



Occupational Health and Safety (Commonwealth Employment) Regulations 1991

Statutory Rules 1991 No. 266 as amended

made under the

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

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Regulation 2

Part 1 Preliminary

1 Name of regulations [see Note 1]

These regulations are the *Occupational Health and Safety (Commonwealth Employment) Regulations 1991*.

2 Interpretation

- (1) In these regulations, unless the contrary intention appears:

A.C.T. transitional staff means the transitional staff within the meaning of the *A.C.T. Self-Government (Consequential Provisions) Act 1988*.

business hours, in relation to a place, means the period from 9.00 a.m. to 5.00 p.m. on a day other than a Saturday, Sunday or a day that is a public holiday in that place.

election means an election for a health and safety representative, or a deputy health and safety representative, under section 25 of the Act.

nomination date means a date fixed under paragraph 7 (1) (a).

prescribed period means a period prescribed in regulation 36.

returning officer means a person appointed under regulation 6.

serious personal injury means an injury to, or disease in, a person:

- (a) that is caused in the course of work; and
- (b) for which the person needs to be:
 - (i) given emergency treatment by a registered medical practitioner; or
 - (ii) treated in a hospital as a casualty, without being admitted to the hospital; or
 - (iii) admitted to a hospital.

the Act means the *Occupational Health and Safety (Commonwealth Employment) Act 1991*.

voter, in relation to an election, means a person who is eligible to vote in the election.

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working day, in relation to an election, means a day other than a Saturday or a Sunday or a day that is a public holiday in the place where the workplace to which the election relates is located.

- (2) A reference in these regulations to a form by number is a reference to a form so numbered in Schedule 1.

2A Forms, notices and reports

- (1) A form must be completed in accordance with a direction specified in, or at the foot of, the form.
- (2) A person must complete a form, give notice or make a report in sufficient detail to allow proper consideration of the completed form, notice or report.
- (3) A form, notice or report must be produced clearly and legibly in handwriting or by means of a machine in such a way as to enable clear and legible reproduction of the contents of the form, notice or report.

3 Dangerous occurrences (Act, s 5 (1))

- (1) An occurrence is a dangerous occurrence for the purpose of the definition of ***dangerous occurrence*** in subsection 5 (1) of the Act if it is an occurrence that:
- (a) resulted from operations that arose from the undertaking conducted by an employer; and
- (b) could have caused:
- (i) the death of, or serious personal injury to, any person; or
- (ii) the incapacity of an employee for the duration of 30 or more successive working days or shifts;
- but as a result of which death, serious personal injury or incapacity did not occur.

4 Employing authorities

- (1) For subparagraph (a) (i) of the definition of ***employing authority*** in subsection 5 (1) of the Act, a person or body

Regulation 4

mentioned in column 2 of an item of the following table is the employing authority in relation to the persons mentioned in column 3 of the item:

Item	Employing authority	Persons
1	Chief of the Defence Force	Members of the Australian Defence Force
2	Chief of Navy	Members of the Australian Navy Cadets
3	Chief of Army	Members of the Australian Army Cadets
4	Chief of Air Force	Members of the Australian Air Force Cadets
5	Executive Director of the Australian Quarantine and Inspection Service	(a) Employees (in the Department of Agriculture, Fisheries and Forestry) assisting the Executive Director; and (b) Contractors assisting the Executive Director
6	Executive Director of Geoscience Australia	(a) Employees (in the Department of Industry, Science and Resources) assisting the Executive Director; and (b) Contractors assisting the Executive Director
7	Director of the Australian Institute of Family Studies	(a) Employees (in the Department of Family and Community Services) assisting the Director; and (b) Contractors assisting the Director
8	Chair of the Productivity Commission	(a) Employees assisting the Chair; and (b) Contractors assisting the Chair

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Item	Employing authority	Persons
9	Controller of the Royal Australian Mint	(a) Employees (in the Department of the Treasury) assisting the Controller; and (b) Contractors assisting the Controller

(2) In this regulation:

contractor means a contractor of the kind referred to in paragraph (a) of the definition of **contractor** in subsection 5 (1) of the Act.

Note 1 The only kind of contractor in relation to which paragraph (a) of the definition of **employing authority** in subsection 5 (1) of the Act applies is the kind referred to in paragraph (a) of the definition of **contractor** in subsection 5 (1) of the Act.

Note 2 Some contractors are sometimes known as ‘consultants’ (see, for example, section 45 of the *Productivity Commission Act 1998*).

4A Entities

- (1) For paragraph (c) of the definition of **Entity** in subsection 5 (1) of the Act, each person, body, organisation or group of persons mentioned in an item in Schedule 1A is prescribed.
- (2) For the definition of **principal officer**, in relation to an Entity, in subsection 5 (1) of the Act, the principal officer of an Entity mentioned in column 2 of Schedule 1A is the person from time to time holding or acting in the office mentioned in column 3 in relation to that Entity.

Regulation 5

Part 2 Elections conducted by unions

5 Involved union to authorise returning officer

- (1) An involved union that is to conduct an election must appoint a person to conduct the election for the union.
- (2) Subject to section 25 of the Act, a person appointed under subregulation (1) must conduct the election in accordance with the rules of the union that appointed the person.

Regulation 6

Part 3 Elections conducted by returning officers

Division 1 Preliminary matters

6 Comcare may appoint returning officer

Comcare may appoint a person in writing as a returning officer to conduct an election, being a person authorised by the Commission in writing to conduct elections.

