

# **Occupational Health and Safety (Commonwealth Employment) Amendment Regulations 1998 1998 No. 355**

## **EXPLANATORY STATEMENT**

### **Statutory Rules 1998 No. 355**

Minister for Employment, Workplace Relations and Small Business

*Occupational Health and Safety (Commonwealth Employment) Act 1991*

Occupational Health and Safety (Commonwealth Employment) Amendment Regulations 1998

Subsection 82(1) of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (the Act) provides that the Governor-General may make regulations required or permitted by the Act to be made.

The Act provides for the health and safety of Commonwealth employees and others at work and establishes a framework within which Commonwealth employers, employees and involved unions cooperate to address health and safety issues.

Section 68 of the Act requires employers to provide notification, and a report, to the Safety Rehabilitation and Compensation Commission (Commission) of certain accidents or dangerous occurrences as required by the regulations. The regulations may include provisions relating to the timing and form of reports and notifications.

The purpose of these Regulations is to amend the Principal Regulations to reduce the amount of information that is collected and require reports to be made at the same time as notifications. This will reduce compliance costs for the employer, while still providing the Commission with necessary information.

Regulations made for the purposes of section 68 of the Act were reviewed in 1997. The review found that compliance with them has placed an unnecessary burden on employers. Much of the detailed information required in the reports and notifications is not used by the Commission in undertaking its statutory functions.

These amendments will emphasise that a serious personal injury is one that needs emergency treatment and not that treatment was merely given; provide that a period of incapacity of thirty days instead of five days governs the reporting and notification of certain accidents or a dangerous occurrence; and provide that in the case of an accident causing death, a report to Comcare is required within 2 hours, or in the case of an accident causing serious injury, incapacity or a dangerous occurrence - a report is required within 24 hours rather than the current 28 days of the employer becoming aware of the matter. More details of the amending Regulations are attached.

The Regulations commence on 1 January 1999.

## **Details of the Occupational Health and Safety (Commonwealth Employment) Amendment Regulations 1998**

### **Regulation 1 - Name of Regulations**

Regulation 1 is a formal provision that provides the name for the amending regulations.

### **Regulation 2 - Commencement**

Regulation 2 provides that the amending regulations commence on 1 January 1999.

### **Regulation 3 - Amendment of the Occupational Health and Safety (Commonwealth Employment) Regulations**

Regulation 3 is a formal provision that provides that Schedule 1 amends the Occupational Health and Safety (Commonwealth Employment) Regulations (the Regulations).

### **Schedule 1**

#### **Item 1 Regulation 1**

The amendment corrects the name of the Regulations, by including the date '1991' in the name.

#### **Item 2 Subregulation 2(1), definition of serious personal injury, paragraph (b)**

Regulation 2 of the Regulations defines 'serious personal injury', in part, to mean an injury or disease that is caused in the course of work and for which the person is given emergency treatment by a registered medical practitioner (paragraph (b)(i) of the definition).

The amendment emphasises the seriousness of the personal injury by inserting the requirement that the person needs the emergency treatment, and was not merely given it.

#### **Item 3 Regulation 3, heading**

Subregulation 3(1) of the Regulations provides a definition of a 'dangerous occurrence', for the purposes of subsection 5(1) of the Act.

The amendment inserts a new heading that provides a cross reference to subsection 5(1) of the Act.

#### **Item 4 Subparagraph 3(1)(b)(ii)**

Subparagraph 3(1)(b)(ii) of the Regulations provides that an occurrence is a 'dangerous occurrence' if it arose from the undertaking of the employer, and could have caused the death of an employee, serious personal injury, or incapacity for work for a period of five or more days.

The amendment replaces the five day period of incapacity, with a thirty day period. The five day period of incapacity resulted in reports and notifications of accidents that were not intended to be the subject of the reporting requirements under section 68 of the Act. It is considered that a thirty day period of incapacity is consistent with the type of accident for which reporting and notifications should be required.

#### **Item 5 Subregulation 3(1)**

The amendment is consequential to the amendment proposed to subparagraph 3(1)(b)(ii) by item 4.

#### **Item 6 Subregulation 3(2)**

Subregulation 3(2) of the Regulations lists a number of examples of 'dangerous occurrences'.

This item omits the list of examples. This leaves the expression dangerous occurrence to be defined by reference to the potential consequences of the occurrence.

#### **Items 7, 8, 9, 10 Subparagraph 4(b)**

Regulation 4 of the Regulations prescribes a number of government agencies for the purpose of the definition of 'employing authority' in section 5(1) of the Act.

