employees to provide and maintain, so far as is reasonably practicable, for employees a working environment that is safe and without risks to health. This includes providing safe systems of work, a safe and healthy workplace, and also monitoring their health and the conditions at the workplace.

Further, the Compliance Code on Workplace amenities and work environment provides specific advice on what the employer needs to do to comply with these duties

See these pages for information:

Heat - when is it too hot: www.ohsrep.org.au/faqs/workplace-and-amenities/heat-when-is-it-too-hot

Longer page on heat: www.ohsrep.org.au/hazards/workplace-conditions/heat

2: I work in a container office in Melbourne. The current temperature inside the office is 39.2 C. When I requested to leave or suggested working from home, my boss told me to 'toughen up' and that if I don't like it, to quit. What are my rights? We are not in a union.

There is no set temperature in OHS legislation - but there is guidance when it comes to temperature in offices - see:

www.ohsrep.org.au/faqs/workplace-and-amenities/offices-temperature-and-humidity-what-are-the-rules

Your employer has a duty to employees to provide and maintain a working environment that is safe and without risks to health, so far as is reasonably practicable - see:

www.ohsrep.org.au/law-rights/ohs-legislation/the-ohs-act/duties-of-employers

If your employer does not own the building - then whoever does - the person with control or management of the workplace also has duties - see:

www.ohsrep.org.au/law-rights/ohs-legislation/the-ohs-act/duties-of-others

So, your boss needs to get onto the owners/managers of the building and make sure they have the air conditioning operating properly (and maintaining it too)

3: I currently work in the kitchen at large fast food chain. What could be done if my employer cannot provide air con in the kitchen? Today it is 42 C, and I've measured the temperature inside the kitchen and it currently sits at 47 C. I know a kitchen is usually hot due to fryers, toasters etc. but something's got to give!

The heat you are experiencing in the kitchen is not acceptable and could lead to workers suffering ill health. While there is no maximum temperature specified in legislation, this does not mean the employer just does nothing. The first issue is why air conditioning cannot be provided. While installing AC cannot be done immediately, it is something which needs to be raised and considered by the company. In the meantime, there are things the employer can do now. It's the employer's duty to monitor the conditions at the workplace and also to provide and maintain a safe and healthy working environment...and there is guidance in the Compliance Code.

I have done an FAQ on this question as I get it a lot in summer. For links, see answer to Question 1.

4: My partner works as a surveyor often working outside in near 40-degree heat. His workplace doesn't have a heat policy, however, he is reluctant to raise this issue with his employers as he feels he will be singled out. Is there any course of action he can take without identifying himself to encourage the workplace to introduce a heat policy?

Unfortunately there is no regulated maximum temperature - but this does not mean the employer can disregard the temperature and send out employees in excessive heat: the employer has duties under the Occupational Health and Safety Act (2004). While there is no regulation requiring a heat policy, the employer has a legal duty to all employees which includes providing safe systems of work, monitoring their health and also the conditions at the workplace. The Compliance Code provides information on what employers need to do to comply - including advice for those with workers who work outdoors.

See these pages for information:

Heat - when is it too hot: www.ohsrep.org.au/faqs/workplace-and-amenities/heat-when-is-it-too-hot

Longer page on heat: www.ohsrep.org.au/hazards/workplace-conditions/heat

Of course, knowing your rights is only half the battle - you've got to have the power to enforce your rights under the law, and health and safety. Your husband could check to see if there

is an employee- elected health and safety representative (HSR) at his workplace. If there is one, then he should take the matter to him or her and ask for it to be taken up. If there is no HSR there, which is probably the case, then he should start talking to fellow workers. If they all get together,

then taking the matter up won't be so difficult. There's really no other way to get the employer to do something. The only other option he has is to contact WorkSafe, Victoria's OHS regulator and seek advice and assistance there:

www.worksafe.vic.gov.au/home

ACCESS TO WATER & OTHER FACILITIES

5: My workplace is an 8-storey building and used to have water fountains on each level for staff. Recently these were removed and replaced with signs stating the fountains have been removed. Instead staff are required to access water from one water tap on level 7 of the building. I was wondering whether this is legal?

No this is not acceptable! Although the law does not specifically MANDATE where the water is to be, the OHS Act puts a general duty on employers to provide adequate facilities (washrooms, toilets, lockers, dining areas, first aid, etc) again, so far as reasonably practicable for the welfare of employees (see: Duties of employers - <http://www.ohsrep.org.au/law-rights/ohs-legislation/the-ohs-act/duties-of-employers>) and then what the employer needs to do to comply with this duty is detailed in the Compliance Code for Workplace Amenities and Work Environment. There is a section on drinking water which states that 'Clean drinking water needs to be provided for employees at all times' and that there needs to be one drinking point per 40 employees, not more than 30 metres from each them.

