

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

- *Information on the OHS(CE) Amendment Act 2006*

Health and safety management arrangements (HSMAs)

Purpose

To advise employers, employees and employee representatives of amendments to the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (the Act) regarding development and variation of HSMAs.

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Overview

Section 16 of the Act provides that employers have a general duty of care to protect the health and safety of their employees at work. It sets out some minimum requirements that must be complied with. Section 16 has been amended to require employers to develop, in consultation with their employees, HSMAs that will apply at their workplace. This provision is a more outcomes focussed approach and replaces the previous prescriptive arrangements requiring employers to develop an occupational health and safety policy (paragraph 16(2)(d)) and agreement (subsection 16(3)) in consultation with involved unions.

The intention of these amendments is to enable the development of HSMAs that suit the individual workplace. A wide range of matters have been identified that can be covered by HSMAs. As a result, the specific needs of individual workplaces can be accommodated in a more flexible and efficient way. The new arrangements are also more outcomes focussed.

What are HSMAs?

HSMAs are arrangements between an employer and their employees that manage the promotion and development of measures to ensure the health, safety and welfare of employees at work. HSMAs provide a framework for employers and employees to work together to effectively manage workplace risks and hazards. They are an integral part of the employers' duty of care.

New paragraph 16(2)(d) of the Act imposes an obligation on employers to develop, with their employees, HSMAs that will:

- enable effective cooperation between an employer and its employees

- promote and develop appropriate measures to ensure the health, safety and welfare of employees at work
- provide adequate mechanisms for
 - informing employees about the arrangements
 - reviewing the arrangements
 - varying the arrangements
 - dealing with disputes that may arise in the course of consultations.

Employers that are required to establish a health and safety committee (HSC) under section 34 of the Act are also obliged to provide in their HSMAs for the way in which the HSC is to be constituted and to operate.

How are HSMAs developed?

The amendments to the Act require that HSMAs be developed through consultation between employers and their employees [see information sheet *Consultation on HSMAs*].

Employees can be represented in these consultations by another employee, or by an employee representative.

New subsection 16A(1) requires employers to take into account advice of the Safety, Rehabilitation and Compensation Commission (the Commission) in developing or varying HSMAs. Comcare can also provide information on matters relevant to HSMAs.

What can HSMAs cover?

The term ‘health and safety management arrangements’ describes a wide range of matters that can be addressed at the workplace level for the management of safety.

As noted above certain matters must be dealt with in developing HSMAs (paragraph 16(2)(d)). Amended subsection 16(3) provides some guidance as to what matters may be dealt with by HSMAs. These include:

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

This provision does not limit the matters that can be covered by HSMAs. The intent of HSMAs is that they be tailored to the needs of each workplace. The process for their development could therefore consider the particular circumstances of an organisation such as the relevant hazards, organisational culture and employee profile.

Transitional arrangements

HSMAs must be developed within 18 months of the date of commencement of the amendments. Within those 18 months, an employer will not be in breach of the Act if they have not developed HSMAs.

An OHS policy will cease to apply once HSMAs have been developed, unless the HSMAs provide for that policy to continue to apply.

An existing OHS agreement between an employer and an involved union that has been made under a repealed or amended provision of the Act (e.g. subsection 16(3)) will be preserved after the date of commencement as long as the OHS policy it was made under is kept under the new arrangements.

Compliance

Amendments to section 41 now provide Comcare, in addition to the Commission, with the power to conduct an investigation at any time to determine whether the requirements of the Act are being complied with. One of the issues that may be investigated is compliance with the requirement to develop HSMAs.

The following issues will be taken into consideration when undertaking such an investigation:

- the adequacy of the consultation between an employer, its employees and their employee representative in developing and varying HSMAs
- the content of HSMAs and
- compliance with any policy or guidance material issued by the Commission or Comcare.

Following such an investigation, a copy of the report will be provided to the employer containing recommendations for improvement. Subsection 53(4) requires employers to respond to the recommendations and to provide an action plan, including timeframes, for implementing the recommendations on request by the Commission.

Further Information

2006 Amendments information sheet series:

- 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

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