7 Information about elections

- (1) As soon as practicable after being appointed under regulation 6, a returning officer must give notice in accordance with subregulation (2) fixing:
 - (a) the last date on which candidates for election may be nominated; and
 - (b) the last date on which a request for a secret ballot must be made; and
 - (c) the time and date for the close of the poll.
- (2) A notice must:
 - (a) be displayed:
 - (i) as early as practicable, but not less than 7 working days, before the nomination date; and
 - (ii) prominently in a part of a workplace where employees in the designated work group to which the election relates might reasonably be expected to see it; and
 - (b) include statements to the effect that any employee of the work group:
 - (i) may be a candidate for election; and
 - (ii) may request the poll for the election to be conducted by secret ballot.

Division 2 Nominations

8 Manner of nomination

- (1) A nomination must:
 - (a) be in writing and set out the name of the candidate in the form in which the name is to be presented on a ballot-paper prepared for the election; and
 - (b) be signed by the candidate; and
 - (c) be sent to the returning officer.
- (2) The returning officer must:
 - (a) note on each nomination the time and date on which it was received by him or her; and
 - (b) keep the nominations in a secure place.

9 Correction of defective nominations

- (1) If a returning officer receives a nomination that does not meet the requirements of subregulation 8 (1), he or she must:
 - (a) within a reasonable period after receipt of the nomination; and
 - (b) before rejecting the nomination;
give notice to the person to whom the defective nomination relates:
 - (c) stating the nature of the defect; and
 - (d) telling the person that he or she may correct the defect in writing given to the returning officer within a reasonable period specified in the notice.
- (2) If a returning officer receives a nomination relating to a person who does not appear to be eligible because of subsection 25 (2) of the Act, the returning officer must:
 - (a) within a reasonable period after receipt of the nomination; and
 - (b) before rejecting the nomination;
give notice to that person:
 - (c) telling the person that he or she does not appear to be eligible for that reason; and

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- (d) asking the person to establish his or her eligibility; and
 - (e) telling the person that he or she may inform the returning officer in writing within a reasonable period specified in the notice why the person believes that he or she is eligible.
- (3) If a defective nomination is corrected and returned to the returning officer, the nomination is valid.

10 Withdrawal of nomination

A candidate may withdraw consent to his or her nomination at any time before the nomination date by giving the returning officer a notice of withdrawal signed by the candidate.

11 Declaration of nominations

- (1) As soon as practicable after the nomination date in relation to an election, the returning officer:
- (a) must prominently display, or cause to be displayed, a notice setting out the name of the candidate, or the names of the candidates, for the election in a part of a workplace where employees in the designated work group to which the election relates might reasonably be expected to see it; and
 - (b) if there is only 1 candidate, must include in the notice a statement that the candidate is taken to have been elected.
- (2) If there is only 1 candidate in an election, the returning officer must notify the candidate as soon as practicable after the nomination date in relation to the election that the candidate is taken to have been elected.
- (3) If more than 1 candidate is nominated, the returning officer must conduct a poll of the employees in the designated work group to decide the election.
- (4) If no candidate is nominated, the election is taken to have failed.

Division 3 The poll

12 Number of votes

Each person eligible to vote at an election is entitled to 1 vote only at the election.

13 Right to secret ballot

A person eligible to vote in an election may request the returning officer for the election to conduct a poll for the election by secret ballot.

14 Conduct of poll by secret ballot

- (1) As soon as practicable after the request, the returning officer must issue ballot-papers for the poll to voters.
- (2) The returning officer must conduct the poll in accordance with Divisions 4 and 5.

15 Conduct of poll if no request made for secret ballot

Subject to Division 6, if no request is made for a secret ballot, the returning officer for an election may conduct a poll for the election in a manner determined by him or her to produce a fair result.

16 If no candidate is elected

If no candidate is elected, the election is taken to have failed.

Division 4 Polling by secret ballot

17 Ballot-papers

A ballot-paper must:

- (a) state the election to which it relates; and
- (b) set out the names of the candidates in the form referred to in paragraph 8 (1) (a) and in alphabetical order; and
- (c) state the manner of voting.

Regulation 18

18 Distribution of ballot papers

- (1) As soon as practicable before the close of the poll, the returning officer for an election must give to each voter:
 - (a) a ballot-paper that is initialled by the returning officer; and
 - (b) an envelope that:
 - (i) is addressed to the returning officer; and
 - (ii) shows on its face that it relates to the election.
- (2) The envelope given to a voter by a returning officer:
 - (a) may be pre-paid; and
 - (b) in that case, may include on its face a statement by the returning officer that the envelope may be posted to the returning officer without expense to the voter.
- (3) The returning officer must ensure that the ballot-paper and envelope are enclosed in a covering envelope that is sealed and addressed to the voter.

19 Manner of voting by secret ballot

- (1) A voter in a poll conducted by secret ballot is to mark the ballot-paper to indicate his or her preference by placing the number '1' in the box opposite the name of the candidate for whom that person wishes to vote.
- (2) After marking the ballot-paper, the voter must:
 - (a) fold the ballot-paper so as to conceal the marking; and
 - (b) put the ballot-paper in the envelope referred to in paragraph 18 (1) (b) and seal the envelope; and
 - (c) lodge the ballot by either:
 - (i) putting the envelope containing the ballot-paper in a locked and sealed ballot box provided for the election by the returning officer in a secure part of the workplace where employees in the designated work group to which the election relates may place envelopes of that kind; or

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- (ii) in the case of an envelope to which subregulation 18 (2) applies — sending the envelope to the returning officer so as to reach him or her not later than the close of the poll.
- (3) If, before lodging his or her ballot, a voter:
 - (a) claims that he or she has spoilt his or her ballot-paper; and
 - (b) returns the ballot-paper to the returning officer; and
 - (c) requests a further ballot-paper;the returning officer must:
 - (d) give the voter a fresh ballot-paper; and
 - (e) write the word ‘spoilt’ across the returned ballot-paper and sign and date the writing.

