

OCCUPATIONAL HEALTH AND SAFETY AND REHABILITATION

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Authority and Application

Clause 74 of the *Victorian Public Service Enterprise Agreement 2020* (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), the *Accident Compensation Act 1985* (Vic), 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 74 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 Agreement

Clause 74 – Occupational Health and Safety and Rehabilitation

Supplementary Guidance Information

1. Ensuring health and safety

- 1.1. Clause 74.1(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.
- 1.4. Work-related sexual harassment constitutes a serious occupational health and safety issue and, in some instances, constitutes work-related violence. Sexual harassment involves non-consensual or unwelcome sexual conduct that could be reasonably expected to make a person feel offended, humiliated or intimidated in the circumstances. Employers have a duty under the OHS Act to take reasonable steps prevent and eliminate sexual harassment in the workplace

2. Employee support and debriefing

- 2.1. Clause 74.6 of the Agreement requires that Employees who have directly or vicariously experienced a 'critical incident' during the course of their work that results in personal distress or psychological trauma, are provided with support and debriefing.
- 2.2. A critical incident is defined in clause 74.6 of the Agreement 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, or otherwise deals with and/or is exposed through their course of their duties to the details of such an incident.
- 2.3. Support and debriefing provided to Employees 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 section 35 of the OHS Act and clause 74 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 OHS Act,
 - 3.1.5. Determining the membership of any health and safety committee; or
 - 3.1.6. 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 74.1 and 74.2 of the Agreement commit the parties to consult in relation to a range of matters, including those contemplated by the OHS Act (above), 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 11 of the Agreement (Implementation of Change) and impact of such change upon health and safety. This may create obligations to consult under both clauses 11 and 74.

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 74.3 of the Agreement, the HSR has the choice to determine the approved course which 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 13 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 the Employeee 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 74.3 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 representatives and employees 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 74.1 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 74.4 of the Agreement supplements the OHS Act provisions relating to DWGs. Some of the provisions in clause 74.4 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 74.5 of the Agreement commits the parties to working together to reduce bullying and occupational assault; and
 - (ii) Clause 74.6 of the Agreement prescribes obligations when 'critical incidents' occur.

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 74 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 13 of the Agreement.

If there is also an OHS issue it must be resolved in accordance with the agreed Issue Resolution Procedure or if there is no such procedure, the procedure prescribed in Part 2.2 of the Occupational Health and Safety Regulations 2017 (OHS Regulations) must be used.

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

VPS Enterprise Agreement Common Policies

- Review of Actions

All policies in the VPS Enterprise Agreement common policies collection can be found at <https://www.vic.gov.au/common-policies-victorian-public-service-enterprise-agreement>

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/

WorkSafe Victoria

<https://www.worksafe.vic.gov.au/>

Authorised by Industrial Relations Victoria:

Key Details	Date
Version	Final as approved
Date	December 2021

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