Go to this page for more information and a link to the Code:

www.ohsrep.org.au/faqs/workplace-and-amenities/drinking-water

Frankly, it is also really poor that your employer REMOVED the water fountains. By doing this, the company has also breached its duty to consult when proposing changes to the workplace - had they consulted, they would have been made of aware that having one source of water on the seventh floor of a building is not acceptable!! See this page:

Duty to consult: www.ohsrep.org.au/law-rights/ohs-legislation/the-ohs-act/duty-to-consult

6: Do employers have to supply glasses for employees to access water from the tap?

Generally, yes - as per this clause in the Compliance Code:

'Drinking water provided by employers needs to be from outlets that are separate from toilet or washing facilities to avoid contamination and hygienically provided by means of disposable or washable drinking containers or delivered by a drinking fountain so that employees do not share drinking containers.'

To get all the information on what employers need to provide in terms of drinking water, go to this page on the site:

www.ohsrep.org.au/faqs/workplace-and-amenities/drinking-water

7: I am currently employed as a casual in a retail position in a store at a large suburban shopping centre where shifts average 8 - 10 hours per day. There are 6 staff. There is no access to any food facilities (e.g. kettle, microwave, toaster) costing employees large amounts of money to purchase adequate food. I have approached my boss about this issue and whether he could provide us with necessary facilities - but he is unwilling to do so. As employees we are wondering whether we are entitled to these basic facilities, without having to fund them personally?

Yes, your employer should be providing you with something - under the Victorian OHS Act the employer has a general duty of care to provide and maintain for employees a working environment that is safe and without risks to health - and this includes providing 'adequate facilities'. The duty which is general and without detail, is qualified by 'so far as is reasonably practicable'. The Act does not have more detail - see:

www.ohsrep.org.au/law-rights/ohs-legislation/the-ohs-act/duties-of-employers

However, more detail is in the Compliance Code which sets up what employers need to do to comply with their duty under the Act. So depending on a number of factors, I see no reason why your boss could not provide some of the items you have requested for the workers - see these pages:

Dining facilities (has info on kitchen stuff too): www.ohsrep.org.au/faqs/workplace-and-amenities/dining-facilities-what-must-employers-provide

Drinking water: www.ohsrep.org.au/faqs/workplace-and-amenities/drinking-water

8: I work at railways station. Our bosses want our station assistants to go to two unmanned stations with no toilets, drinking water, or cover to clean there for about an hour. I am trying to see what rules under OHS that I can use to stop this?

There are no 'rules' in OHS which can be specifically applied to this situation. But what you would look at in raising issues with the employer is the employer's 'general duty of care' - s21 of the Act - which states that the employer must, so far as is reasonably practicable, provide and maintain for employees a working environment that is safe and without risks to health - see this page:

www.ohsrep.org.au/law-rights/ohs-legislation/the-ohs-act/duties-of-employers

So – what are the issues? (you will need to go through this carefully to identify any potential risks to the station assistants, and then to propose to management what actions can and must be taken to eliminate/minimise the risks). Here are some ideas:

Lack of adequate facilities

- water – workers must have access to clean and cool drinking water, especially on hot day when the temperature may be mid- 30's or above. Not having water could lead to serious health problems – heat stroke, dehydration, etc (possible options – install fountain, provide esky with water, etc) See: *Drinking Water* www.ohsrep.org.au/faqs/workplace-and-amenities/drinking-water
- shade – ditto – sun stroke, etc (possible options – provide

shade, change time of day; don't send them on very hot days) See: *heat* - www.ohsrep.org.au/faqs/workplace-and-amenities/heat-when-is-it-too-hot

- toilets – workers should be able to access toilets when they need to (possible options – install a portable toilet, arrange access in nearby facilities, ..) See *Toilet facilities*: www.ohsrep.org.au/faqs/workplace-and-amenities/toilet-facilities-what-should-workplaces-have

Threat of occupational violence

- ensure workers are never on their own; ensure they are provided with means to contact (someone who can take action) immediately in the case of an emergency. See: *working alone* www.ohsrep.org.au/hazards/workplace-conditions/working-alone-is-it-legal,-is-it-safe

FIRST AID REQUIREMENTS

9: Please advise where I can obtain a lockable first aid kit for 6 employees.

