



New South Wales

Occupational Health and Safety (Committees in Workplaces) Regulation 1999

under the

Occupational Health and Safety Act 1983

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Occupational Health and Safety Act 1983*.

JEFFREY SHAW, Q.C., M.L.C.,

Minister for Industrial Relations

Explanatory note

The object of this Regulation is to repeal and remake, with minor modifications, the provisions of the *Occupational Health and Safety (Committees in Workplaces) Regulation 1984*. The new Regulation contains provisions with respect to the following matters:

- (a) establishment of workplace committees (Part 2),
- (b) membership and procedure of workplace committees (Part 3),
- (c) functions of workplace committees and powers of their members (Part 4),
- (d) training of members of workplace committees (Part 5).

This Regulation is made under the *Occupational Health and Safety Act 1983*, including section 45 (the general regulation-making power) and sections 23–26.

This Regulation is made in connection with the staged repeal of subordinate legislation under the *Subordinate Legislation Act 1989*.

1999 No 466

Occupational Health and Safety (Committees in Workplaces) Regulation 1999

Contents

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	4
2 Commencement	4
3 Definitions	4
4 Notes	5
Part 2 Establishment of workplace committees	
5 Request for establishment of committee	6
6 Establishment of committee	6
Part 3 Members and procedure of workplace committees	
7 Composition and size of committee	7
8 Election of employees' representatives	8
9 Appointment of employer's representatives	9
10 Election of committee chairperson and convener	9
11 Vacation of office of members of committee	9
12 Procedure at meetings of committee	10
Part 4 Functions of workplace committees and powers of members	
13 Functions of occupational health and safety committees	11
14 Powers of members of occupational health and safety committees	11
Part 5 Training of members of workplace committees	
15 Accreditation of courses and trainers	14
16 Training to be provided to members of committees	14

Occupational Health and Safety (Committees in Workplaces) Regulation 1999

Contents

Part 6 Miscellaneous

17	Appeal to WorkCover Authority	16
18	Employees' representatives—work as committee members	16
19	Display of certain provisions	17
20	Repeal	17

1999 No 466

Clause 1 Occupational Health and Safety (Committees in Workplaces) Regulation 1999

Part 1 Preliminary

Occupational Health and Safety (Committees in Workplaces) Regulation 1999

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Occupational Health and Safety (Committees in Workplaces) Regulation 1999*.

2 Commencement

This Regulation commences on 1 September 1999.

3 Definitions

(1) In this Regulation:

accredited trainer means a person for the time being approved by the WorkCover Authority under Part 5 to conduct an accredited training course.

accredited training course means a training course for the time being approved by the WorkCover Authority under Part 5 and conducted by an accredited trainer.

employees' representatives of an occupational health and safety committee, means the members of the committee who are elected by the persons employed at the place of work at which the committee is established.

employer's representatives of an occupational health and safety committee, means the members of the committee who are appointed by the employer of the persons employed at the place of work at which the committee is established.

occupational health and safety committee means an occupational health and safety committee established at a place of work pursuant to section 23 of the Act.

the Act means the *Occupational Health and Safety Act 1983*.

- (2) A reference in this Regulation to a meeting of the persons employed at a place of work includes a reference to a meeting of some of the persons employed at that place of work, but only if the other persons employed at that place of work were given reasonable notice of the meeting.

4 Notes

The explanatory note and table of contents to this Regulation do not form part of this Regulation.

1999 No 466

Clause 5 Occupational Health and Safety (Committees in Workplaces) Regulation 1999

Part 2 Establishment of workplace committees

Part 2 Establishment of workplace committees

5 Request for establishment of committee

A request for the establishment at a place of work of an occupational health and safety committee, being a request made under section 23 (1) (a) of the Act by a majority of the persons employed at that place of work, is to be forwarded by a person:

- (a) appointed by an industrial organisation of employees whose members are engaged at that place of work, or
- (b) appointed at a meeting of the persons employed at that place of work,

to the employer of the persons employed at that place of work.

6 Establishment of committee

On receipt of such a request or a direction of the WorkCover Authority under section 23 (1) (b) of the Act, the employer must, as soon as practicable, arrange for the establishment of an occupational health and safety committee in accordance with the Act, this Regulation and, except in the case of a request, such directions as the WorkCover Authority may give to the employer.

