



## **Why do I need to comply with Australian Standard 3745-2010? It's just a Standard, not Legislation!**

In each State and Territory of Australia Work Health Safety (WHS) legislation (aka OH&S) has been enacted to ensure the safety of all persons within a workplace. It places a responsibility on the "person in charge of the workplace" to ensure the safety and wellbeing of all persons under the control of the person in charge of the workplace and this requirement is also extended to third parties who may visit or be effected by an incident or the effect of a process that emanates from the workplace (persons in an adjacent building, persons in another tenancy on a floor or the other occupants of a multi-storey building).

To ensure the safety of all workers and third parties the person in charge of the workplace must conduct a hazard analysis to indentify risks that could impact on workplace safety. Once identified the risks must be eliminated. If the risks cannot be eliminated then control measures must be put in place to mitigate the risk. The control measures must be documented and persons within the workplace must be trained in those procedures.

Risks that could impact on workplaces within a commercial building are commensurate with the type of occupancy (work carried out). The risks in a workplace that carries out administration for a commercial enterprise may not face the same risks as a lawyer's office or a tenancy occupied by the family law court could include, but not be confined to, fire, workplace confrontation, air-conditioning contamination. In this instance to implement the procedures to mitigate the risk best practice would be to adopt a recognised code of practice or Standard. Australian Standard (AS) 3745-2010 is the recognised best practice for workplace emergencies.

The adoption of the guidelines recommended by AS 3745-2010 would involve the persons in charge of the workplace nominating employees to participate as part of an Emergency Control Organisation (ECO) and as such the employees are acting in the course of their employment.

### **Vicarious Liability**

The following is a definition of Vicarious Liability:

Vicarious liability is a form of strict, secondary liability that arises under the common law doctrine of agency – respondeat superior – the responsibility of the superior for the acts of their subordinate, or, in a broader sense, the responsibility of any third party that had the "right, ability or duty to control" the activities of a violator. It can be distinguished from contributory liability, another form of secondary liability, which is rooted in the tort theory of enterprise liability.

### **Employer's Liability**

Employers are vicariously liable, under the respondeat superior doctrine, for negligent acts or omissions by their employees in the course of employment (sometimes referred to as 'scope of employment'). For an act to be considered within the course of employment it must either be authorised or be so connected with an authorised act that it can be considered a mode, though an improper mode, of performing it.

Courts sometime distinguish between an employee's "detour" or "frolic". For instance, an employer will be held liable if it is shown that the employee had gone on a mere detour in carrying out their duties, whereas an employee acting in his or her own right rather than on the employer's business is undertaking a "frolic" and will not subject the employer to liability.

Neither, generally, will an employer be held liable for assault or battery committed by employees, unless the use of force was part of their employment (e.g. police officers), or they were in a field likely to create friction with persons they encountered (e.g. car re-possessors). However, the employer of an independent contractor is not held vicariously liable for the tortious acts of the contractor, except where the contractor injures someone to whom the employer owes a non-



delegable duty of care, such as where the employer is a school authority and the injured party a pupil.

Employers are also liable under the common law principle represented in the Latin phrase, "qui facit per alium facit per se", i.e. the one who acts through another, acts in his or her own interests. This is a parallel concept to vicarious liability and strict liability in which one person is held liable in criminal law or tort for the acts or omissions of another.

The following are extracts from State Legislation:

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**NSW OCCUPATIONAL HEALTH AND SAFETY REGULATION 2001 - REG 17**

**Employer to provide for emergencies**

**17 Employer to provide for emergencies**

- (1) An employer must ensure that, in the event of an emergency at any place of work at which the employer's undertaking is conducted, arrangements have been made for:
  - (a) the safe and rapid evacuation of persons from the place of work, and
  - (b) emergency communications, and
  - (c) appropriate medical treatment of injured persons.

If the employer does not have control, or has only limited control, of the place of work, the duty under this subclause applies only to the matters over which the employer has control.

- (2) In making arrangements for the purposes of this clause, an employer must take the following into account:
  - (a) the nature of the hazards at the place of work,
  - (b) the size and location of the place of work,
  - (c) the number, mobility and capability of persons at the place of work.
- (3) If employees work at a fixed place of work, the employer must ensure that:
  - (a) adequate arrangements are made for the shutting down and evacuation of the place of work in the event of an emergency, and
  - (b) details of the arrangements for any such evacuation are kept on display in an appropriate location or locations at the place of work, and
  - (c) **one or more persons are appointed and appropriately trained to oversee any such evacuation and, if appropriate, in the use of on-site fire fighting equipment.**

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**NT WORKPLACE HEALTH AND SAFETY REGULATIONS - SECT 47**

**Access and egress**

**47. Access and egress**

- (1) The owner or occupier of a workplace shall provide and maintain a means of access to and egress from the workplace which:
  - (a) enables a worker at the workplace to move safely throughout the workplace in the performance of the worker's normal duties; and
  - (b) allows safe and rapid egress from the workplace in an emergency; and



- (c) gives safe access to plant at the workplace.
- (2) An employer shall ensure that the means of access to a place at a workplace where a worker is likely to pass through or be required to work in is kept free of obstructions so that access is readily available at all times.
- (3) The owner or occupier of a workplace shall ensure that the location of emergency means of access to and egress from the workplace are identified with appropriate signs in accordance with AS 1319.
- (4) An employer shall develop an evacuation procedure to be followed in the event of a fire or emergency at a workplace and shall ensure that the evacuation procedure is practised at reasonable intervals and a record is kept of the practices.