First aid kits can be purchased from any number of retailers or online from safety equipment providers

(eg Seton: <https://www.seton.net.au/work-wear-ppe-first-aid/first-aid.html>)

However, they should never be locked. This is because if someone is in need of first aid, and the kit is locked, then there could be an unacceptable delay in the person receiving assistance.

Here's some info on our site on First Aid kits:

www.ohsrep.org.au/faqs/workplace-and-amenities/first-aid-kits

10: We currently have first aid units throughout our factory and we also have trained first aiders. My question is, are we required by law to have a first aid room or a sick bay room for staff to rest if unwell or when waiting for further first aid assistance?

There are no mandated requirements for first aid in the Act or

regulations – except that under s21 of the Act, the employer has a general duty of care to provide, so far as is reasonably practicable, facilities for the welfare of employees – it's very vague and not specific at all. However, there is then the First Aid Compliance Code, which sets out what employers need to do to comply. The Code requires that employers, in consultation with HSRs and workers, undertake an assessment of the needs of the workplace, and determine what the first aid facilities then need to be.

Take a look at this page, which sets out the answer:

www.ohsrep.org.au/faqs/workplace-and-amenities/first-aid-what-are-the-requirements

Scroll down until you get to this point:

'First aid rooms and medical services: Whether a first aid room is needed will depend on the type of workplace. The Code states that compliance is achieved by providing a first aid room in:

- low-risk workplaces with more than 200 employees
- higher-risk workplaces with more than 100 employees

Of course this is guidance, and does not prevent the employer agreeing to provide a first aid room in smaller workplaces.

FACILITIES

11: If your workplace toilet hasn't been in use for several weeks and the public toilets nearby are down an alley with no one around and you feel unsafe using them at night, does your work have a duty of care to get this toilet fixed asap? Some employees are unable to leave the store due to their role and are holding on for over 5 hours. Public toilets were also out of use the other day so there were no toilets within a km or more we could use - some of us had to leave work unpaid to use a toilet.

If employees are unable to take a needed toilet break for over five hours, then this is an unsafe and unhealthy system of work, and must be changed. The employer needs to re-organise the system to ensure that a worker is able to take a toilet break when they need to.

In the situation of no toilets available closer than one km - an unacceptable situation - it is outrageous that the workers had their pay docked in order to go to the toilet.

All of these issues must be raised with your employer - hopefully you have an elected HSR, and are members of a union. If not, then your only alternative is to contact WorkSafe Victoria for assistance and advice.

Check out this page:

www.ohsrep.org.au/faqs/workplace-and-amenities/toilet-facilities-what-should-workplaces-have

12: I am an HSR for my DWG at a university representing employees who provide counselling to students. The service is currently located in buildings separate from main city campus, which have employee toilet and dining facilities that comply with relevant provisions of the Workplace Amenities and Work Environment Compliance Code. The service is due to be moved on the main campus which has no toilets for staff separate from those for students and my DWG staff are expected to use communal toilets shared with approximately 60 staff from other work areas in addition to students. I queried this and was informed it is University policy for the complex to not provide separate staff toilets, and that s45 re minimum gender ratios is superseded by the Building Code s46 'with respect to occupancy levels'. I welcome your advice on this.

It's a shame that the university management did not consult with employees prior to coming up with their policy about not providing separate toilets for staff - s35 of the Act specifically states that the employer must consult when making decisions about the adequacy of welfare facilities for employees

- see Duty to Consult: www.ohsrep.org.au/law-rights/ohs-legislation/the-ohs-act/duty-to-consult

I think you could still use this requirement in the Act to get the university to re-open their decision and policy, and use the Compliance Code as guidance.

Yes, the Building Code, which now has been picked up as regulation by all the states and territories, is law and so has higher status than a code, but the OHS Act is also law.

Even though the policy is compliant with the Building Code - which applies to the construction of buildings, they also have legal duties under s21 of the OHS Act - to provide and maintain a working environment that is safe and without risks to health (includes psychological health) and includes providing adequate facilities. The university cannot say they are complying with the Building Code and ignore their legal duties under another Act.

So the way to go would be to put a case together that the employer is breaching their duties under the OHS Act with this policy - and putting these workers at risk. To do this, consult with the DWG members and come up with a list of the risks and reasons - e.g.

- the potential breakdown of the necessary relationship between counsellors and the students if forced to meet in the common toilets, and potential risks to both the physical safety and psychological health of the counsellors
- this could also affect the effectiveness of the counselling sessions
- numbers of toilets and gender toilets - mismatch with numbers of students & staff and also the gender balance. Queues in peak times - will put workers under stress (missing appointment times)

The above and other reasons (you should be able to come up with more) could lead to unforeseen consequences - such as staff not hydrating, not going to the toilet when they need to for fear of (whatever).