Division 5 The count

20 Envelopes given to returning officer

- (1) A returning officer for an election must:
 - (a) keep the ballots received by him or her before the close of the poll secure; and
 - (b) keep the envelopes containing the ballots-papers unopened until the count.
- (2) The returning officer must not admit to the count ballot-papers received by him or her after the close of the poll.

21 Scrutineers

Each candidate in a poll conducted by secret ballot may appoint 1 scrutineer to represent him or her at the count.

22 Returning officer to be advised of scrutineers

A candidate must tell the returning officer of the name of his or her scrutineer (if any) before the commencement of the count.

Regulation 22A

22A Persons present at the count

- (1) The returning officer may direct a person to leave the place where the count is being conducted if the person:
 - (a) is not entitled to be present, or to remain present, at the count; or
 - (b) being entitled to be present — interrupts the count, except as provided by subregulation (2).
- (2) A candidate's scrutineer who:
 - (a) objects to a decision by the returning officer that a ballot paper is formal or informal, as the case may be; or
 - (b) considers that an error has been made in the conduct of the count;may interrupt the count and so inform the returning officer.
- (3) A person must comply with a direction given to him or her under subregulation (1).

Penalty: 5 penalty units.

- (4) An offence against subregulation (3) is an offence of strict liability.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (5) It is a defence to a prosecution for an offence against subregulation (3) if the person had a reasonable excuse.

Note A defendant bears an evidential burden in relation to the question whether he or she had a reasonable excuse (see section 13.3 of the *Criminal Code*).

23 Conduct of the count

- (1) As soon as practicable after the close of the poll, but on a working day, the returning officer must count the votes for each candidate.
- (2) A returning officer must, not less than 1 working day before the count, notify each candidate, or a scrutineer of each candidate, of the place where, and the time when, the count is to occur.

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- (3) The candidate who receives the most votes is the successful candidate.
- (4) If 2 or more candidates receive the same number of votes, the successful candidate is to be determined by lots drawn by the returning officer.

24 Informal ballot-papers

A ballot-paper is informal if:

- (a) it is not initialled by the returning officer; or
- (b) it has no vote marked on it; or
- (c) it is so imperfectly marked that the intention of the person who marked the ballot-paper is not clear; or
- (d) it has any mark or writing on it by which the person who marked the ballot-paper can be identified.

25 Completion of the count

After the count conducted in respect of a poll has been completed, the returning officer must prepare, date and sign a statement setting out:

- (a) the number of votes given to each candidate; and
- (b) the number of informal ballot-papers.

26 Destruction of election material

At the end of 6 months after notification of the result of the poll for an election is given under regulation 29, the returning officer may destroy:

- (a) the nominations for that election; and
- (b) the ballot-papers for the election.

Division 6 Result of election

27 Request for recount

- (1) At any time before notification of the result of the poll for an election is given under regulation 29, the returning officer:

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- (a) on his or her own motion, may conduct a recount of any ballot-papers received in the election; or
 - (b) if a candidate makes a request, either orally or in writing, for a recount of any ballot-papers received in the election and gives reasons for the request — must conduct a recount of the ballot-papers.
- (2) In conducting a recount, the returning officer:
 - (a) in the case of a poll by secret ballot — has the same powers for the purposes of the recount as he or she had in the count; and
 - (b) in any other case — may make any reasonable decision in respect of the allowance and admission, or disallowance and rejection, of a vote cast in the poll.

28 Irregularities at election

- (1) Subject to subregulation (2), if the returning officer has reasonable grounds to believe that there has been an irregularity in the conduct of an election, he or she may, at any time before notification of the result of the poll is given under regulation 29, declare the election to be void.
- (2) An election must not be declared to be void only because of:
 - (a) a defect or irregularity in the conduct of the election that did not affect the result of the election; or
 - (b) an error or defect in an instrument or other document made, or purporting to be made, for the purposes of this Part; or
 - (c) any illegal practice, other than bribery or corruption, or attempted bribery or corruption, having been engaged in by a person, unless:
 - (i) it is likely that the result of the election was affected by the practice; and
 - (ii) it is just that the election be declared void.
- (3) If an election is declared void, regulation 29 applies as if the election had failed.

29 Result of poll

- (1) As soon as practicable after the failure of an election, a returning officer must notify in writing:
 - (a) the employer of all the employees in the designated work group to which the election relates; and
 - (b) Comcare;
of the failure of the election.
- (2) As soon as practicable after the close of the poll for an election, the returning officer must notify in writing the candidate who is elected and enclose with the notification a copy of the statement prepared under regulation 25 (completion of count).

Regulation 30

Part 4 Advice, investigations and inquiries

30 Form of provisional improvement notices

A provisional improvement notice issued by a health and safety representative to a responsible person under subsection 29 (2) of the Act must be set out in accordance with Form 1.

31 Investigators — identity cards

- (1) For the purposes of subsection 40 (6) of the Act (appointment of investigators), the prescribed form of an identity card is set out in Schedule 2.
- (2) A person who ceases to be an investigator must, as soon as practicable, return his or her identity card to Comcare.

Penalty: 10 penalty units.

- (3) An offence against subregulation (2) is an offence of strict liability.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

32 Investigators — certificates of appointment

- (1) Comcare must issue to an investigator a certificate of appointment.
- (2) A certificate of appointment must contain the following information:
 - (a) a reference to the appointment of the investigator under subsection 40 (2) of the Act;
 - (b) the restrictions imposed on the investigator under subsection 40 (5) of the Act;
 - (c) the date of effect of the appointment and the signature of the Chief Executive Officer of Comcare.

