



NSW TEACHERS FEDERATION

Occupational Health and Safety

October 2002

1. What are hazards in the workplace?

A hazard is defined by WorkCover as "any person, thing or action in the work environment that could lead to someone developing an illness or sustaining an injury".

Hazards in the workplace are classified by WorkCover as falling within the following definitions:

- physical** — eg. slippery surfaces, broken steps
- chemical** — eg. cleaning and laboratory chemicals
- biological** — eg. mould, fungi, cockroaches
- mechanical** — eg. unguarded machinery
- electrical** — bared electrical wires or faulty equipment
- psychological** — anxiety and stress.

Risks refer to the risks to health, safety and welfare that arise from the hazard being present or used in the workplace.

The Occupational Health and Safety Act 2000 and the Occupational Health and Safety Regulation 2001 place much more emphasis on employers adopting risk management systems which require that all risks be:

- identified;
- assessed as to the severity of the injury or illness which may occur and the likelihood that the hazard will cause an injury; and
- eliminated or controlled.

These processes must then be reviewed to ensure that the mechanisms put in place are working. If injury occurs, the assessment and control process must be reviewed so that appropriate mechanisms can be put in place to prevent further injury or illness occurring.

WorkCover has issued *Hazpak* which provides a process for risk assessment.

The responsibility for risk identification, assessment, control and review is the employer's. Principals in public schools are not employers for the purposes of the OH&S legislation.

The employer is required under the OH&S Regulation 2001 chapter 2 — "to consult with employees to enable them to contribute to the making of decisions affecting their health, safety and welfare at work".

Among other things, the Regulation "requires consultation when risks to health and safety arising from work are assessed and when decisions are made about the measures to be taken to eliminate and control risks".

Detailed leaflets on the requirements for consultation and risk assessment will be sent to Federation Representatives and principals as part of a special project, funded by WorkCover and being undertaken by Federation. This will also include advice on the new Workers Compensation provisions.

2. What do we do to ensure the Department of Education and Training (DET) meets its obligations?

Members frequently report that even where OH&S Committees have identified serious hazards they are not addressed because there are insufficient school funds and the DET provides no additional support.

The Occupational Health and Safety Act 2000 places an obligation on employers under section 8 to "ensure the health, safety and welfare at work" of employees and non-employees at the place of work.

This requirement can be pursued industrially through the Industrial Relations Commission or if a dispute is lodged by the union, or by referral to WorkCover which may also be done through the union. The number of WorkCover inspectors is limited and at times they may identify other workplaces as having higher priority. Therefore, it is best that these matters are discussed with Federation Officers in the first instance.

WorkCover does not distinguish between the use of school-based or centralised funds for the purposes of controlling or eliminating risks.

The following materials provide a guide to raising and documenting safety concerns with the DET to ensure that they meet their obligations.

3. Are principals employers for the purposes of the Act?

No.

The employer is "the Crown in the right of NSW". In a prosecution usually the words "Department of Education and Training" are added.

Federation has been consistent in its advice that principals are employees. The DET issued an e-mail to principals on October 29, 2002 which states:

"OH&S responsibilities of principals

All employees of the Department, including principals, must comply with section 20 of the OH&S Act — Duties of employees. This section requires employees to take reasonable care for the health and safety of everyone in the workplace who may be affected by their acts or omissions. All employees, including principals, must also co-operate with the Department as the employer in complying with the OH&S Act and the OH&S Regulation.

Legal position of principals with regard to WorkCover notices and prosecutions

WorkCover can choose to prosecute any individual or organisation it considers to have breached a responsibility under the OH&S Act. In cases where a prosecution has been brought

in relation to an accident at a government school, invariably the Department as employer has been prosecuted. Should a WorkCover prosecution be brought against a principal or other employee, the person can apply for Crown representation. Legal Services Unit can assist in this regard."

To date, all prosecutions of the DET by WorkCover have been directed at DET as employer and not individuals.

4. Our OH&S Committee has not been trained — what do we do?

The Federation and the DET are discussing consultative arrangements including the revision of the training course. There has been no agreement reached at this stage.

The DET is still responsible for providing training. The OH&S Regulation chapter 3 states:

"31. Training to be undertaken by members of OHS committees and OHS representatives

(1) An employer must ensure that each member of an OHS committee and each OHS representative undertakes a course of training in accordance with this clause.

