

Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 1999 (No. 3) 1999 No. 189

EXPLANATORY STATEMENT

Statutory Rules 1999 No. 189

Issued by the authority of the Minister for Employment, Workplace Relations and Small Business

Occupational Health and Safety (Commonwealth Employment) Act 1991

Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 1999 (No. 3)

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. Section 23 of the Act provides that regulations may make provisions relating to any matter affecting the occupational health and safety of employees, contractors or other persons at or near a workplace.

The purpose of the amendments is to ensure that employers have adequate notice of decisions that may affect them and the opportunity to have those decisions reviewed by the Administrative Appeals Tribunal.

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.

To promote uniformity in Commonwealth, State and Territory occupational health and safety schemes, the National Occupational Health and Safety Commission develops national standards and codes of practice. These national standards and codes of practice are 'declared' under subsection 38(1) of the *National Occupational Health and Safety Commission Act 1985* and may be given legislative force by relevant occupational health and safety legislation. The mechanism for giving legislative effect to the standards and codes for Commonwealth employees is found in section 70 of the Act.

Section 70 of the Act provides that 'declared' national standards and codes of practice, that are relevant to Commonwealth employment, should be incorporated either into approved codes of practice, or into regulations. The approved codes of practice provide Commonwealth employers with practical guidance in relation to the implementation of national standards. The regulations impose obligations arising from the national standards.

Part 6 of the Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations (the Regulations) incorporates national standards relating to the control of hazardous substances in the workplace. Regulation 6.16 of the Regulations contains a prohibition on the use at work of a hazardous substance mentioned in Schedule 1, except in circumstances specified in the Schedule.

Regulation 6.16A provides a method by which employers may be granted an exemption from the prohibition contained in Regulation 6.16. Exemptions may be granted by the Safety, Rehabilitation and Compensation Commission (Commission), and may be subject to conditions.

The Regulations will ensure that:

* employers are given notice of reasons for a decision to add, vary or revoke a condition to an exemption; and

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* merits review by the Administrative Appeals Tribunal will be available in relation to a decision to grant an exemption subject to a condition.

More details of the regulations are attached.

The Regulations commence on gazettal.

ATTACHMENT

DETAILS OF THE OCCUPATIONAL HEALTH AND SAFETY (COMMONWEALTH EMPLOYMENT) (NATIONAL STANDARDS) AMENDMENT REGULATIONS 1999

Regulation 1 - Name of regulations

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

Regulation 2 - Commencement

This regulation provides that the amending regulations commence on gazettal.

Regulation 3 - Amendment of Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations

Regulation 3 is a formal provision which provides that the Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations (the Regulations) are amended as set out in Schedule 1.

SCHEDULE 1 Amendments

Item 1 After subregulation 6.16B(2)

Regulation 6.16 contains a prohibition on the use at work of a hazardous substance mentioned in Schedule 1 except in circumstances specified in the Schedule. Regulation 6.16A provides that the Safety, Rehabilitation and Compensation Commission (Commission) can exempt an employer from the prohibition on handling certain hazardous substances at work if it is satisfied that:

- * the use of the hazardous substance is essential to the employer's business; and
- * there is no reasonable alternative substance; and
- * there are no circumstances implying that the exemption would be inconsistent with the objects of Part 6.

The Commission is required to provide reasons if it refuses to grant an exemption. Regulation 6.16B provides that an exemption may be subject to conditions that promote the objects of Part 6. The Commission is also empowered to vary, add or revoke a -condition.

This item inserts a new subregulation which requires the Commission to give an employer reasons for the addition, variation or revocation of a condition to an exemption. The notice must also specify the time when an addition, variation or revocation takes effect.

Item 2 Regulation 6.16D

Regulation 6.16D currently provides for review by the Administrative Appeals Tribunal (AAT) of a number of decisions in relation to exemptions.

This item inserts a new Regulation 6.16D. The new provision will ensure merits review by the AAT will be available in relation to:

- * all decisions that are currently subject to review (the decision to refuse to grant an exemption, the decision to add, vary or revoke a condition of an exemption, and a decision to cancel an exemption); and
- * a decision of the Commission to issue an exemption which is subject to a condition.