Formally notify the employer you have an OHS issue and request a meeting to resolve the issue, as per section 73... make sure everyone is on side and knows what's going on. If there is no 'movement' from management, consider next actions:

- issuing a PIN
- doing a 'stunt' - Giant PIN served outside the toilets, or come up with some ideas

Make sure that you let the union know what you're thinking if you take the issue further, but let them know you've got this issue

HSRS

13: I am in the process of identifying new OHS Reps for two of our DWGs. I have requested for people interested to put their names forward, but no one is interested in being the HSR. One person recommended another person, but they have declined. What do I do now? I understand we cannot nominate a staff member. Do we go without if no one wants to do it?

That is correct - elected health and safety reps should not be managers (if this is what you mean by 'staff') and it should not be management nominating. As the role of the HSR is to be the representative of the workers, it is up to the workers to nominate and even run the elections.

It is not unusual, unfortunately, for there to be some unwillingness to take on the role of HSR - many workers don't feel up to it, or feel it's too much of a responsibility, or fear that if they do they will end up in dispute with the employer.

Under the OHS Act, employees have the right and should be encouraged to be represented. HSRs have powers and rights ... and without reps sometimes it is difficult to get things resolved, particularly if the employer is not very OHS compliant. But this may not be the case with your company.

If no-one is coming forward, then let it go for the moment.

However please be aware that (and it would be useful to inform employees):

- under s35 and 36 of the Act the employer must consult with affected employees when proposing changes, and a range of other matters – even if there is no formal HSR
- under s73, if they have an issue, then they can nominate someone to take this issue up with the employer on their behalf, sort of a temporary HSR
- there can still be an OHS Committee formed under s76 – and this could be the forum for consultation, on broader workplace matters at least, until such time as HSRs are elected.

Remember that whether there are elected HSRs or not, the employer still has a legal duty to consult with affected workers. So maybe an explanation to the staff that by electing HSRs the process is easier as the consultation occurs through the rep, and also that HSRs have no legal duties as HSRs, but have powers and rights... this may encourage someone to agree to step forward.

14: I am the HSR at my workplace. I was elected unopposed. There seems to be a misunderstanding between my role as HSR and OHS officer. In the past, these roles might well have been combined. Are you able to clarify my situation as HSR and any links to OHS officer- Duty Officer please? Once I understand, I should have a better chance explaining it to my leadership and staff.

This problem is so common in many workplaces – the employer confusing the roles of elected HSR and the person who has OHS responsibilities.

The OHS Officer position is someone who has been appointed by the employer to be the management rep on OHS for the purposes of s73 (resolution of issues) and may have other 'duties'. The HSR is the representative of the

DWG, is elected (or elected unopposed) and has POWERS and RIGHTS, but no DUTIES. See also these pages:

- OHS reps and deputies – what is their role? www.ohsrep.org.au/faqs/ohs-reps-@-work-faqs-for-ohs-reps-/ohs-reps-and-deputies
- I've been given a duty statement [/www.ohsrep.org.au/faqs/ohs-reps-@-work-faqs-for-ohs-reps-/ive-been-given-a-duty-statement](http://www.ohsrep.org.au/faqs/ohs-reps-@-work-faqs-for-ohs-reps-/ive-been-given-a-duty-statement)
- OHS reps - your rights www.ohsrep.org.au/law-rights/rights/ohs-reps-rights/ohs-reps-your-rights

15: If there is an injury/accident in the workplace is it necessary for the HSR in the DWG to be informed and is there a clause in the OHS Act which covers this action?

Under section 58(1)(a)(ii) the HSR has the RIGHT to inspect the workplace 'immediately in the event of an incident or any situation involving an immediate risk to the health or safety of any person'. This means that the HSR needs to know about it, and be informed about it. However, unfortunately, there is no CORRESPONDING DUTY on the employer to actually NOTIFY the relevant HSR/s

Consequently I always recommend that when HSRs get back from training, they go through what their rights are as HSRs (eg rights to inspect, right to access information, right to be consulted, right to call in assistance, etc, etc) with their employer and point out that this means being notified of an incident/dangerous occurrence, being provided with access to (or even better, being provided with) any information, and so on.

Check this page out:

HSR Rights www.ohsrep.org.au/law-rights/rights/ohs-reps-rights/ohs-reps-your-rights