(2) The course of training must be undertaken as soon as practicable after the person is first appointed as a member of the committee or first elected as a representative (unless the person has previously undertaken an approved course of training)."

If you can't get Committee members trained, you should call a Federation meeting and consider a motion along the following lines:

"The Federation members at _____ [school/college] note that _____ OH&S Committee members have not been trained as required under the Occupational Health and Safety Act 2000 and the Occupational Health and Safety Regulation 2001.

The request for these members to be trained was made on _____ [date].

The Federation members believe that the DET is in breach of OH&S requirements.

Unless there is a satisfactory response by the District Superintendent by _____ [date] outlining when the course will be provided for all of our OH&S committee members we will meet again to consider appropriate action."

If the response is unsatisfactory you should contact your Federation Organiser and consider a further motion which may include referral to WorkCover or the Industrial Relations Commission.

5. Our OH&S Committee has identified a number of physical, chemical, biological, mechanical and/or electrical hazards. The DET has been informed but nothing has happened. What do we do?

Call a Federation meeting, list the hazards, determine which hazards have the greatest impact on staff and student safety and welfare.

A possible motion could include the following elements:

"The Federation members at _____ [school/college] are concerned at the Department of Education and Training's failure to control or eliminate the following physical hazards [list all hazards] which have been identified and forwarded to the district office [by the principal and/or OH&S Committee].

In our opinion the control or elimination of the following hazards have a high priority because the consequences of failing to address them could cause death, disability or long term illness or injury.

[List priority issues — if there are reports of staff or students who have suffered illness or injury as a result of these hazards, reference should be included here.]

We require a response from the District Superintendent as to when and how all of these hazards will be dealt with and what process of consultation with affected employees will be conducted.

If a satisfactory response is not received by _____ [date] a further Federation meeting will be called to consider appropriate action which may include industrial or political action or referral to WorkCover."

If there is no response or an inadequate response, the Federation Representative should discuss the matter with an Organiser prior to holding the next meeting so that the appropriate action can be determined. If there is no response or an inadequate response, the Federation Representative should discuss the matter with an Organiser prior to holding the next meeting so that the appropriate action can be determined. The action could include:

- holding a safety stop work meeting
- refusing to enter and teach in unsafe workspaces
- refusing to use unsafe equipment
- referring the matter to the Industrial Research Section of Federation to consider for listing as a dispute in the Industrial Relations Commission
- taking up the matter with a local MP or the Minister
- pursuing with WorkCover.

If you don't have an OH&S committee but you know safety issues have been referred to the DET, you should amend the motion but use the same process.

It is possible that schools may be required to use some global budget funds to address the hazard. If this creates problems for funding of the school's educational priorities then additional funding shall be sought from the DET.

6. There seems to be conflicting reports about electrical lead testing and tagging. The costs for this seem prohibitive. What do we do?

The employer is responsible for ensuring the health, safety and welfare of all employees and non-employees at their place of work. The employer is also responsible for risk management of all potential hazards. The Federation is not aware of any formal advice issued by the Department of Education and Training.

A Federation meeting could be called to consider the following recommendation:

"The Federation members of _____ [school/college] require formal advice as to:
(i) what are the Department's requirements for electrical lead testing and tagging for our school/college;
(ii) how the process is to be carried out in our school; and
(iii) how this will be funded by the Department of Education and Training.

We require a response to these matters from the District Superintendent.

A meeting of Federation members will be re-convened following receipt of this advice. Industrial and other appropriate action will be considered if this process increases teacher or principal workload, and/or forces the school to choose between the provision of educational resources for students or compliance with the Department of Education and Training's requirements."

7. The members of our OH&S committee complain that when they identify some safety issues they are expected to do the administrative work to fix the problems.

An example is pest infestations of cockroaches and mice identified in the Food Technology rooms and the canteen. Committee members were asked to get quotes from pest companies to address the problem.

The function of an OH&S Committee is set out in the OH&S Act Part 2 section 18:

"18. Functions of OHS committees and OHS representatives.

An OHS committee or an OHS representative has the following functions:

- (a) to keep under review the measures taken to ensure the health, safety and welfare of persons at the place of work;
- (b) to investigate any matter that may be a risk to health and safety at the place of work;
- (c) to attempt to resolve the matter but, if unable to do so, to request an investigation by an inspector for that purpose; and
- (d) such other functions as are prescribed by the regulations.

