



Module Three

The Language of OH&S

An overview of Occupational Health and Safety

THE OCCUPATIONAL HEALTH AND SAFETY ACT 2000 AND THE OCCUPATIONAL HEALTH AND SAFETY REGULATION 2001 EMPLOYER AND EMPLOYEE RESPONSIBILITIES

OHS LEGISLATION

Statute Law (“A law established by legislative enactment”: www.dictionary.com)

In Australia the State governments are in the main responsible for the regulation of Health and Safety in the workplace.

Each state has requirements under an Act and supporting material including Regulations and Codes of Practice, which draw on information contained in International and Australian Standards.

Compliance with Acts and Regulations is mandatory.

Act

An Act is a law produced by parliament and enforced by government departments.

Non-compliance is considered an offence and may result in prosecution, on the spot penalties, or the issuing of Improvement or Prohibition notices.

Regulations

A Regulation is made under an act. There may be many Regulations under one act.

A Regulation provides more specific information on how to comply with the Act.

Not complying with a Regulation is an offence under the Act and thereby may result in prosecution, a fine or the issuing of Improvement or Prohibition notices.

OHS ACT 2000

The Act provides the legislative framework for all employers to provide **a safe working environment**.

Under the Act, all persons,(whether employers or employees) have legal duties that they must fulfil.

The underlying requirement in the OHS Act 2000 is that of **Risk Management and the Control of all identified hazards**.

This means that all persons doing any activity **must** identify the hazards and then state the action that is or will be used to control the hazard (i.e. minimise the risks to the health and safety of themselves and others.)

The Act is divided into Parts, Divisions and Sections, which detail the duties of **employers and employees** in ensuring health, safety and welfare at work.

Duties of employers

- An employer must ensure the health, safety and welfare at work of all the employees of the employer. [OHS Act 2000 Part 2 Div 1 s8(1)]
- An employer must consult with the employees of the employer to enable the employees to contribute to the making of decisions affecting their health, safety and welfare at work. [OHS Act 2000 Part 2 Div 2 (13)]

Duties of employees

- An employee must, while at work, take reasonable care for the health and safety of people who are at the employer's place of work and who may be affected by the employee's acts or omissions at work. [OHS Act 2000 Part 2 Div 3 s20(1)]
- An employee must, while at work, co-operate with his or her employer or other person so far as is necessary to enable compliance with any requirement under this Act or the regulations that is imposed in the interests of health, safety and welfare on the employer or other person. [OHS Act 2000 Part 2 Div 3 s20(1)]
- A person must not, intentionally or recklessly, interfere with or misuse anything provided in the interests of health, safety and welfare under occupational health and safety legislation.

OHS REGULATION 2001

The OHS Regulation 2001 was designed to assist employers in meeting their obligations under Part 2 Div 1 Section 8 of the OHS Act 2000.

- The Regulation applies to all places of work.
- The Regulation applies to plant that affects public safety, whether or not the plant is at a place of work or for use at work. (The definition of Plant from s82 is “plant includes any machinery, equipment or appliance”).

The obligations of the employer remain the responsibility of the employer, regardless of any delegation or contract for carrying out the tasks [OHS Regulation 2001].

The Regulation is divided into a number of Chapters and Clauses, which explain in detail the obligations and duties required under the OHS Act 2000, for different areas, work activities or equipment and tools. For example:

Chapter 2 Places of work – Risk management and other matters

- Outlines the responsibilities of employers to identify hazards, carry out risk assessments and take steps to eliminate or control the risks.

Chapter 3 Workplace Consultation

- Provides detailed guidance to employers on how to set-up Consultation processes with the employees, including the setting-up of OHS Committees.

Chapter 4 Work Premises and Working Environment

- Covers the responsibilities of “*controllers of premises*” to ensure that the premises are safe and without risks to health.

A *controller of premises* means a person who has control of premises used by people as a place of work, including:

- (a) a person who has only limited control of the premises, and
- (b) a person who has, under any contract or lease, an obligation to maintain or repair the premises. [OHS Regulation 2001]

RISK MANAGEMENT

Definitions:

Chapter 4 of the Regulation imposes obligations on an employer to *identify foreseeable hazards* that may arise from the conduct of the employer's undertaking, to *assess the risks of those hazards* and to *eliminate the risks or, if not reasonably practicable to do so, to control the risks.*

- A *hazard* means anything (including work practices or procedures) that has the potential to harm the health or safety of a person.
- A *risk* is the *likelihood* of a hazard producing adverse effects on the health and safety of humans, and the size of the effect.