Part 3 Members and procedure of workplace committees

7 Composition and size of committee

- (1) The composition and size of an occupational health and safety committee established at a place of work is to be determined by agreement between the employer of the persons employed at that place of work and a representative or representatives:
 - (a) appointed jointly by the industrial organisation of employees whose members are engaged at that place of work, or
 - (b) appointed at a meeting of the persons employed at that place of work.
- (2) The maximum number of members of an occupational health and safety committee is to be 8 or such other number as is determined in the manner referred to in subclause (1).
- (3) Despite anything to the contrary in this clause, the maximum number of members of an occupational health and safety committee established at a government school or a registered non-government school under the *Education Act 1990* is to be 4.
- (4) In order to ensure effective representation for all persons employed at a place of work, the following factors in respect of the place of work are to be taken into account in determining the composition and size of an occupational health and safety committee:
 - (a) the operation of various shifts,
 - (b) various departments or sub-units,
 - (c) geographical location,
 - (d) the variety of different occupations,
 - (e) the composition of the workforce,
 - (f) the degree and character of the hazards present at the place of work.
- (5) In respect of any occupational health and safety committee, the number of employer's representatives must not exceed the number of employees' representatives.

1999 No 466

Clause 7 Occupational Health and Safety (Committees in Workplaces) Regulation 1999

Part 3 Members and procedure of workplace committees

- (6) A person is not eligible to be elected as an employees' representative on an occupational health and safety committee unless the person is employed at the place of work at which the committee is established.

8 Election of employees' representatives

- (1) As soon as practicable after:
- (a) a request is made under this Regulation for the establishment of an occupational health and safety committee, or
 - (b) a direction is given by the WorkCover Authority under section 23 (1) (b) of the Act for the establishment of such a committee,

a meeting of the persons employed at the place of work at which the committee is to be established must be called:

- (c) in the case of a request—by the person who forwarded the request, or
 - (d) in the case of a direction—by a person nominated by the WorkCover Authority.
- (2) At least 1 week's notice of that meeting is to be given to the employer concerned.
- (3) The method of electing employees' representatives on an occupational health and safety committee is to be determined at that meeting and those representatives are to be elected at that meeting or at a later time determined at that meeting.
- (4) On the expiration of the term of office of an employees' representative on an occupational health and safety committee, an election to fill the vacant office is to be held in the manner and at the time determined at that meeting or at a subsequent meeting of the persons employed at the place of work concerned.
- (5) On the occurrence of a casual vacancy in the office of an employees' representative on an occupational health and safety committee, the chairperson and convener of the committee may, unless otherwise determined at a meeting of the persons employed at the place of work, appoint a person to the vacant office for the balance of the predecessor's term of office.

-
- (6) Subject to this Regulation, an employees' representative on an occupational health and safety committee is to hold office for a period of 2 years.

9 Appointment of employer's representatives

- (1) The employer's representatives on an occupational health and safety committee are to be appointed by the employer:
- (a) as soon as practicable after the request made under this Regulation for the establishment of the committee or, as the case may be, the direction given by the WorkCover Authority under section 23 (1) (b) of the Act for the establishment of the committee, and
 - (b) thereafter as the occasion requires.
- (2) The employer's representatives on an occupational health and safety committee are to include, as far as practicable, a person with authority to implement preventative measures and otherwise act on behalf of the employer in matters associated with occupational health and safety.

10 Election of committee chairperson and convener

The employees' representatives on an occupational health and safety committee are to elect one of their number to be chairperson and convener of the committee as soon as practicable after the establishment of the committee and thereafter as the occasion requires.

11 Vacation of office of members of committee

A member of an occupational health and safety committee ceases to be such a member if:

- (a) the member resigns from the committee, or
- (b) in the case of an employees' representative, the member ceases to be employed at the place of work at which the committee is established, or
- (c) the member is removed from office:
 - (i) in the case of an employer's representative—by the employer, or

1999 No 466

Clause 11 Occupational Health and Safety (Committees in Workplaces) Regulation 1999

Part 3 Members and procedure of workplace committees

- (ii) in the case of an employees' representative—at a meeting of the persons employed at that place of work.