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**WA OCCUPATIONAL SAFETY AND HEALTH REGULATIONS 1996 - REG 3.10**

**3.10 Evacuation procedures**

A person who, at a workplace, is an employer, the main contractor, a self-employed person or a person having control of the workplace must ensure that –

- (a) there is an evacuation procedure to be followed in the event of fire or other emergency at the workplace;
- (b) where practicable, the evacuation procedure is clearly and prominently displayed at the workplace;
- (c) where practicable, a diagram showing the location of exits and the position of the diagram in relation to the exits is clearly and prominently displayed at the workplace;
- (d) where practicable, the evacuation procedure is practised at the workplace at reasonable intervals; and
- (e) persons at the workplace who would be required to help control or extinguish a fire at the workplace are appropriately trained and provided with appropriate protective clothing and equipment.

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**VIC OCCUPATIONAL HEALTH AND SAFETY REGULATIONS 2007**

**2.1.2. Provision of information, instruction and training**

- (1) If these Regulations require an employer to control any particular risk, the employer must provide each employee of the employer who may be exposed to the risk with sufficient information, instruction and training in relation to the following matters as are necessary to enable the employee to perform his or her work in a manner that is safe and without risks to health-
  - (a) the nature of the hazard giving rise to the risk; and
  - (b) the need for, and the proper use and maintenance of, measures to control the risk.

*Notes 1. Act compliance-section 21 (see regulation 1.1.7). 2. Section 21 of the Act also places obligations on an employer in relation to supervision.*

- (2) The obligation imposed by subregulation (1) is in addition to any other obligation imposed on the employer by these Regulations in relation to the provision of information, instruction and training.



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**SA OCCUPATIONAL HEALTH, SAFETY AND WELFARE REGULATIONS 2010 - REG 58**

**58—Preliminary**

The purpose of this Division is to ensure—

- (a) that emergency exits, procedures and training are adequate in the event of emergencies; and
- (b) the provision of appropriate emergency facilities; and
- (c) access to rescue equipment and suitably trained personnel in cases where emergency situations are reasonably foreseeable.

**59—Emergency exits, procedures and training**

- (1) A workplace must provide for the safe and rapid evacuation of persons in the event of an emergency.
- (2) If the failure of an artificial lighting system at a workplace could cause a risk to the safety of persons at work, or to the safe and rapid evacuation of persons, a suitable emergency lighting system must be provided and maintained.
- (3) If a workplace is within a building or located at a fixed site—
  - (a) adequate arrangements must exist for the shutdown and evacuation of the workplace in the event of an emergency, and the details of the arrangements for evacuation must be kept on display in an appropriate place; and
  - (b) 1 or more responsible persons must be appointed and trained in accordance with subregulation (4) to oversee evacuation and, where appropriate, the use of first-attack fire fighting equipment.
- (4) The following provisions apply in relation to the appointment and training of responsible persons under subregulation (3):
  - (a) the number of persons appointed at a particular workplace must be adequate to ensure the reasonable protection of employees who work at the workplace, and in determining the number to be appointed the following factors must be taken into account:
    - (i) the nature of the hazards at the workplace;
    - (ii) the size, location and type of workplace;
    - (iii) the number and mobility of the employees;
  - (b) the training that must be provided must be adequate to ensure that the person can carry out his or her task competently and must include training in—
    - (i) evacuation procedures; and
    - (ii) the use of fire extinguishers.

**60—Emergency facilities**

- (1) Appropriate fire-fighting facilities and, where appropriate, fire-protection facilities, must be—
  - (a) available at a workplace, and in determining the appropriateness of the facilities the nature of the hazards at the workplace must be assessed; and



- (b) maintained in an effective condition by a competent person.
- (2) Portable fire extinguishers must be provided and installed at a workplace in accordance with AS/NZS 2444 Portable fire extinguishers and fire blankets - Selection and location .
- (3) If the accidental escape of a hazardous substance at a workplace could give rise to a risk to the health or safety of a person involved in a shutdown or cleanup procedure, suitable protective equipment and clothing must be provided and maintained.
- (4) If there is a risk at a workplace that a person could come into contact with a corrosive substance, or any other substance that could cause injury to the skin or eyes, appropriate deluge facilities that are immediately accessible from the place of work must be provided and maintained.

