

Mr K Heffernan
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Department of
Industrial Relations

Dear Mr Heffernan

I refer to your letter dated 23 January 2006 in relation to the application of the *Workplace Health and Safety Act 1995* to playground equipment.

I note that you have attached an information sheet produced by the Division of Workplace Health and Safety (the former title of Workplace Health and Safety Queensland) produced in June 1996. There have been a number of changes to the *Workplace Health and Safety Act 1995* and supporting documents such as the Plant Code of Practice since the production of the information sheet.

My response is directed to the specific questions you have posed. I have provided the relevant references to the *Workplace Health and Safety Act 1995* for your assistance.

Is public playground equipment still designated as "plant" under WH&S?

Yes. Plant includes –

- (a) machinery, equipment, appliance, pressure vessel, implement and tool; and
- (b) personal protective equipment; and
- (c) a component of plant and a fitting, connection, accessory or adjunct to plant.

(refer schedule 3, dictionary, definition of 'plant')

When is a playground, or playground equipment, considered a workplace under WH&S?

A workplace is any place where work is, or is to be, performed by –

- (a) a worker; or
- (b) a person conducting a business or undertaking. (refer section 9, "What is a workplace"?)

The provision of playground equipment forms part of an entity's business or undertaking, whether as part of a school, childcare centre or public park. Therefore, a playground with playground equipment, is a workplace under the *Workplace Health and Safety Act 1995*.

The person in control of a relevant workplace area has an obligation to ensure the relevant workplace area is safe and without risk to health (these obligations do not extend to areas that are also the domestic premises of the person in control of the area). (refer section 34C)

The person in control of fixtures, fittings or plant included in a relevant workplace area has an obligation to ensure the fixtures, fittings or plant are safe and without risks to health (these obligations do not extend to areas that are also the domestic premises of the person in control of the area). (refer section 34D)

A relevant workplace area is –

- (a) any building or other structure, or a part of a building or other structure, used as a workplace; and
- (b) any area adjacent to the building or other structure or part associated with the use of the building or other structure or part as a workplace.

An outside play area for a child care centre is used in the *Workplace Health and Safety Act 1995* as an example of an area that could be adjacent to a building or other structure or part and associated with its use as a workplace. (refer section 15A)

The person in control, of a relevant workplace area, is the person who is the owner of the relevant workplace area. However, if there is in place a lease, contract or other arrangement that provides, or has the effect of providing, for another person to have effective and sustained control of the relevant workplace area, the other person, and not the owner, is the person in control of the relevant workplace area. (refer section 15B)

The person in control, of fixtures, fittings or plant included in a relevant workplace area, is the person who is the owner of the relevant workplace area (with the same conditions as relevant workplace area with respect to transfer of 'ownership'). (refer section 15C)

In respect of the particular plant, being 'playground equipment', the owner of the plant has an obligation to ensure that the plant is maintained in a condition that ensures the plant is safe, and without risk to health, when used properly. (refer section 35)

These obligations highlight the responsibility of plant owners and controllers of associated workplaces, such as plant in a public park or within a school or childcare centre, to the ongoing safe condition of plant and the surrounding area.

Is a school or childcare centre playground a workplace when teachers are supervising children at play?

Yes, a school or childcare centre playground where teachers are supervising children at play is a place where work is being performed by a worker or a person

conducting a business or undertaking (in this case, both characteristics are satisfied). (refer section 9)

In addition to the obligations for control of a relevant workplace area and relevant workplace fittings, fixtures and plant, the entity that has ongoing responsibility for the playground equipment has an obligation (as a 'person who conducts a business or undertaking') to ensure that the workplace health and safety of each of the person's workers and any other persons (such as teachers and children using the area or plant) is not affected by the conduct of the relevant person's business or undertaking. This conduct extends to omission of appropriate monitoring of the condition of plant such as playground equipment and undertaking maintenance accordingly. (refer section 28)

The entity for which the teacher is engaged has an obligation (as 'a person who conducts a business or undertaking') to ensure the workplace health and safety of each of the person's workers and any other persons is not affected by the conduct of the relevant person's business or undertaking. This would extend to ensuring that the equipment that children will be using is safe. This obligation may be met by strategies such as obtaining assurances from the owner of the safety of the equipment, engaging specialist inspectors or providing teachers with the necessary skills, knowledge and procedures to assess plant before being used by children, or a combination of these strategies.

Do children do 'work', and if so, does that 'work' include play?

No. A person is a worker if the person does work, other than under a contract for services, for or at the direction of an employer. Children do not do work for the purposes of the *Workplace Health and Safety Act 1995* during their educational and play activities in a teaching environment.

In closing I would also like to refer you to the Plant Code of Practice, which can be obtained at http://www.dir.qld.gov.au/pdf/whs/plant_code2005.pdf. The revised Plant Code of Practice commenced on 1 April 2005 and may assist you in the activities undertaken by your business.

I trust the information provided satisfactorily answers your questions.

Yours sincerely

ALDO RAINERI

A/Director

9 / 12 / 2005