Note: See section 69 for power of employees' representative to accompany an inspector on an inspection of a place of work. See section 137 for offence of unauthorised disclosure of confidential information by any member of a committee or representative."

This does not mean they have to do the work to address the problem.

In our discussions with the DET, the Federation has insisted that there should be sufficient staff in District and State office to provide schools and colleges with the support to address these issues.

This matter could be dealt with by a motion similar to the motion in point 5.

8. Under the new legislation, are there still limits on the size of the OH&S committees?

No.

The Federation is discussing consultative processes with the DET and it is hoped this may lead to an agreed consultative arrangement. The legislation provides for these agreed arrangements. It places no limitation on the size of the committee.

The OH&S Regulation chapter 3 section 23 (1):
"The relevant workgroups to be represented by OHS committees or OHS representatives are to be determined in a manner that ensures that they are able to represent effectively the employees in each workgroup and, in particular, in a manner that enables them to undertake regular meaningful communication with the employees in each workgroup."

9. Our school does not have 20 employees — can we have a committee?

This may be possible if we reach an agreement with the DET over consultation arrangements. However, it is possible to have an OH&S representative.

The OH&S Act states in Part 2, section 17 (2):

"OHS representatives:

An OHS representative is to be elected for the purposes of consultation under this Division if at least one of the persons employed by the employer requests the election of the representative or if WorkCover so directs. The employees may elect more than one OHS representative if the employer agrees or if WorkCover so directs."

A Federation meeting could be called with a motion requesting one or more OH&S representatives be elected and referred to the District Superintendent. The employees will then elect the representative.

10. We have a small number of students who exhibit violent behaviour which causes both physical and psychological harm to both staff and students. How can we get appropriate support?

The DET is responsible for providing educational programs and ensuring safe workplaces. In a recent case WorkCover prosecuted the DET and the Department of Juvenile Justice for failing to provide a safe place of work because a teaching assistant had been fatally stabbed during a hospitality lesson.

Justice Staunton indicated that she recognised that there were competing legislative requirements. She said: "The end result in the situation before me in balancing those competing legislative considerations is not that DA [the student] or any other detainees be deprived of vocational educational opportunities. The issue is that a person such as DA should be properly risk assessed, and with that knowledge and relevant input from the school staff, she be placed in a learning environment which both diverts and educates her while at the same time does not expose school staff to unnecessary and foreseen risk of harm."

11. We find it difficult getting adequate information about students enrolling in our school after leaving another school. The behaviour of these students often poses risks to the health, safety and welfare of staff and students. We only find out about their past history after a violent incident. How do we get the necessary information?

The OH&S Regulation 2001 states at Clause 13 Employer to provide instruction, training and information, Section 2 (2) and (3):

(2) "An employer must ensure that any person who may be exposed to a risk to health and safety at the employer's place of work:

- (a) is informed of the risk, and
- (b) is provided with any information, instruction and training necessary to ensure the person's health and safety.

The information, instruction and training (and the timing of its provision) must be commensurate with the risk to health and safety concerned.

(3) An employer must provide persons who have responsibilities with respect to the following under this Regulation with all available information necessary to enable them to fulfil those responsibilities:

- (a) identifying hazards,
- (b) assessing risks arising from those hazards,
- (c) eliminating or controlling those risks,
- (d) monitoring or reviewing risk control measures,
- (e) providing information."

The Federation has issued advice on this issue in leaflets "Advice on enrolment of students with disabilities and students with special learning needs; occupational health and safety; integration of students with disabilities, including in support units; appraisal of the student's needs and risk assessment; medication, medical procedures, individual transition plans, health care plans, individual education plans, individual emergency plans" (issued September 26, 2001) and "Enrolment of Students with a documented history of Violence — Advice to principals and teachers" issued in June 2002. This information is available on the Federation website and by request from the Federation's Communications Room.

12. What is the DET's policy on dealing with violent students?

The DET's "Good Discipline and Effective Learning: Procedures for the Suspension and Expulsion of School Students" states:

"All students and teachers have the right to be treated fairly and with dignity, in an environment free from disruption, intimidation, harassment and discrimination. To achieve this, all schools will maintain high standards of student behaviour" (page 4).