12 Procedure at meetings of committee

- (1) The procedure for the calling of meetings of an occupational health and safety committee and for the conduct of business at those meetings are, subject to this Regulation, to be as determined by the committee.
- (2) The following provisions apply to each occupational health and safety committee:
 - (a) the committee is to meet at least once every 3 months,
 - (b) the chairperson and convener of the committee may call a meeting at any time,
 - (c) the chairperson and convener is to circulate an agenda to all members of the committee prior to any meeting,
 - (d) minutes of each meeting are to be kept by a person designated by the committee for the purpose,
 - (e) the records of the committee (including minutes of meetings) are to be placed in the custody of the employer for safekeeping,
 - (f) members of the committee may have access to all records of the committee, including minutes of meetings,
 - (g) copies of the minutes of meetings are to be displayed at the place of work at which the committee is established in prominent places where employees may read them.

Part 4 Functions of workplace committees and powers of members

13 Functions of occupational health and safety committees

For the purposes of section 24 (1) (d) of the Act, an occupational health and safety committee has the following additional functions:

- (a) the committee is to assist in the development of an appropriate recording system of accidents and hazardous situations in respect of the place of work at which the committee is established,
- (b) the committee is to assist in the development of a safe working environment and safe systems of work at that place of work and is to assist in the formation of an occupational health and safety policy suitable for that place of work,
- (c) the committee is to monitor the measures taken to ensure the proper use, maintenance and, if necessary, replacement of equipment designed to protect employees from hazardous situations,
- (d) the committee is to make such recommendations to the employer as it thinks appropriate to ensure the health and safety of persons at that place of work.

14 Powers of members of occupational health and safety committees

- (1) For the purposes of section 25 (1) of the Act, a member of an occupational health and safety committee established at a place of work has power:
 - (a) to carry out an inspection of that place of work in a manner determined by that committee:
 - (i) by way of routine inspection at intervals (not exceeding 3 months) agreed with the employer, or
 - (ii) whenever an accident or possible hazardous situation is brought to the attention of the committee and failure to rectify the possible hazard could cause injury in the immediate future, and
 - (b) to carry out an inspection of that place of work at any time with the approval of the employer, and

1999 No 466

Clause 14 Occupational Health and Safety (Committees in Workplaces) Regulation 1999

Part 4 Functions of workplace committees and powers of members

- (c) to obtain from the employer, prior to their implementation, all details of proposed changes to that place of work which could affect the occupational health and safety of persons at that place of work, and
 - (d) to have access to all information kept by the employer:
 - (i) relating to accidents and occupational diseases occurring at that place of work, and
 - (ii) relating to any research, testing or examination of any plant or substance for use at that place of work (being any research, testing or examination relating to the risks to health and safety to which the plant or substance may give rise at that place of work), and
 - (e) to recommend to the employer training and education for particular groups working at the place of work in order to overcome occupational health and safety hazards, and
 - (f) to inform the chairperson and convener of that committee of any apparent breach of the occupational health and safety legislation at that place of work, and
 - (g) as soon as practicable after election or appointment to the committee, to inspect and familiarise himself or herself with that place of work and the persons employed thereat at a time agreed with the employer.
- (2) Subject to subclause (3), a person who is, or was at any time, a member of an occupational health and safety committee must not disclose any information relating to any manufacturing or commercial secrets or working processes and obtained by the person in connection with the exercise of the person's functions as a member of the committee.
- Maximum penalty: 20 penalty units.
- (3) Subclause (2) does not operate to prevent the disclosure of information where that disclosure is:
- (a) made in connection with the exercise of the functions of a member of an occupational health and safety committee, or

- (b) made with the prior approval of the employer concerned, or
- (c) ordered by a court, or by any other body or person authorised by law to examine witnesses, in the course of, and for the purpose of, the hearing and determination by that court, body or person of any matter or thing.

1999 No 466

Clause 15 Occupational Health and Safety (Committees in Workplaces) Regulation 1999

Part 5 Training of members of workplace committees

Part 5 Training of members of workplace committees

15 Accreditation of courses and trainers

- (1) The WorkCover Authority may, on application or otherwise, approve as an accredited training course any training course in connection with exercise of the functions of members of the occupational health and safety committees.
- (2) The WorkCover Authority may, on application or otherwise, approve any person as an accredited trainer to conduct any accredited training course.
- (3) The manner of making application for an approval under this clause is to be as determined by the WorkCover Authority.
- (4) An approval under this clause may be granted subject to such terms and conditions as the WorkCover Authority thinks fit to impose.
- (5) An approval under this clause may be revoked by the WorkCover Authority at any time.