Hazard Identification

It is a requirement of the legislation that all activities that are undertaken at a workplace are performed safely. In order to commence the process of risk management, it is necessary to identify all the hazards that exist or will exist during the activity.

Classification of hazards:

Hazards are classified into the following categories. (Examples follow each)

- **Chemical.** pesticides, carcinogens, cytotoxins, unknown mixtures
- **Physical.** manual handling, being struck by objects, trips and falls, cuts
- **Biological.** infection, poisoning
- **Radiation.** Radioisotopes, sun exposure, lasers, microwaves
- **Psychological.** Stress due to deadlines, physical threats, shift-work issues

RISK ASSESSMENT

Once a hazard has been identified, the risk of it causing injury or illness has to be determined. For example, if the risk is determined to be very high, then a decision might have to be made to stop the activity, but if the risk is determined to be very low, then the activity will probably be continued, with appropriate controls in place.

STEPS INVOLVED IN RISK ASSESSMENT

1. IDENTIFY THE HAZARD

This can be done **INCIDENTALLY** (that is, through observations or complaints), or it can be done **SYSTEMATICALLY** (that is, through regular inspections or through discussion with experienced people).

2. ASSESS THE RISK

There are three parts to this process:

- Determine the **CONSEQUENCES** (ie. death vs. first aid)
- Determine the **PROBABILITY** (ie. very likely vs. very unlikely to occur)
- Determine the **EXPOSURE** (ie. continually vs. very rarely)

3. DETERMINE THE LEVEL OF RISK AND PRIORITISE THE CONTROL ACTIONS REQUIRED ACCORDINGLY

It is the goal of all assessments to eliminate any potential risk by elimination of all hazards.

“CONTROL” OF RISKS

- The Regulation imposes an obligation on all persons to **control** a risk to health and safety (where it is impossible to eliminate the risk) by taking the following measures (**in the order specified**) to minimize the risk to the lowest level reasonably practicable.

This is called the “HIERARCHY OF CONTROLS”

1. **Substitution** of the hazard giving rise to the risk with a hazard that gives rise to a lesser risk. (for example, substitute vinegar for sulphuric acid)
 2. **Isolation** of the hazard from the person put at risk (for example, move noisy equipment into a separate room)
 3. **Design changes** to minimize the risk (for example, providing a guard on a piece of dangerous machinery).
 4. **Administrative changes** to minimize the risk (for example, rotate through a number of activities to avoid overuse injuries)
 5. **Personal protective equipment (PPE)** to minimize the risk (for example, a face mask to prevent inhalation of hazardous substances).
- A combination of the above measures is required to be taken to minimise the risk to the lowest level reasonably practicable if no single measure is sufficient for that purpose.

You should note:

- The control of risks **must** be completed using the “hierarchy of controls” above - in the **order** shown above.
- PPE should always be the **last** method used to control risks.

CONSULTATION

“The employer must consult..., with the employees of the employer to enable the employees to contribute to the making of decisions affecting their health, safety and welfare at work”. (OHS Act 2000, Section 12, Part 2, Division 1)

This requirement means that the employer must share relevant information about occupational health, safety and welfare with employees and those employees be given the opportunity to express their view and to contribute to the resolution of OHS issues at their place of work. The employer must also be able to show that the views of the employees have been valued and taken into account by the employer.

Consultation is required in the following circumstances:

- Whenever risks to health and safety are assessed or when the assessment is reviewed
- Whenever decisions are made about controlling those risks
- Whenever procedures for monitoring risks are introduced or altered
- When decisions are made about the adequacy of facilities for employee welfare
- Whenever decisions are made about the procedure to be used for consultation (OHS Act 2000 Part 2 Division 2 s13-15)

The OHS Act 2000 requires that Consultation take place either by an OHS Committee or OHS representatives or any other arrangement **agreed by the employer and employees.**

This consultation process between the employer and the employee should form the basis of the development of safe work practices for all tasks carried out within the workplace.