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- (2A) The Chief Executive Officer may, in writing, delegate to a person the Chief Executive Officer's function under paragraph (2) (c).
- (3) If a restriction is imposed on the investigator under subsection 40 (5) of the Act after the issue of a certificate of appointment, Comcare must cancel the certificate and issue another certificate of appointment in its place.
- (4) An investigator must carry the certificate of appointment, or a copy of the certificate, issued to him or her at all times when exercising powers or performing functions as an investigator.
- (5) A person who ceases to be an investigator must, as soon as practicable, return his or her certificate of appointment to the Chief Executive Officer of Comcare.

Penalty: 10 penalty units.

- (6) An offence against subregulation (5) is an offence of strict liability.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

33 Taking samples for testing etc

- (1) If a sample of a substance or thing taken under subsection 44 (1) of the Act is practicably divisible, the investigator who has taken the sample must:
 - (a) divide the sample into 3 parts; and
 - (b) put each part into a container and seal and label the container appropriately; and
 - (c) give 1 part to the employer for which work is performed using the substance or thing; and
 - (d) provide another part for inspection, examination, measuring or testing for the purposes of the Act; and
 - (e) retain the remaining part for any further inspection, examination, measuring or testing that is required.
- (2) If a sample of a substance or thing taken under subsection 44 (1) of the Act, is not practicably divisible, the investigator who has taken the sample must provide the whole sample for

Regulation 34

inspection, examination, measuring or testing for the purposes of the Act.

- (3) An investigator who:
- (a) has taken possession of any plant, substance or thing; or
 - (b) has taken a sample of a substance or thing;
and removed the plant, substance or thing or the sample from the workplace under subsection 44 (1) of the Act must take all reasonable steps to ensure that:
 - (c) the plant, substance or thing is not damaged; or
 - (d) the sample is not contaminated;
while in his or her possession or control.

34 Form of certain notices

A notice issued by an investigator under a following provision of the Act must be in accordance with the form specified in relation to the provision concerned:

- (a) subsection 44 (2) ('power to take possession of plant, take samples of substances etc') — Form 2;
- (b) subsection 45 (1) ('power to direct that workplace etc. not be disturbed') — Form 3;
- (c) subsection 46 (1) ('power to issue prohibition notices') — Form 4;
- (d) subsection 47 (1) ('power to issue improvement notices') — Form 5.

35 Alteration or disturbance of site of accident or dangerous occurrence

- (1) An employer commits an offence if:
- (a) the employer engages in conduct, or allows another person to engage in conduct, that results in the alteration or disturbance of the site of an accident or dangerous occurrence arising out of an undertaking by the employer; and
 - (b) at the time of the conduct:
 - (i) an investigation of the accident or dangerous occurrence had not been completed; and

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- (ii) the investigator had not given permission for the alteration or disturbance of the site.

Penalty: 10 penalty units.

- (2) It is a defence to a prosecution for an offence against subregulation (1) if the employer had a reasonable excuse.

Note A defendant bears an evidential burden in relation to the matter mentioned in subregulation (2) (see section 13.3 of the *Criminal Code*).

- (3) It is a defence to a prosecution for an offence against subregulation (1) if, at the time of the conduct, the employer had given a notice of the accident or dangerous occurrence to Comcare in accordance with section 68 of the Act and:

- (a) Comcare had given notice that investigation of the accident or dangerous occurrence was not required; or
- (b) an investigator had not entered the workplace where the site of the accident or dangerous occurrence is located in response to the notice within 1 working day of the employer giving notice to Comcare.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (3) (see section 13.3 of the *Criminal Code*).

- (4) Without limiting subregulation (2), an employer has a ***reasonable excuse*** if the employer engages in, or allows another person to engage in, the conduct that results in the alteration or disturbance of the site of an accident or dangerous occurrence in the course of:

- (a) the rescue, or attempted rescue, of an injured person; or
- (b) the retrieval, or attempted retrieval, of the body of a deceased person; or
- (c) the protection, or attempted protection, of the health or safety of a person; or
- (d) the prevention, or attempted prevention, of damage being done to a substance or thing;

if the alteration or disturbance is unavoidable.

Regulation 36A

Part 5 Notification and reporting of accidents and dangerous occurrences

36A Prescribed period — paragraph 68 (1) (b) of the Act

For the purposes of paragraph 68 (1) (b) of the Act ('notification and reporting of accidents and dangerous occurrences'), each of the following periods is prescribed:

- (a) in the case of an employee who performs work in shifts — 30 or more successive shifts workable by the employee; and
- (b) in any other case — 30 or more successive working days.

37 Service of notices and reports

- (1) For the purposes of the Act or these regulations, a notice or report that is to be given to Comcare may be delivered in business hours to a Comcare office.
- (2) For the purposes of the Act and these regulations, a notice that is to be given to an employer may be delivered:
 - (a) in the case of a notice to be given to the Commonwealth — to the Agency Head of the relevant Entity; and
 - (b) in the case of a notice to be given to a Commonwealth authority — to the principal officer of that Commonwealth authority; and
 - (c) in the case of a notice in respect of work performed by a member of the Australian Defence Force — to the Chief of the Defence Force; and
 - (d) in the case of a notice in respect of work performed by an officer or employee of a body referred to in paragraph 4 (b) — to the employing authority in relation to the body.