"Principals of government schools must suspend immediately and consistently with these procedures, any student who:

"is violent or threatens serious physical violence

"Any student intentionally causing injury or

threatening serious physical violence against another student or teacher is to be suspended immediately.

"is in possession of a prohibited weapon

"Any student in possession of a prohibited weapon, or using, or threatening to use, any item or instrument as a weapon, is to be suspended immediately. The matter must be reported to the police immediately." (page 6, number 4).

"Principals of government schools may also suspend, consistent with these procedures and ... above, any student who, among other things:

"is persistently disobedient

"Students who, in their relationships with staff, are persistently disobedient, insolent or engage in verbal harassment and abuse, may be suspended. Students who persistently disrupt and prevent the learning and teaching of others may also be suspended. Suspension of these students should only occur after school based intervention has failed." (page 7, number 6).

It is important that schools follow the suspension procedures in relation to violent incidents. When students are suspended there should be a risk assessment and control strategies put in place prior to the student's return.

13. How are risk assessments done?

It is the DET's responsibility to undertake risk assessments and establish a risk management system. They must consult with employees about how the risks may be controlled or eliminated. The employer must also monitor and review these mechanisms to ensure they remain effective or after it is shown that they are ineffective.

The following process describes how a risk assessment may be done in relation to a violent student. It is general in nature and may be used as a guide to assist employees involved in the consultation process during the risk assessment.

1. Risk Identification

(a) Consider a range of information eg. incident reports, welfare and discipline meetings and injury register, which describe the behaviours that pose risks to staff and other students. This may also include information from previous schools.

(b) Identify the behaviours which have the potential to cause harm both psychological and physical to the individual student, other students and staff eg. examples might include intimidatory behaviour including threats and bullying, stand-over tactics, verbal abuse, hitting, kicking, biting and spitting.

(c) Are there any identifiable triggers or situations which either set off or exacerbate these behaviours?

(d) Are there particular times and places where the risk to others is exacerbated?

(e) Are there any environmental or external factors which impact on the student's behaviour?

2. Risk Assessment

The Hazpack kit from WorkCover uses a matrix to assist in risk assessment. The DET also uses this model.

- Hazards should be assessed according to:
- the severity of injury likely to be caused by a particular hazard; and

the likelihood that the hazard will cause an injury. The following table shows how the *Hazpak* kit can be used to classify hazards.

How dangerous is the hazard you've found?

How severely could it hurt someone or how ill could it make someone	++ very likely could happen any time	+ likely could happen sometime	- unlikely could happen, but very rarely	-- very unlikely
!!! kill or cause permanent disability or ill health	1	1	2	3
!!! long term illness or serious injury	1	2	3	4
!! medical attention and several days off work	2	3	4	5
! first aid needed	3	4	5	6

The numbers reflect the importance of each hazard. In this table, ranking 1 is the highest priority, and these hazards need to be addressed immediately. Ranking 6 is lowest priority and would be addressed later.

When using the model there needs to be consideration of the student's capacity for self-harm as well as harm to others. It should be noted that the psychological harm posed by these behaviours may increase after prolonged exposure.

During the risk assessment process it might be considered necessary to have an expert provide an assessment on the individual student which may help in determining appropriate control mechanisms.

It is important that any assessment relate to safety issues of everyone in the workplace.

It should be noted that if a student is suspended for behaviours which pose a health, safety or welfare risk there must be mechanisms in place to control these behaviours before the student is allowed to return to class.

3. Control strategies

It is particularly important that employees have input into recommendations about how risks can be eliminated or controlled.

In terms of students displaying violent behaviour this might include:

- additional staff — not only aides but specialist teachers on a part-time or full-time basis
- training for existing staff
- release and relief for existing staff to review policies or programs or implement new ones
- consideration of the physical environment eg. noise which may be a trigger for the behaviour or that dangerous equipment may add to the risks of the behaviour.

The employer does not have to adopt the recommendations of employees involved in the risk assessment process. Where members feel that their safety will not be ensured by the strategies adopted by the DET they may call a Federation meeting to consider

what action is necessary to provide a safe work place. Possible motions to consider are included in the leaflet "Enrolment of a Student with a Documented History of Violence — Advice for Principals and Teachers".

