

Amendments to the Occupational Health and Safety (Commonwealth Employment) Act 1991

- Information on the OHS(CE) Amendment Act 2006

Administrative and technical amendments

Purpose

To advise employers, employees and employee representatives of administrative and technical amendments to the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (the Act).

Contents

- **Extension of the duties of erectors or installers of plant**
- **Conduct of investigations**
- **Notification and reporting**
- **Annual reports**
- **Technical amendments**

Extension of the duties of erectors or installers of plant

Subsection 20(1) has been amended so that a person erecting or installing any plant in a workplace for the use of employees must take all reasonably practicable steps to ensure that the process of erection or installation, as well as the plant itself, is safe for all employees at the workplace. Breaches of this subsection may incur civil action or criminal prosecution as provided in Schedule 2 of the Act.

Conduct of investigations

A number of administrative amendments have been made in relation to the conduct of investigations.

Section 41 has been amended to provide Comcare with the same powers as the Safety, Rehabilitation and Compensation Commission (the Commission) to direct investigators to conduct investigations concerning compliance with the Act, contravention of the Act and in relation to certain accidents or dangerous occurrences.

The Commission can revoke a direction to conduct an investigation by Comcare. However, Comcare does not have the power to revoke such a direction made by the Commission.

Subsection 41(5) has also been amended to provide that an employee representative, if requested by an employee, may make a request to Comcare or the Commission for an investigation to be conducted at a workplace at which the employee performs work for the employer. Previously, such a request could only be made by an 'involved union' at the request of an employee who was a member of that union.

Subsection 43(1) provides, among other things, that an investigator may require certain persons to give the investigator documents or copies of documents relevant to the conduct of an investigation. A new subsection 43(3) has been inserted that requires an investigator to return such documents under certain circumstances, that is:

- if the documents are no longer needed for the conduct of an investigation, and
- where a decision is made by the investigator not to use the documents in proceedings or the documents have been used in such proceedings.

Notification and reporting

Section 68 has been amended to remove the requirement for a report to be provided to the Commission when there is an accident or dangerous occurrence in connection with an undertaking by an employer. However, an employer is still required to notify the Commission of any such accident or dangerous occurrence.

Annual reports

Section 74 details certain matters that are to be included in annual reports that Commonwealth Departments and Commonwealth authorities are required to submit under this section. These provisions have been amended to streamline annual reporting requirements by reducing prescription and making reporting more outcomes focussed. The amendments have:

- removed the prescriptive list of matters to be included in an annual report. Paragraph 74(1)(c) now requires the inclusion of details of the health and safety management arrangements (HSMAs) in a workplace [see Information sheet on *Health and safety management arrangements (HSMAs)*]
- replaced the word ‘measures’ with the word ‘initiatives’ in paragraph 74(1)(d) to reflect modern terminology
- inserted a new paragraph 74(1)(da) requiring health and safety outcomes to be included in the annual report, including information on the impact on injury rates of employees achieved as a result of initiatives taken under paragraph 74(1)(d), or previous initiatives
- simplified paragraph 74(1)(f), which now provides that the annual report must include details of investigations and notices given to an employer under subsections 29, 46 and 47 during the year
- amended paragraph 74(1)(g) to provide that the annual report must include details of other matters as required by guidelines approved by the Parliamentary Joint Committee of Public Accounts and Audit. To date, no guidelines on occupational health and safety matters have been issued.

Technical amendments

A number of technical amendments have been made to the Act to improve its operation or correct deficiencies.

Section 39 has been repealed and replaced by two new provisions, sections 38A and 39, conferring powers on Comcare that were previously exercised by the Commission. These amendments recognise that Comcare is better placed than the Commission to undertake these functions:

- section 38A allows Comcare to advise employers, employees or contractors on occupational health and safety matters affecting those parties. Advice may be provided on Comcare's own initiative or at the request of the parties
- section 39 allows Comcare to refer persons seeking advice about an occupational health and safety matter to relevant experts.

Subsection 47(7) has been repealed with the effect that all employers and employees covered by the Act are subject to enforcement action for failure to comply with an improvement notice.

Subsection 67C details considerations that must be made in the calculation of the Regulatory Contribution, including reference to other legislation. Paragraphs 67C(a) and (c) have been amended to replace references to the obsolete *Commonwealth Employees' Rehabilitation and Compensation Act 1988* with the correct reference to the *Safety, Rehabilitation and Compensation Act 1988*.

Subsection 70(7) has been amended to ensure that an up to date copy of each document incorporated in a code of practice is available for inspection at each of the offices of Comcare. Previously, such documents were only required to be available at the offices of the Commission. This will provide easier access to such documents.

Schedule 1 has been updated. This schedule specifies statutory corporations that are Government Business Enterprises (GBEs) for the purposes of the Act. Other GBEs are automatically covered by the definition of 'Government business enterprise' in section 5(1).

The following bodies have been inserted into Schedule 1 as they are GBEs for the purposes of the Act but do not fall automatically within the definition in section 5(1):

- Australian Government Solicitor
- Defence Housing Authority.

The following bodies have been omitted from Schedule 1:

- ANL Limited
- Health Insurance Commission
- Housing Loans Insurance Corporation
- Pipeline Authority
- Telstra Corporation Limited.

Note: Telstra Corporation Limited remains a GBE for the purposes of the Act, as it comes within paragraph (b) of the definition in section 5(1).

Further Information

2006 Amendments Information Sheet Series:

- Health and safety management arrangements (HSMAs)
- Consultation on workplace OHS arrangements
- Certification of employee representatives
- Operation of workplace consultative arrangements

References

Occupational Health and Safety (Commonwealth Employment) Act 1991
Occupational Health and Safety (Commonwealth Employment) Regulations 1994

Contacts

For further information contact:

The Comcare OHS Hotline - Phone **1300 366 979**
Email OHS enquiries to: ohs.help@comcare.gov.au