

# OCCUPATIONAL HEALTH AND SAFETY AND REHABILITATION

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## Authority and Application

Clause 65 of the Victorian Public Service Enterprise Agreement 2016 (the Agreement) applies to Victorian Public Service Departments and Agencies (Employers) and their Employees covered by the Agreement. It is to be read in conjunction with the *Occupational Health and Safety Act 2004 (Vic)*.

## Overview

The Employer's Occupational Health and Safety and Rehabilitation (OHS) obligations arise under relevant Occupational Health and Safety legislation, including the *Occupational Health and Safety Act 2004 (Vic)* (OHS Act) and the Agreement. This policy is only intended to provide a summary of the key responsibilities under both the Agreement and OHS Act. Employers must ensure they maintain their own OHS policies and procedures, which are compliant with their obligations under the Agreement and relevant legislation.

The parties to the Agreement are committed to ensuring Employees work in an environment which is, so far as is reasonably practicable, safe and without risks to health. Where health and safety issues are identified, the parties will work cooperatively to resolve health or safety issues promptly. Clause 65 of the Agreement outlines the agreed approach to occupational health and safety matters, including the establishment of consultation arrangements, training obligations and the role of health and safety representatives.

## Relevant provisions of the VPS Enterprise Agreement

### Clause 65. Occupational Health and Safety and Rehabilitation

#### 65.1 Objectives

- (a) This Agreement acknowledges and supports the rights of Employees to work in an environment, which is, so far as is practicable, safe and without risks to health. The Parties are committed to the promotion of a joint and united approach to consultation and resolution of Occupational Health and Safety (OH&S) issues.
- (b) The Agreement commits the Parties to improving health and safety with a view to improving workplace efficiency and productivity. This will be accomplished through the ongoing development, in consultation with Employees and their

health and safety representatives, of management systems and procedures designed to, so far as is practicable to:

- (i) identify, assess and control workplace hazards;
  - (ii) reduce the incidence and cost of occupational injury and illness;
  - (iii) identify and appropriately manage work and work practices which impact on OH&S;
  - (iv) provide a rehabilitation system for Employees affected by occupational injury or illness; and
  - (v) consider the impact of changes to work practices and staffing on occupational health and safety
- (c) OH&S statutory requirements, including regulations and codes of practice/compliance codes are minimum standards and will be improved upon where practicable.

### **65.2 OH&S consultation**

- (a) Consultative mechanisms appropriate to each Agency will be established to address OH&S issues. Such mechanisms will be:
- (i) in accordance with the Victorian *Occupational Health and Safety Act 2004*;
  - (ii) established in consultation with Employees and their health and safety representatives; and
  - (iii) consistent with the Employer's agreed issue resolution procedures and the rights and functions of health and safety representatives, consistent with the *Occupational Health and Safety Act 2004 (Vic)*.
- (b) Where an OH&S committee is established at least half the members shall be Employees, including health and safety representatives.
- (c) The OH&S committee must operate within the requirements of the *Occupational Health and Safety Act 2004 (Vic)*.
- (d) A CPSU Workplace representative may attend local OH&S committee meetings (by giving notice) from time to time.

### **65.3 OH&S training**

- (a) Workplace training programs, including induction and on the job training will outline relevant details of OH&S policies and procedures.
- (b) The contents of OH&S training programs will outline the OH&S roles and responsibilities of Employees, managers and supervisors, OH&S policies and procedures, particular hazards associated with their workplaces, control measures applicable to each hazard, and how to utilise OH&S systems to identify hazards and instigate preventative action.

#### 65.4 Designated Work Groups

- (a) In each Agency the parties at the local level will review the Designated Work Groups (DWGs), and negotiate revised DWGs where appropriate through workplace Union/management consultative structures.
- (b) The parties at the central level will establish instructions for the conduct of the reviews of DWGs at the local level.
- (c) Unions will be notified of vacancies for health and safety representatives in DWGs where the majority of DWG Employees are eligible to be members of a Union.
- (d) Each elected health and safety representative will be provided with reasonable access to facilities such as email, telephone, fax, office and computer access, where available. An Employee will be granted reasonable time release or paid time (including time in lieu) to attend to their functions as a health and safety representative, including but not limited to regularly inspecting workplaces (as defined by their DWG), consulting with Employees in their DWGs, OH&S representatives and other persons involved in the organising of Employees' health, safety and welfare.
- (e) The Employer will post and maintain current in each workplace the names and relevant contact details, including email where available, of elected health and safety representatives for identified DWGs. Such circular shall be required to be posted on a notice board for the regular attention of all Employees working in the workplace.
- (f) To monitor the maintenance of effective OH&S structures and training delivery the parties will jointly establish a central register or local registers of DWG's and their health and safety representatives. The register will be maintained by the Employer from information provided on a quarterly basis from each region/workplace.
- (g) Information from the updated register(s) will be provided periodically (quarterly) in electronic format to a Union. The information provided will be in accordance with the *Privacy and Data Protection Act 2014* (Vic). Where possible, this information will include:
  - (i) a description, including the location, of each DWG within each Agency;
  - (ii) the name of each elected health and safety representative, their workplace contact details and email address;
  - (iii) the date the health and safety representative was elected;
  - (iv) a description of the training the health and safety representative has attended and the date of attendance;
  - (v) the name and contact details of the nominated management representative responsible for each DWG;

- (vi) details of the structure of OH&S committees, their meeting frequency and the name and contact details of the committee convener.

