

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

- Information on the OHS(CE) Amendment Act 2006

Overview of amendments

Purpose

To advise employers, employees and employee representatives of amendments to the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (the Act). This is an overview of amendments and readers should refer to the individual information sheets (see section on **Further information**) for details on individual topics.

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Health and Safety Management Arrangements (HSMAs)

Section 16 of the Act outlines minimum requirements that employers must comply with to fulfil their duty of care to protect the health and safety of their employees at work. This section has been amended to require employers to develop HSMAs in consultation with their employees. HSMAs replace the previous requirement to develop an occupational health and safety policy and agreement.

They are arrangements between employers and their employees on the management, promotion and development of measures to ensure the health, safety and welfare of employees at work.

HSMAs are designed to be tailored to meet the needs of individual workplaces, taking into account the particular circumstances of the organisation such as relevant hazards, organisational culture and workforce. HSMAs can include, but are not limited to:

- a written OHS policy;
- risk management arrangements;
- the making of agreements between the employer, employees and their employee representatives about:
 - continuing consultation on occupational health and safety matters, or
 - other matters as agreed between the parties; and
- training in relation to occupational health and safety.

Consultation on workplace OHS arrangements

To facilitate a more direct relationship between employers and employees, amendments have been made to subsection 16(2)(d), requiring employers to consult with their employees or their employee representative in relation to HSMAs, mechanisms for dealing with disputes, and health and safety committees (HSCs). The consultation should be in a form which is agreed upon by involved parties, and which meets the needs of the organisation. Employers are required to provide information to employees and their representatives regarding HSMAs:

- In a reasonable timeframe, to allow employee representatives to consult with employees and obtain their views, and to enable employee suggestions to be considered; and
- In an easily understood manner and readily accessible format.

Representation of employees

The amendments to section 16 allow employees to choose to be represented during consultations regarding HSMAs by either another employee, or by an employee representative. An employee representative has been defined in section 5(1) as either:

- a registered organisation of employees; or
- an association of employees which the employee is entitled to be a member of by virtue of his/her employment.

An employee may still be involved in consultations, even though they have chosen to be represented in the same consultations by another employee, or by an employee representative.

Certification of employee representatives

There is a new provision allowing employees who choose to be represented by an employee representative to remain anonymous. In allowing an employee to remain anonymous, section 16(B) provides for the employee representative to obtain a certificate from Comcare to represent employees in specific consultations. The application to Comcare from an employee representative must be in the 'prescribed form' and satisfy the CEO of Comcare that the employee requesting representation has requested to be represented by the employee representative, and that their identity not be revealed. Section 16(B) requires a certificate issued by the CEO of Comcare to identify:

- the employee representative;
- the employer; and
- the proposed consultations.

The certificate and the employee representative must not identify the employee(s) concerned.

Operation of workplace consultative arrangements

In recognition of the primacy of direct employer and employee contact, amendments to the Act have been made regarding the administrative arrangements surrounding the establishment of Designated Work Groups (DWGs), election of health and safety representatives (HSRs), and HSCs.

Subsections 24(1) to (3) have been amended to permit requests to establish or vary DWGs to be made by employees or their representatives instead of involved unions, or employees in the absence of an involved union. These amendments also place new obligations on employers to prepare and maintain lists of DWGs.

Where an election for HSRs is required, an employer must conduct the nomination and election process under the new arrangements of section 25. New sections 33(2A) and (2C) clarify the arrangements for the election of deputy HSRs.

The new section 25 also requires employers to provide written notification to employees in a DWG of any HSR vacancy or selection. Amendments to section 26 now allow the term of office for HSRs to be specified in the HSMAs, or for two years where the duration is not specified. There have been new provisions under section 26 which specify the process relating to casual HSR vacancies.

Amendments to section 31 provide a simpler provision for the resignation of HSRs. Amendments to section 32 allow employers and employee representatives, rather than an involved union, to make a request to the Safety, Rehabilitation and Compensation Commission (the Commission) to have a HSR disqualified.

Section 34 has been repealed and replaced with less prescriptive mechanisms to establish and operate HSCs. Now a HSR or a majority of employees (rather than an involved union) in a workplace (with not less than 50 employees) can request their employer to establish a health and safety committee.

Section 37 has been amended to permit Comcare (instead of the Commission), to receive requests to undertake investigations. Requests can be made by HSRs and supervisors when there is disagreement regarding the adequacy of action to remove an immediate threat to the health and safety of employees, or whether a direction under s37(1)(b) by a HSR for employees to cease work was necessary.

Administrative and technical amendments

A number of administrative and technical amendments have been made to the Act concerning erectors/installers of plant, conduct of investigations, notification and reporting, and annual reports.

Subsection 20(1) has been amended so that a person erecting or installing 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.

Section 39 has been repealed and replaced by two new provisions, conferring powers on Comcare that were previously exercised by the Commission.

Section 41 has been amended to provide Comcare with the same powers as the Commission to direct investigators to conduct investigations.

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. Previously such a request could only be made by an 'involved union'.

A new subsection 43(3) has been inserted that requires an investigator who has obtained documents under subsection 43(1) to return them when the documents are no longer needed for the investigation, or where a decision has been made by the investigator not to use the documents in proceedings, or when the documents have been used in proceedings.

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.

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. This amendment does not affect the requirement for an employer to notify the Commission of accidents or dangerous occurrences as required by section 68.

To provide easier access to each document incorporated in a code of practice, subsection 70(7) has been amended to require up to date copies of such documents are to be held at Comcare offices, rather than offices of the Commission. Amendments have been made to section 74 to streamline annual reporting requirements by reducing prescription and making reporting more outcomes focussed.

Schedule 1 has been updated to specify statutory corporations that are Government Business Enterprises (GBEs) for the purposes of the Act. Note that other GBEs are automatically covered by the definition of 'Government Business Enterprise' in section 5 of the Act.

Transitional arrangements

There are transitional arrangements to allow smooth transition of the amended requirements of the Act.

HSMA's must be developed within 18 months of the commencement of the amendments (commencement date). Any existing OHS policies and associated agreements will continue to apply during this time. Once HSMA's are developed under the amendments, the OHS policy may continue to apply if it is provided for in the HSMA's.

A DWG in existence prior to the commencement date will continue to operate. Where consultations are underway but not complete at the time of the commencement date,

consultations may continue under the previous arrangements, however, the DWG must be established within 3 months of the commencement date.

HSRs holding office prior to the commencement date may remain in office after the commencement date and will be subject to the Act as it is in force after the election. If an election for HSRs has commenced, but has not been finalised at the time of the commencement date, the election can be held under the previous arrangements. However, these elections must be finalised within 3 months of the commencement date. Undetermined applications for disqualification of a HSR commenced prior to the commencement date, may be determined under the previous arrangements.

HSCs which are operational at the commencement date can continue to operate until replaced by HSCs established under the new provisions, or at the end of the period of 6 months after commencement, whichever is the earlier.

Further information

2006 Amendments information sheet series:

- Health and Safety Management Arrangements (HSMA)s
- Consultation on workplace OHS arrangements
- Certification of employee representatives
- Operation of workplace consultative arrangements
- Administrative and technical amendments

References

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

Contacts

For further information contact:

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