16 Training to be provided to members of committees

- (1) For the purposes of section 25 (2) of the Act, the training to be provided to members of an occupational health and safety committee established at a place of work is to be provided by the employer of the persons employed at that place of work.
- (2) Any such training is to consist of:
 - (a) attendance by each member of the occupational health and safety committee, as soon as practicable after being appointed or elected to the committee, at an accredited training course which provides training in his or her duties as a member of the committee, and
 - (b) attendance by members of the committee, if necessary, at further training courses which provide:
 - (i) training in connection with the industry or business with which the committee is concerned and in the special hazards to which employees are exposed in that industry or business, and
 - (ii) refresher training in their duties as members of the committee.

-
- (3) The WorkCover Authority may, on application made in such manner as the WorkCover Authority determines, exempt an employer from the requirements of subclause (2) (a) in respect of a member of an occupational health and safety committee who has received training referred to in subclause (7).
- (4) An occupational health and safety committee may determine:
- (a) which accredited training courses its members should attend under subclause (2) (a), and
 - (b) which further training courses (if any) its members should attend under subclause (2) (b) and the times for attendance, and
 - (c) whether its members should be trained together or separately.
- (5) If a dispute arises on a matter referred to in subclause (4):
- (a) between the relevant employer and the occupational health and safety committee, or
 - (b) between the employees' representatives and the employer's representatives on an occupational health and safety committee,
- the dispute may be referred to the WorkCover Authority for resolution.
- (6) The decision of the WorkCover Authority in relation to such a dispute is binding and is to be given effect to by the persons concerned.
- (7) Nothing in this clause affects any entitlement to training under any State industrial instrument or agreement, but an employer is not be required to provide training under this clause if the training has already been provided under any such instrument or agreement.

1999 No 466

Clause 17 Occupational Health and Safety (Committees in Workplaces) Regulation 1999

Part 6 Miscellaneous

Part 6 Miscellaneous

17 Appeal to WorkCover Authority

(1) In this clause:

prescribed person in relation to an occupational health and safety committee, means:

- (a) the employer of the person employed at the place of work at which the committee is established, or
 - (b) a person employed at that place of work, or
 - (c) a person acting with the authority of the majority of the persons employed at that place of work, being a person appointed by an industrial organisation of employees whose members are engaged at that place of work.
- (2) A prescribed person may appeal to the WorkCover Authority in respect of any 1 or more of the following matters:
- (a) a request for the establishment of an occupational health and safety committee which is considered irregular,
 - (b) any procedures in the election of employees' representatives on any such committee which are considered irregular,
 - (c) any matter concerning the composition or size of any such committee, or the procedure adopted by any such committee for the conduct of its affairs, which is considered inadequate or inappropriate to ensure effective workplace representation or otherwise to achieve the objects of the Act.
- (3) The manner of making an appeal under this clause, and the procedure of the WorkCover Authority in dealing with any such appeal, is to be as determined by the WorkCover Authority.
- (4) The decision of the WorkCover Authority on an appeal under this clause is binding and is to be given effect to by the persons concerned.

18 Employees' representatives—work as committee members

- (1) Where a person employed at a place of work is an employees' representative on an occupational health and safety committee established at that place of work, the person:

- (a) is taken to be engaged in the person's usual work at that place while duly exercising the person's functions as a member of the committee or while attending any training course under Part 5, and
 - (b) is entitled to exercise those functions or attend any such training course at any time, including during the person's ordinary hours of work.
- (2) A person so taken to be engaged in the person's usual work is, without affecting the generality of subclause (1), entitled to pay, including pay (at the appropriate rate) for any period that the person is so engaged which exceeds the person's ordinary hours of work.

19 Display of certain provisions

The employer of persons employed at a place of work must:

- (a) cause a notice to be displayed at that place of work, or
- (b) make available to the persons employed at that place of work,

a copy of the provisions of sections 23, 24, 25, 26 and 31 of the Act and the provisions of this Regulation.

Maximum penalty: 20 penalty units.

20 Repeal

- (1) The *Occupational Health and Safety (Committees in Workplaces) Regulation 1984* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Occupational Health and Safety (Committees in Workplaces) Regulation 1984*, had effect under that Regulation continues to have effect under this Regulation.