### **65.5 Bullying and violence at work**

The Parties to this Agreement are committed to working together to reduce bullying and occupational assault so far as is practicable in the workplace.

### **65.6 Employee support and debriefing**

- (a) The Employer will provide support and debriefing to Employees who have experienced a “critical incident” during the course of the work that results in personal distress. The Employer is committed to assisting the recovery of Employees experiencing normal distress following a critical incident with the aim of returning Employees to their pre incident level of functioning as soon as possible.
- (b) A critical incident is defined as an event outside the range of usual human experience which has the potential to easily overcome a person's normal ability to cope with stress. It may produce a negative psychological response in an Employee who was involved in or witnessed such an incident.
- (c) Critical incidents in the workplace environment include, but are not limited to:
  - (i) aggravated assaults;
  - (ii) robbery;
  - (iii) suicide or attempted suicide;
  - (iv) murder;
  - (v) sudden or unexpected death;
  - (vi) hostage or siege situations;
  - (vii) discharge of firearms;
  - (viii) vehicle accidents involving injury and/or substantial property damage;
  - (ix) acts of self-harm by persons in the care of others;
  - (x) industrial accidents involving serious injury or fatality; and
  - (xi) any other serious accidents or incidents.

## **Supplementary Guidance Information**

### **1. Ensuring health and safety**

- 1.1. Clause 65.1(a) of the Agreement acknowledges and supports the rights of Employees to work in an environment, which is, so far as is practicable, safe and without risks to health. The duty imposed on a person by the *Occupational Health and Safety Act 2004 (Vic)* (OHS Act) is to:

- 1.1.1. eliminate risks to health and safety so far as is reasonably practicable, and
- 1.1.2. if it is not reasonably practicable to eliminate risks to health and safety, to reduce those risks so far as is reasonably practicable.
- 1.2. To determine what is reasonably practicable in relation to ensuring health and safety, the following things should be considered:
  - 1.2.1. The likelihood of the hazard or risk concerned eventuating;
  - 1.2.2. The degree of harm that would result if the hazard or risk eventuated;
  - 1.2.3. What the person concerned knows, or ought reasonably to know, about the hazard or risk and any ways of eliminating or reducing the hazard or risk;
  - 1.2.4. The availability and suitability of ways to eliminate or reduce the hazard or risk;
  - 1.2.5. The cost of eliminating or reducing the hazard or risk.
- 1.3. Both the Employer and Employees have obligations under the OHS Act.

## **2. Employee support and debriefing**

- 2.1. Clause 65.6 of the Agreement requires that Employees who have experienced a 'critical incident' during the course of their work that results in personal distress, are provided with support and debriefing. This may include offering Employees access to appropriate, timely psychological support in response to a critical incident including psychological first aid, and where necessary professional counselling and psychological support services. The Employer should work with the Employee to identify the most appropriate support based on the needs of the individual.

## **3. Consultation obligations on occupational health and safety matters**

- 3.1. Under the OHS Act and clause 65 of the Agreement, the obligation to consult arises when the Employer does any of the following things (note that a reference to an Employee of an Employer includes a reference to an independent contractor engaged by the Employer and any Employees of the independent contractor):
  - 3.1.1. Identifying or assessing hazards or risks to health or safety at a workplace under the Employer's management and control or arising from the conduct of the undertaking of the Employer;
  - 3.1.2. Making decisions about the measures to be taken to control risks to health or safety at a workplace under the Employer's management and control or arising from the conduct of the undertaking of the Employer;
  - 3.1.3. Making decisions about the adequacy of facilities for the welfare of Employees of the Employer;
  - 3.1.4. Making decisions about specified procedures in section 35(1)(d) of the *Occupational Health and Safety Act 2004 (Vic)*;

- 3.1.5. Determining the membership of any health and safety committee;  
or
- 3.1.6. Making decisions about specified procedures or proposing changes about specified matters in the OHS Act that may affect the health or safety of Employees of the Employer.
- 3.2. The OHS Act requires that the Employer must, so far as is reasonably practicable, consult with Employees of the Employer who are or are likely to be directly affected by any of the Employer's actions set out above. This consultation must include:
  - 3.2.1. Sharing with Employees information about the matter on which the Employer is required to consult; and
  - 3.2.2. Giving Employees a reasonable opportunity to express their views about the matter; and
  - 3.2.3. Taking into account those views.
- 3.3. If Employees are represented by a health and safety representative, the consultation must involve that representative (with or without the involvement of the Employees directly).
- 3.4. In addition, if the Employer and the Employees have agreed to procedures for undertaking consultation, the consultation must be undertaken in accordance with those procedures.
- 3.5. Clause 65.1 and 65.2 of the Agreement commit the parties to consult in relation to a range of matters, including those contemplated by the OHS Act (above) as well as some further matters, and to establish mechanisms to allow OHS issues to be addressed.
- 3.6. The obligation upon the parties is to continually establish (if not having done so already) appropriate consultative mechanisms, and, to continually develop those mechanisms with the ultimate aim of eliminating as far as is reasonably practicable hazards and risks.
- 3.7. Employers should also be aware of a major change contemplated by clause 10 of the Agreement (Implementation of Change) and impact of such change upon health and safety. This may create obligations to consult under both clauses 10 and 65.

