

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

- Information on the OHS(CE) Amendment Act 2006

Operation of workplace consultative arrangements

Purpose

To advise employers, employees and employee representatives of amendments to the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (the Act) affecting designated work groups (DWGs), health and safety representatives (HSRs) and health and safety committees (HSCs).

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Overview

Amendments to the Act concerning DWGs, HSRs and HSCs provide for more direct consultation by employers with all of their employees, and greater opportunities for participation of employees in workplace health and safety by removing the mandatory role of unions.

Current workplace arrangements – including the establishment of DWGs, election of HSRs and the requirement to have HSCs – have been retained, but the administrative arrangements have been revised consistent with the thrust of the amendments. No change is being made to the functions and powers of HSRs.

DWGs

DWGs remain an integral part of effective HSMA. Subsections 24(1) to (3) have been amended so that requests to establish or vary DWGs are to be made by employees or their representatives. Previously such requests could only be made by an ‘involved union’ or, in the absence of an involved union, an employee.

The amendments also place new obligations on employers to prepare and maintain lists of all DWGs, and require that such lists describe the categories of employees included in each DWG. The lists must be made available for inspection by employees and Comcare investigators. This requirement is contained in section 24B.

Transitional arrangements for DWGs

Transitional arrangements provide that a DWG in existence prior to the commencement of the amendments (commencement date) will continue to operate as if it had been established under the new arrangements.

Where consultations to establish DWGs are underway but are not completed before the commencement date, transitional arrangements provide that those consultations may continue. However, the DWG must be established within 3 months of the commencement date.

Election and selection of HSRs

The amendments continue to provide for the selection or election of HSRs. Subsections 25(4) to (10), which previously provided a mandated role for unions in the nomination and election process, have been repealed. Should an election be required an employer must now conduct the nomination and election process. The new arrangements are provided for in new section 25A.

All employees in the DWG are now eligible to nominate for election unless they have been disqualified under section 32. All employees in the DWG remain entitled to vote in the election. To assist the process, the new section 25A(9) provides for the Safety, Rehabilitation and Compensation Commission (the Commission) to issue directions to employers on the conduct of HSR elections.

Election of Deputy HSRs

New subsections 33(2A), (2B) and (2C) have been inserted to clarify the arrangements for the election of deputy HSRs (DHSRs). Should the option to elect a DHSR be taken, the employer must invite nominations from all employees in the affected DWG. The procedures for election are based on those for HSRs (with the exception of subsections 25A(1) and (2)), as are the resignation and disqualification provisions.

Terms of office, casual vacancies and disqualification of HSRs

Section 26 has been repealed and replaced by subsections 26(1) to (3) to reflect that the term of office for HSRs is now as specified in the HSMAs, or for two years where the duration is not specified.

A new provision (section 26A) has been inserted relating to casual HSR vacancies. If a HSR ceases to hold office before the end of their term (the retiring HSR) then the person selected to replace them will hold office for either:

- the remainder of the retiring HSR's term, where that term had more than 6 months to run or
- the remainder of that term plus the next term of office, where the retiring HSRs term had less than 6 months to run.

If a DWG is varied and there is a resultant change in membership of the DWG, the HSR for that DWG must cease to hold office. This technical amendment is provided for by new paragraph 31(1)(ba).

Subsections 31(2) to (4) have been replaced by new subsections 31(2) to (3) providing a simpler provision for the resignation of a HSR. A HSR may now resign by notifying the employer and employees in the affected DWG in writing.

An employer may apply to the Commission for the disqualification of a HSR under subsection 32(1). The amended provision now provides that an employee representative rather than an involved union can also make such an application, provided it is at the request of an employee in the DWG. This is a consequential amendment reflecting amendments relating to the representation of employees.

Transitional arrangements for HSRs

Transitional arrangements provide that HSRs holding office immediately before commencement remain in office after the commencement date, may remain in office subject to the Act as it is in force after the amendments.

If an election for a HSR had commenced but not finalised immediately before commencement, transitional arrangements allow the election to be completed under the previous arrangements. However the process must be completed within 3 months of commencement.

Transitional arrangements provide that undetermined applications for disqualification of a HSR made prior to the commencement date may be determined under the previous arrangements.

General provisions regarding HSRs

Employers must continue to prepare and maintain lists of HSRs and ensure the availability of such lists for inspection by employees and investigators. New section 25B replaces and simplifies the previous requirements in section 25(10). In addition, under new section 25C employers must provide written notification to employees in a DWG of any HSR vacancy or selection.

Subsection 37(3) has been amended to permit Comcare (instead of the Commission), in addition to an investigator, to receive requests to undertake occupational health and safety investigations. Such requests may be made by HSRs or supervisors under certain circumstances, ie where there is disagreement between a supervisor and a HSR about:

- the adequacy of action taken to remove an immediate threat to the health and safety of employees or
- whether a direction under section 37(1)(b) by a HSR for employees to cease work was necessary.

HSCs

Section 34 has been repealed and replaced with less prescriptive mechanisms to establish and operate HSCs. Subsection 34(1) is a new provision that provides that a HSC must be established in workplaces where the number of employees is normally not less than fifty. A HSR or a majority of employees in the workplace (where there are fifty or more employees) can in writing request their employer to establish a HSC. The capacity of an involved union to request the establishment of a HSC has been removed.

Subsection 34(3) requires the HSC, once established, is to operate in accordance with the employer's HSMA. Subsection 34(4) provides that, irrespective of the provisions in the HSMA regarding membership, the number of members representing the employers on the HSC must not exceed the number of members representing the employees.

Transitional arrangements for HSCs

Transitional arrangements provide that HSCs in existence immediately before the commencement date continue in operate until replaced by HSCs established under the new provisions. Replacement HSCs must be established within six months of the commencement date.

Further Information

2006 Amendments Information Sheet Series:

- Health and safety management arrangements (HSMAs)
- Consultation on workplace OHS arrangements
- Certification of employee representatives
- Administrative and technical amendments

References

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

Contacts

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