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- (3) For the purposes of the Act and these regulations, a notice that is to be given to a body corporate that is not a Commonwealth authority may be delivered to a director, principal executive officer or secretary of the body corporate.
- (4) For the purposes of the Act and these regulations, a notice or report may be given to a person:
 - (a) except in the case of a notice under section 68 of the Act ('notification and reporting of accidents and dangerous occurrences') — by a message transmitted to a computer system known to be in use by the person, being a message that is:
 - (i) in a form compatible with the computer system; and
 - (ii) capable of being recorded by the computer system; or
 - (b) in the case of a notice of a dangerous occurrence, incapacity within the meaning of paragraph 37A (1) (c) or a serious personal injury — by direct telephone contact with the person in business hours.
- (5) For the purposes of the Act and these regulations, a notice may be given to a person by electronic facsimile message transmitted to a facsimile facility that is installed at the address of the person last known to the person giving the notice.
- (5) A person who gives a notice to which paragraph 4 (a) applies to another person:
 - (a) must inform the other person by telephone:
 - (i) before transmission of the message; or
 - (ii) as soon as practicable after transmission of the message;
of the fact that the message will be, or has been, transmitted; and
 - (b) must send a copy of the notice by pre-paid post to the address of the other person last known to the first-mentioned person.

Regulation 37A

37A Notice of accidents and dangerous occurrences to be given

- (1) For the purposes of section 68 of the Act ('notification and reporting of accidents and dangerous occurrences'), an employer must give notice to Comcare:
 - (a) in the case of an accident that causes the death of a person — within 2 hours of the employer becoming aware of the death; and
 - (b) in the case of an accident that causes serious personal injury to a person — within 24 hours of the employer becoming aware that the person has, or is likely to have, suffered the injury; and
 - (c) in the case of an accident that causes an employee who performs work in connection with the undertaking conducted by his or her employer to be incapacitated from performing work for a prescribed period — within 24 hours of the employer becoming aware of the incapacity; and
 - (d) in the case of a dangerous occurrence — within 24 hours of the employer becoming aware of the occurrence.
- (2) An employer must give a notice required by subsection 68 (1) of the Act within the time required by subregulation (1).

Penalty: 10 penalty units.

- (3) Strict liability applies in subregulation (2) to the physical element that a notice is required by subsection 68 (1).

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (4) It is a defence to a prosecution for an offence against subregulation (2) that it was not reasonably practicable for the defendant to give the notice within the time required.

Note A defendant bears an evidential burden in relation to the matter mentioned in subregulation (4) (see section 13.3 of the *Criminal Code*).

Regulation 37B

37B Form of notice of accidents or dangerous occurrences

- (1) For the purposes of section 68 of the Act (“notification and reporting of accidents and dangerous occurrences”), notice of an accident must include the following information:
 - (a) the name of the employer; and
 - (b) the address of the workplace; and
 - (c) the time and date of the accident; and
 - (d) details of the accident, including a description of:
 - (i) the location in the workplace where the accident occurred; and
 - (ii) any plant and equipment that was involved in the accident; and
 - (iii) the process or substance used in the undertaking at the workplace that was involved in the accident; and
 - (e) subject to subregulation (3), the full name of:
 - (i) each person killed; and
 - (ii) each person receiving serious personal injury; and
 - (iii) each person incapacitated within the meaning of paragraph 68 (1) (b) of the Act; and
 - (g) in respect of the person giving the notice:
 - (i) his or her name; and
 - (ii) the classification and designation (if any) of the position occupied, or the duties of which are performed, by him or her; and
 - (iii) his or her telephone number during working hours.
- (2) For the purposes of section 68 of the Act, notice of a dangerous occurrence must include:
 - (a) information referred to in paragraphs (1) (a), (b), (c) and (d), as if a reference in those paragraphs to an accident were a reference to a dangerous occurrence; and
 - (b) information referred to in paragraph (1) (g).
- (3) If an accident results in the death of, or injury to, more than one person, an employer is not obliged to give to Comcare the name of a dead or injured person until the names of all persons

Regulation 37C

who died or were injured as a result of the accident are known to the employer.

37C Notice of deaths must be given by telephone

Notice of the death of a person must be given to Comcare:

- (a) in business hours — by direct telephone contact with a Comcare employee in the relevant State or Territory; and
- (b) outside business hours — by contacting, by telephone, the Comcare office in the relevant State or Territory and following the instructions given to callers.

Note Telephone numbers for Comcare offices in each State and Territory are listed on the Comcare website: <http://www.comcare.gov.au>. Comcare's telephone service includes a call diversion and message recording facility outside business hours.

37D Reports of accidents and dangerous occurrences to be given

- (1) Subject to subregulation (2), for the purposes of section 68 of the Act ('notification and reporting of accidents and dangerous occurrences'), an employer must report to Comcare:
 - (a) if an accident that causes the death of a person — within 2 hours of the employer becoming aware of the death; and
 - (b) if an accident causes serious personal injury to a person — within 24 hours of the employer becoming aware that the person has, or is likely to have, suffered the injury; and
 - (c) if an accident causes an employee who performs work in connection with an undertaking conducted by his or her employer to be incapacitated from performing work for a prescribed period — within 24 hours of the employer becoming aware of the incapacity; and
 - (d) in the case of a dangerous occurrence — within 24 hours of the employer becoming aware of the occurrence.
- (2) If an accident results in the death of more than one person, an employer is not obliged to report to Comcare until the names of all persons who died as a result of the accident are known to the employer.

Regulation 37F

- (3) An employer must give a report required by subsection 68 (1) of the Act within the time required by this regulation.

Penalty: 10 penalty units.

- (4) Strict liability applies in subregulation (3) to the physical element that a report is required by subsection 68 (1).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (5) It is a defence to a prosecution for an offence against subregulation (3) that it was not reasonably practicable for the defendant to give the report within the time required.

Note A defendant bears an evidential burden in relation to the matter mentioned in subregulation (5) (see section 13.3 of the *Criminal Code*).