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**ACT WORK SAFETY REGULATION 2009 - REG 118**

**Division 7.13–Emergency procedures**

Person conducting business or undertaking to provide for emergencies

- (1) A person conducting a business or undertaking at a workplace commits an offence if the person does not ensure that, in an emergency at the workplace, appropriate systems are in place for—
  - (a) the safe and rapid evacuation of people from the workplace; and
  - (b) emergency communications; and
  - (c) the medical treatment of injured people.
- (2) A person conducting a business or undertaking at a workplace commits an offence if the person engages workers at the workplace and does not ensure that—
  - (a) arrangements are made for shutting down and evacuating the workplace in an emergency, including appropriate practice evacuations; and
  - (b) details of the arrangements are displayed in appropriate places at the workplace; and
  - (c) an appropriate number of people are properly trained to oversee any evacuation and use any on-site fire appliances.
- (3) What is appropriate for this section must be decided having regard to—
  - (a) the nature of the hazards at the workplace; and
  - (b) the size and location of the workplace; and
  - (c) the number, mobility and capability of people at the workplace.
- (4) An offence against this section is a strict liability offence.

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**QLD BUILDING FIRE SAFETY REGULATION 2008**

**Part 4–Evacuation planning, instruction and practice**

**Division 1–Preliminary**

**Subdivision 1–Interpretation**

- 17. Meaning of evacuation coordination procedures



- 18. Meaning of evacuation diagram
- 19. Meaning of person with special needs

**Subdivision 2–Application of particular divisions**

- 20. Application of divs 2, 3, 5 and 6

**Division 2–Fire and evacuation plans**

**Subdivision 1–Keeping fire and evacuation plans in specified form**

- 21. General requirements
- 22. Requirements for managing entities
- 23. Requirements for secondary occupiers
- 24. Fire and evacuation plan to include and reflect fire safety management procedure
- 25. Relevant approval documents to be obtained and kept with fire and evacuation plan

**Subdivision 2–Other matters relating to keeping fire and evacuation plans**

- 26. Accessing a fire and evacuation plan
- 27. Changing a fire and evacuation plan
- 28. Reviewing a fire and evacuation plan

**Division 3–Evacuation signs and diagrams**

- 29. References to an evacuation sign
- 30. Evacuation signs and diagrams to be displayed

**Division 4 Instructions for prescribed persons–Fire Service Act, s 104E**

- 31. Prescribed time and period for prescribed persons

**Division 5 Fire and evacuation instructions–buildings used for temporary events**

- 32. Fire and evacuation instructions

**Division 6 Fire and evacuation instructions–other buildings**

**Subdivision 1–Preliminary**

- 33. Application of div 6

**Subdivision 2–Fire safety advisers**

- 34. Appointment of fire safety advisers for high occupancy buildings

**Subdivision 3–General evacuation instructions**

- 35. General evacuation instructions

**Subdivision 4–First-response evacuation instructions**

- 36. General requirements



- 37. Additional requirement for high occupancy buildings

#### **Subdivision 5—Evacuation coordination instructions**

- 38. General requirements
- 39. Requirements for instructing new persons
- 40. Requirements for new occupiers
- 41. Additional requirements for high occupancy buildings
- 42. Compliance by occupiers of particular low occupancy buildings

#### **Division 7—Evacuation practice**

- 43. Evacuation practice—budget accommodation buildings
- 44. Evacuation practice—other buildings

#### **Division 8—Records**

- 45. Fire and evacuation instruction record
- 46. Evacuation practice record

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### **NSW**

#### **CIVIL LIABILITY ACT 2002 - SECT 35A**

##### **PART 8A - Good Samaritans 35A. Application of Part**

- (1) This Part applies to civil liability of any kind.
- (2) This Part does not apply to civil liability that is excluded from the operation of this Part by section 3B.

#### **CIVIL LIABILITY ACT 2002 - SECT 35B**

##### **35B. Protection of good samaritans**

- (1) A good samaritan is an individual who provides assistance, advice or care to another person in relation to an emergency or accident in circumstances in which –
  - (a) he or she expects no money or other financial reward for providing the assistance, advice or care; and
  - (b) as a result of the emergency or accident the person to whom, or in relation to whom, the assistance, advice or care is provided is ill, is at risk of death or injury, is injured, is apparently ill, is apparently at risk of death or injury or is apparently injured.
- (2) A good samaritan is not liable in any civil proceeding for anything done, or not done, by him or her in good faith and without recklessness –
  - (a) in providing assistance, advice or care at the scene of the emergency or accident; or
  - (b) in providing advice by telephone or by another means of communication to a person at the scene of the emergency or accident.



- (3) Subsection (2) applies even if the emergency or accident was caused by an act or omission of the good samaritan.
- (4) Subsection (2) does not apply to any act or omission of a good samaritan that occurs before the assistance, advice or care is provided by the good samaritan.