#### **4. OH&S training**

- 4.1. The OHS Act provides that the Employer must, if requested more than 14 days in advance by a health and safety representative, allow the health and safety representative to attend the following courses, where they are approved by WorkSafe, relevant and chosen in consultation with the Employer:
  - 4.1.1. An initial course of training in OHS after being elected; and
  - 4.1.2. A refresher course at least once in each year, after completing the initial course of training, that he or she holds office.

Note - Under s67(3)(c) of the OHS Act and clause 66.4 of the Agreement, the HSR has the choice to determine the approved course which

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they seek to attend. If an Employer refuses to allow a health and safety representative to attend a course or they cannot agree on a particular course, the health and safety representative may ask WorkSafe to determine a specified course or seek for the matter to be resolved under clause 12 of the Agreement (Resolution of Disputes).

4.2. The Employer must:

- (i) Allow each health and safety representative time off work to attend the courses with such pay as he or she would otherwise be entitled to receive from the Employer for working during that period; and
- (ii) Pay the costs associated with each health and safety representative's attendance at the courses.

4.3. Clause 65.3 of the Agreement supplements the OHS Act training requirements by prescribing required content of workplace training programs conducted by the Employer.

## **5. Designated Work Groups**

5.1. The OHS Act provides for health and safety representation to be organised into designated work groups (DWG). A DWG may be established at the instigation of either the Employer or Employees. Consistent with clause 65.1 of the Agreement, the Employer will negotiate revised DWGs where appropriate through the workplace, union, management consultative structures.

5.2. The particulars of the DWG including any major variation (such as the grouping, number of health and safety representatives and their representative rights) are to be determined by negotiation between the Employer and Employees with reference to s46 of the OHS Act. The Employee(s) may be represented in these negotiations by any person authorised (which may include their union representative) by the Employee group. WorkSafe is empowered to resolve these matters where agreement cannot be reached.

5.3. Clause 65.4 of the Agreement supplements the OHS Act provisions relating to DWGs. Some of the provisions in clause 65.4 prescribe obligations that are in addition to the OHS Act obligations (i.e. notification to unions of HSR vacancies, provision of reasonable facilities for HSR's and provision of information to unions).

## **6. Other specific obligations**

6.1. Obligations in the Agreement also address specific subject matter under the overriding obligations to minimise as far as reasonably practicable risks and hazards. For example

- (i) Clause 65.5 of the Agreement commits the parties to working together to reduce bullying and occupational assault; and
- (ii) Clause 65.5 of the Agreement prescribes obligations when 'critical incidents' occur.

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## Making decisions under this policy

Under section 20(1) of the *Public Administration Act 2004*, the public service body head has all the rights, powers, authorities and duties of an Employer, which will usually be delegated to staff within their Department or Agency. Employers should ensure that any actions under this policy are only taken by an employee with the delegation to do so. Each Department and Agency should give effect to this policy in accordance with its own delegations.

## Dispute resolution

An Employee who is directly affected by a decision made or action taken pursuant to clause 65 may apply for a review of actions under the Employer's review of actions policy or seek to resolve a dispute through the Resolution of Disputes procedure at clause 12 of the Agreement.

## Further Information

Employees should refer to their Department or Agency's intranet for information on procedural requirements, systems and approval delegations.

For further information and advice please contact your local Human Resources or People and Culture Unit (or equivalent).

## Related policies or documents

### **Occupational Health and Safety Act 2004 (VIC)**

[http://www.legislation.vic.gov.au/domino/web\\_notes/ldms/pubstatbook.nsf/f932b66241ecf1b7ca256e92000e23be/750e0d9e0b2b387fca256f71001fa7be/\\$file/04-107a.pdf](http://www.legislation.vic.gov.au/domino/web_notes/ldms/pubstatbook.nsf/f932b66241ecf1b7ca256e92000e23be/750e0d9e0b2b387fca256f71001fa7be/$file/04-107a.pdf)

### **Occupational Health and Safety Regulations (VIC)**

[http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/vic/consol\\_reg/ohasr2017382/](http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/vic/consol_reg/ohasr2017382/)

### **VPS Enterprise Agreement Common Policies**

All policies in the VPS Enterprise Agreement Common Policies collection, can be found at <https://vpvc.vic.gov.au/vps-enterprise-agreement-common-policies/>