4. Monitoring and review

If a student assaults or self harms after these measures have been put in place it will be necessary for a further risk assessment to be conducted and new measures considered to control or eliminate the risks posed by the behaviours of the student.

Can you show how the process might work?

Risk identification

Student A is enrolled in a special education unit in a mainstream high school, term 1 year 7. Incident reports, minutes from welfare, discipline meetings and the injury register for this time show the following:

- A)** Often hits or kicks at other students when he becomes frustrated about something — minor incidents which don't leave bruising occur on almost a daily basis. This upsets the other students but can usually be settled after some time.
- B)** On three occasions the student has run away from the unit. There is no fencing around the play area attached to the unit and it opens onto a major road. The student is not roadsafe.
- C)** There are two incident reports which describe incidents where the student was teased by students in the mainstream area and reacted violently by punching, pulling hair and biting. On each occasion a teacher intervened and the student continued kicking and punching the teacher until restrained. Two mainstream teachers had recorded in the injury register that they suffered bruising and distress as a result of the violent incident while they were on playground duty.
- D)** The classroom teacher reports that it becomes very stressful constantly monitoring the student's behaviour to prevent him harming others or harming himself by running away.

Risk assessment

A risk assessment should have been conducted prior to enrolment which may have meant that a number of mechanisms could have been put in place or a more appropriate setting be provided.

A risk assessment should also have been undertaken after the first assault on another student.

The DET policy should have been followed and there should have been suspensions at least, after each of the two incidents, with a risk assessment and control mechanisms put in place prior to the student coming back to the school.

Using the matrix on this information:

- A)** May result in a rating of either 3 or 4 in that it is likely or very likely to happen and could result in either medical attention or first aid needed for other students.
- B)** The risk would be a 1 or 2. The student running away is either likely or very likely. Although he hasn't been hurt the fact that he runs across a major road means the risk of death, permanent injury or serious injury is foreseeable.
- C)** The risk would be at least a 2 or 3 — it is likely or very likely that the student may attack another student for teasing him. If teachers intervene it is very likely that they will be kicked or punched and they may require medical attention for the physical or psychological injury.
- D)** The risk may be a 1 or 2. If nothing is done to provide assistance to the teacher and the behaviours continue on a daily basis it is likely that she may need medical attention and several days off work or that she may develop a long term psychological illness. If she is assaulted the likelihood will increase.

Control strategies

It may be appropriate to have a functional and behavioural assessment on the student to provide additional information.

Specialist assistance by an ISTB may be requested. Additional aides and or a smaller class may be necessary.

The unit should be fenced.

Access to the main playground area may be limited until mechanisms are developed to prevent students teasing him. Measures need to be put in place so that there is appropriate back up and support for any teacher who is assaulted on playground duty.

The classroom teacher may need some respite or a re-arrangement of the class.

All teachers may want training in dealing with violent or challenging behaviour of students.

The student should be suspended in line with DET policy if a further assault occurs.

Teachers may consider that given the high risk rating the student may need to be placed in a more appropriate educational setting or major modifications to the existing school.

Monitoring and review

The mechanisms will need to be constantly monitored to ensure they are effective.

14. Addressing safety issues or being involved in consultation on risk assessments takes time. How can we do this and teach too?

The Federation does not accept that it is the responsibility of the principal or teachers to accept a massive increase in workload to comply with OH&S legislation. Remember that under the Act it is the employer's responsibility to ensure that there are risk management systems in place.

If you are involved in a risk assessment process or in consultation about addressing safety issues, then you should demand appropriate release and relief. If it is not forthcoming, a Federation meeting should be held. The meeting might consider the following:

"The Federation members at _____ [school/college] demand that the DET comply with the OH&S Regulation 2001 in terms of consulting 'employees to enable them to contribute to the making of decisions affecting their health, safety and welfare at work'. We demand that _____ teachers be released and relieved to participate in the consultation process as required in _____. [If it is a risk assessment — Chapter 2 OH&S Regulation 2001, if it is general consultation involving OH&S Representatives or OH&S Committees, Chapter 3 OH&S Regulation 2001].

If appropriate support is not provided by _____ [date], a further meeting will be held to discuss appropriate action including industrial and political action and/or referral to WorkCover."

The demand should be sent to the District Superintendent.

If no support is forthcoming you should discuss the matter with your Federation Organiser to plan the appropriate action.