37E Form of reports about accidents

For the purposes of section 68 of the Act ('notification and reporting of accidents and dangerous occurrences'), a report about an accident must include the following information:

- (a) the name and business address of the employer;
- (b) the address of the workplace;
- (c) the time and date of the accident;
- (d) a description of the part of the workplace where the accident happened;
- (e) action that the employer has taken, or proposes to take, to prevent recurrence of an accident of the same kind.

Note COMCARE may publish a form to facilitate the preparation of a report under regulation 37E.

37F Form of reports about dangerous occurrences (Act, s 68)

For section 68 of the Act, a report about a dangerous occurrence must include the information mentioned in paragraphs 37E (a), (b), (c), (d) and (e), as if any reference in those paragraphs to an accident were a reference to a dangerous occurrence.

Note COMCARE may publish a form to facilitate the preparation of a report under regulation 37F.

Regulation 37G

37G Records of accidents and dangerous occurrences

For the purposes of section 69 of the Act ('records of accidents and dangerous occurrences'), an employer must retain a record of a report under regulation 37D ('reports of accidents and dangerous occurrences to be given') for a period of 30 years.

Part 6 Modifications of the Act

38 Modification of the Act in relation to Commonwealth employees who are members of the A.C.T. transitional staff

- (1) This regulation applies to an employee who:
 - (a) is a member of the A.C.T. transitional staff; and
 - (b) performs duties at a place that is owned or occupied by the Australian Capital Territory Executive established by section 36 of the *Australian Capital Territory (Self-Government) Act 1988*.
- (2) For the purposes of section 15 of the Act, the Act (other than Parts 1 and 2 and section 82) applies in relation to the employee and to the employee's place of work, subject to the modifications and adaptations set out in Schedule 4.

38A Modifications of the Act in relation to officers under the *Export Control Act 1982*, the *Imported Food Control Act 1992*, the *Meat Inspection Act 1983* and the *Quarantine Act 1908*

- (1) This regulation applies to an employee who:
 - (a) is appointed as:
 - (i) an authorised officer under section 20 of the *Export Control Act 1982*; or
 - (ii) an authorised officer under section 40 of the *Imported Food Control Act 1992*; or
 - (iii) an authorised officer under section 32 of the *Meat Inspection Act 1983*; or
 - (iv) a person appointed as a quarantine officer (no matter how described) under subsection 9AA (3) of the *Quarantine Act 1908*; or
 - (v) a person appointed, or authorised to act, as a temporary quarantine officer under section 9A of that Act; and

Regulation 38A

- (b) ordinarily performs his or her work as an authorised officer at a place that is not Commonwealth premises.
- (2) For the purposes of section 15 of the Act, the Act, other than Parts 1 and 2 and section 82, applies in relation to the employee and to the employee's place of work, subject to the modifications and adaptations set out in Schedule 5.

Part 7 Review of decisions

39 Review of decisions by returning officers

- (1) Subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of a decision of a returning officer under subregulation 28 (1) ('irregularities at election') by a person whose interests are affected by the decision.
- (2) A returning officer must take such steps as are reasonable in the circumstances to give a person whose interests are affected by the decision written notice of:
 - (a) the making of the decision; and
 - (b) the right to have the decision reviewed by the Administrative Appeals Tribunal; and
 - (c) except where subsection 28 (4) of the *Administrative Appeals Tribunal Act 1975* applies, the right to be given a statement under section 28 of that Act.
- (3) Failure to comply with subregulation (2) in relation to a decision does not affect the validity of the decision.

Regulation 40

Part 8 Miscellaneous**40 Application of Part 5 of the Act to employees working at a place that is not Commonwealth premises**

For section 15 of the Act, Part 5 of the Act (other than section 82) applies to an employee who ordinarily performs his or her work at a particular place that is not Commonwealth premises.

41 Witnesses allowances and expenses

For section 63 of the Act, the allowances and expenses reasonably allowed by the Commission in accordance with Schedule 3 are prescribed.

Schedule 1 Forms

(subregulation 2 (2))

Form 1 Provisional Improvement Notice

(regulation 30)

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

Provisional Improvement Notice

To:

*(the responsible person within the meaning of subsection 29 (2) of the
Act)*

I, *(name of the health and safety representative issuing the notice)*,
appointed as the health and safety representative under section 25 of the
Occupational Health and Safety (Commonwealth Employment) Act 1991
for *(description of the designated work group)*, after consultation in
accordance with subsection 29 (1) of the Act, believe that the following
provision, or provisions, of the Act or Regulations is, or are, being
contravened or is, or are, likely to continue to be contravened:

The contravention is *(a brief description)*

The contravention is occurring at

The reasons for my opinion are as follows:

In accordance with paragraph 29 (4) (b) of the Act, action necessary to prevent the contravention, or the likely contravention, of the provision or provisions referred to above must be taken before *(the date of a day that is:*

- (a) not less than 7 days after the day when the notice is issued; and*
- (b) reasonable in the opinion of the health and safety representative).*

In accordance with paragraph 29 (5) of the Act, the following action should be taken:

Dated:

(signature)
Health and safety representative

Notes:

Note 1 Under subsection 29 (8) of the Act, within 7 days after this notice is issued, the responsible person, or any other person, to whom a copy of this notice has been given under subsection 29 (7) of the Act, may make a request to the Commission, or to an investigator, that an investigation of the matter the subject of this notice be conducted.

Note 2 The Commission has delegated its function under subsection 29 (8) of the Act to the Chief Executive Officer of Comcare.

Note 3 Under subsection 29 (9) of the Act, upon a request being made under subsection 29 (8) of the Act, the operation of this notice is suspended pending the determination of the matter by an investigator.