Each of these four items amends the prescribed 'employing authorities', consequent on changes in the Administrative Arrangements Order of 21 October 1998. That Administrative Arrangements Order has changed the names of some Departments, and the Departments in which some agencies are located.

#### **Item 11 Paragraphs 36A(a) and (b)**

Section 68 of the Act requires employers to provide notification, and a report, to the Safety Rehabilitation and Compensation Commission (Commission) of certain accidents or dangerous occurrences as required by the regulations. Paragraph 68(1)(b) provides for a period of incapacity to be prescribed by the regulations. An accident that causes incapacity for the prescribed period will need to be notified or reported on to the Commission.

Regulation 36A prescribes that, for the purposes of paragraph 68(1)(b) of the Act, a period of 5 or more working days or work shifts is the prescribed period.

The amendment replaces the five day period of incapacity, with a thirty day period. The five day period of incapacity resulted in reports and notifications of accidents that were not intended to be the subject of the reporting requirements under section 68 of the Act. It is considered that a thirty day period of incapacity is consistent with the type of accident for which reporting and notifications should be required.

#### **Item 12 Paragraph 37(1)**

Subregulation 37(1) of the Regulations makes provision for the service of notices and reports to particular officers within Comcare. The amendment simplifies the requirements, obliging employers to notify, or report to, the relevant State or Territory Occupational Health and Safety Manager of Comcare.

#### **Item 13 Paragraph 37B(1)(f)**

Regulation 37B of the Regulations prescribes the form of notice, for accidents or dangerous occurrences, and prescribes the information to be contained in the notice. Information required includes information about the employer, the accident, and future preventative action by the employer.

The amendment omits the requirement to give notice of the action that the employer has taken or proposes to take, to prevent an accident of the same kind happening again. It is considered that this information should only be provided for in the report that is required under Regulation 37E.

#### **Item 14 Paragraph 37B(2)(a)**

Subregulation 37B(2) of the Regulations provides that the notice of a dangerous occurrence must include specified information from a number of paragraphs in subregulation 37B(1). The proposed amendment would provide new paragraph references, consequent on the changes made by Item 13.

#### **Item 15 Paragraph 37D(1)(a), (b) and (c)**

Subregulation 37D(1) of the Regulations currently provides that a report is to be given to Comcare within 28 days of an employer becoming aware of the accident that has caused the death, serious personal injury or incapacity, or becoming aware of the dangerous occurrence. A penalty of \$1,000 is prescribed for non-compliance with the provision.

The amendment changes the time frame for providing these reports. The timing mirrors that required in relation to notifications made under Regulation 37A. In the case of an accident causing the death of a person, a report is required within 2 hours of the employer becoming aware of the death. In the case of an accident causing serious personal injury or incapacity, or a dangerous occurrence a report is required within a 24 hour period. This is considered to be a more administratively appropriate time period for reporting, while continuing to give full effect to section 68 of the Act.

#### **Item 16 Paragraph 37E (e) to (u)**

Regulation 37E of the Regulations prescribes the form of a report about an accident. The information required in reports about accidents includes:

- \* the name and address of the employer, and of the workplace;
- \* the date and time of the accident;
- \* a description of the workplace where the accident occurred; and,
- \* the principal activity of the person the subject of the report, at the time of the accident.

Additional information required in a report under section 37E includes an affected person's Australian Government Staff Number; their occupational classification and whether they were employed full or part time.

The amendment removes the requirement to report on the additional matters set out in paragraphs (e) to (u), except for the requirement to report on the action that the employer has taken or proposes to take, to prevent an accident of the same kind happening again. The requirement to report on preventative action is retained in renumbered paragraph 37E(e).

The information contained in the omitted paragraphs has been found to be of only limited use to the Commission. As a result, the provision of the information by employers is no longer to be required.

#### **Item 17 Paragraph 37F**

Regulation 37F of the Regulations provides the form for a report about a 'dangerous occurrence'. The Regulation currently requires reports to include information mentioned in specified paragraphs of Regulation 37E, and the requirement to provide the names and addresses of any witnesses.

The amendment substitutes a new provision on the form of reports about dangerous occurrences. The new provision includes consequential changes to reflect the changes to paragraph numbering in regulation 37E (effected by item 16), and the removal of paragraph 37E(u). The amendment also removes the requirement to provide the names and addresses of witnesses. Information about witnesses can be obtained in the course of an investigation if required.