Note 4 Subsection 29 (12) of the Act provides that if this notice is issued to an employer, the employer must:

- notify each employee who is working for the employer and who is affected by this notice of the fact that this notice has been issued; and
- display a copy of this notice at or near each workplace at which work that is the subject of this notice is being performed.

Note 5 Under subsection 29 (13) of the Act, this notice ceases to have effect if:

- it is cancelled by the health and safety representative or an investigator; or
- the responsible person takes the action specified in this notice, or if no action is specified, takes the action that is necessary to prevent the further contravention, or likely contravention, with which this notice is concerned.

Note 6 Subsection 29 (14) of the Act requires the responsible person:

- to ensure that, to the extent that this notice relates to any matter over which the person has control, that this notice is complied with; and
- to inform the health and safety representative who issued this notice of the action taken to comply with this notice.

Note 7 Under subsection 48 (1) of the Act, any of the following persons may, in writing, ask the Australian Industrial Relations Commission to review the investigator's decision, under section 29 of the Act to confirm or vary this notice:

- an employer affected by the investigator's decision;
- the person to whom this notice was issued;
- the health and safety representative or involved union for a designated work group whose employees are affected by the decision;
- if there is no designated work group — an involved union in relation to the affected employee;
- the owner of any plant, substance or thing to which the decision relates.

Note 8 Under subsection 48 (3) of the Act and subject to section 48, the making of an appeal against the investigator's decision, under section 29 of the Act, to confirm or vary this notice does not affect the operation of the decision or prevent the taking of action to implement the decision, except to the extent that the reviewing authority makes an order to the contrary.

Note 9 Under subsection 48 (5) of the Act, where a decision appealed against is a decision of an investigator, under section 29, to confirm or vary this notice (the operation of which has been suspended pending the investigation of the matter to which this notice relates by the investigator), the operation of this notice is further suspended pending determination of the appeal, except to the extent that the reviewing authority makes an order to the contrary.

Form 2 Notice of removal of plant or sample

(paragraph 34 (a))

Occupational Health and Safety (Commonwealth Employment) Regulations 1991

Notice of removal of plant or sample

To: *(the name of employer or of owner of the plant, substance or thing if applicable)*

and *(name of health and safety representative for designated workgroup)*

I, *(name of investigator)*, an investigator appointed under section 40 of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*, in the course of conducting an investigation under section 41 of the Act, have taken possession of: *(description of item removed)*

from the workplace at: *(address)*

The reason for this action is: *(explanation of why removal of item was necessary)*

Signed: *(Investigator)*

Dated:

Notes:

Note 1 Under subsection 44 (3) of the Act, this notice must be displayed in a prominent place at the workplace from which the item mentioned above was removed.

Note 2 Under subsection 44 (4) of the Act, the investigator must:

- (a) ensure that the item is inspected, examined, measured or tested as soon as reasonably practicable after the investigator took possession of the item; and
- (b) return the item to the workplace as soon as reasonably practicable after the inspection, examination, measurement or testing is completed.

Note 3 Under subsection 44 (5) of the Act, the investigator must, as soon as reasonably practicable after completion of the inspection, examination, measurement or testing, give, to each person to whom the investigator is required under subsection 44 (2) of the Act to give this notice, a written statement setting out the results of the inspection, examination, measurement or testing.

Note 4 Under subsection 48 (1) of the Act, any of the following persons may, in writing, ask the Australian Industrial Relations Commission to review the investigator's decision, under section 44 of the Act, to take possession of the item:

- an employer affected by the investigator's decision;
- a person to whom a notice has been issued under subsection 29 (2) or 47 (1) of the Act;
- the health and safety representative or an involved union for a designated work group in which is included an employee affected by the decision;
- if there is no such designated work group — an involved union in relation to the employee;
- the owner of any plant, substance or thing to which the investigator's decision relates.

Note 5 Under subsection 48 (3) of the Act and subject to section 48, the making of an appeal against a decision, under section 44 of the Act, of an investigator to take possession of the item does not affect the operation of the decision or prevent the taking of action to implement the decision, except to the extent that the reviewing authority makes an order to the contrary.

Note 6 Under section 50 of the Act, this notice must not be tampered with or removed until the item has been returned to the workplace. The penalty for tampering with or removing this notice is \$3 000 or imprisonment for 6 months, or both.

Form 3 Do not disturb direction

(paragraph 34 (b))

Occupational Health and Safety (Commonwealth Employment) Regulations 1991

Do not disturb notice

To: *(name of person in charge of operations at workplace)*

I, *(name of investigator)*, an investigator appointed under section 40 of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*, direct that:

(description of the affected workplace or part of workplace, plant, substance or thing)

is not to be disturbed during the period from am/pm
to am/pm on (date).

The reasons for issuing this notice are:

Signed: *(Investigator)*

Dated:

Notes:

Note 1 Under subsection 45 (3) of the Act, this direction must be displayed in a prominent place at the workplace:

- (a) that is, or the specified part of which is, under this direction, to be left undisturbed; or
- (b) at which the plant, substance or thing that is, under this direction, to be left undisturbed, is located.

Note 2 Under subsection 45 (5) of the Act, an employer who has control over the workplace, plant, substance or thing to which this direction relates, and whose employees use the workplace, plant, substance or thing in the performance of work for the employer, must ensure that this direction is complied with. The penalty for non-compliance with this requirement by a Government business enterprise is \$25 000.

Note 3 Under subsection 48 (1) of the Act, any of the following persons may, in writing, ask the Australian Industrial Relations Commission to review the investigator's decision, under section 45 of the Act, to give this direction:

- an employer affected by the investigator's decision;
- a person to whom a notice has been issued under subsection 29 (2) or 47 (1) of the Act;
- the health and safety representative or an involved union for a designated work group in which is included an employee affected by the decision;
- if there is no such designated work group — an involved union in relation to the employee;
- the owner of any plant, substance or thing to which the investigator's decision relates.

Note 4 Under subsection 48 (3) of the Act and subject to section 48, the making of an appeal against a decision by an investigator, under section 45 of the Act, to give this direction does not affect the operation of the decision or prevent the taking of action to implement the decision, except to the extent that the reviewing authority makes an order to the contrary.

Note 5 Under section 50 of the Act, this direction must not be tampered with or removed before the notice has ceased to have effect. The penalty for tampering with or removing this direction is \$3 000 or imprisonment for 6 months, or both.

Form 4 Prohibition notice

(paragraph 34 (c))

Occupational Health and Safety (Commonwealth Employment) Regulations 1991

Prohibition notice

To: *(name and address of employer)* and *(name and address of owner of workplace, plant or thing if different from the employer)*

I, *(name of investigator)*, an investigator appointed under section 40 of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* am of the opinion that the person named above is the employer at: *(workplace address)*

where an activity is being undertaken that immediately threatens the health and safety of a person at or near the workplace.

I THEREFORE PROHIBIT the following activity or activities:

- (a) at this workplace or part of workplace: *(specify workplace, or part, if applicable)*
- (b) using this plant or substance: *(specify plant or substance, if applicable)*
- (c) following this procedure: *(specify procedure, if applicable)*

*Action that may be taken that will be adequate to remove the threat to health and safety is:

(if insufficient space, use additional page)

Signed: *(Investigator)*

Dated:

[*Omit if inapplicable]

Notes:

Note 1 Under subsection 46 (4) of the Act, the employer to whom this notice is issued must ensure that, to the extent that this notice relates to any matter over which the employer has control, this notice is complied with. The penalty for non-compliance with this requirement by a Government business enterprise is \$25 000.

Note 2 Under subsection 46 (6) of the Act, this notice ceases to have effect when an investigator notifies the employer that the investigator is satisfied

that the employer has taken adequate action to remove the threat to health or safety that caused this notice to be issued.

Note 3 Under subsection 46 (8) of the Act, this notice may specify action that may be taken in order to satisfy the investigator that adequate action has been taken to remove the threat to health and safety that caused this notice to be issued.

Note 4 Under subsection 46 (9) of the Act, the employer to whom this notice is given must:

- (a) give a copy of this notice to each health and safety representative (if any) for a group of the employer's employees performing work that is affected by this notice; and
- (b) ensure that a copy of this notice is displayed in a prominent place at or near each workplace at which that work is being performed.

Note 5 Under subsection 48 (1) of the Act, any of the following persons may, in writing, ask the Australian Industrial Relations Commission to review a decision by an investigator, under section 46 of the Act, to issue this notice, or that the employer to whom this notice was issued has not taken adequate action to remove the threat to health and safety that caused this notice to be issued:

- an employer affected by the investigator's decision;
- a person to whom a notice has been issued under subsection 29 (2) or 47 (1) of the Act;
- the health and safety representative or an involved union for a designated work group in which is included an employee affected by the decision;
- if there is no such designated work group — an involved union in relation to the employee;
- the owner of any plant, substance or thing to which the investigator's decision relates.

Note 6 Under subsection 48 (3) of the Act and subject to section 48, the making of an appeal against a decision of the investigator, under section 46 of the Act:

- (a) to issue this notice; or
- (b) that an employer to whom this notice was issued has not taken adequate action to remove the threat to health and safety that caused this notice to be issued;

does not affect the operation of the decision, or prevent the taking of action to implement the decision, except to the extent that the reviewing authority makes an order to the contrary.

Note 7 Under section 50 of the Act, this notice must not be tampered with or removed before the notice has ceased to have effect. The penalty for tampering with or removing this notice is \$3 000 or imprisonment for 6 months, or both.

Form 5 Improvement notice

(paragraph 34 (d))

Occupational Health and Safety (Commonwealth Employment) Regulations 1991

Improvement notice

To: *(name of person responsible for contravention)*

and *(name of employer if different from person responsible)*

and *(name of owner of workplace, plant or thing if different from person responsible and employer)*

I, *(name of investigator)*, an investigator appointed under section 40 of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*, am satisfied that the person named above as the responsible person is contravening, or has contravened and is likely to contravene section of the Act or regulation of the *Occupational Health and Safety (Commonwealth Employment) Regulations 1991* at:
(address of workplace)

The reasons for my opinion are:
(brief description of contravention)

You are required to take action within *(insert number)* days of the date of this notice to prevent any further contravention or likely contravention of that section or regulation.

*The following action must be taken by the responsible person within the period specified above:
(if insufficient space, use additional page)

Signed: *(Investigator)*

Dated:

[* Omit if inapplicable]

Return this portion of the notice (when the required improvement has been completed) to this address:

Name:

Position:

Address:

Telephone:

Improvement Notice No. _____ has been complied with.

Signed: _____

This notice was delivered to: *(insert name)*

in the office/position of: *(insert office/position)*

at: *(insert time)* am/pm on: *(insert date)*

Notes:

Note 1 Under subsections 47 (6) and (7) of the Act, the responsible person to whom this notice was issued must ensure that, to the extent that this notice relates to any matter over which the person has control, this notice is complied with. The penalty for non-compliance with this requirement by a government business enterprise or an employee of a Government business enterprise is \$10 000.

Note 2 Under subsection 47 (8) of the Act, if this notice was issued to an employer, the employer must:

- (a) give a copy of this notice to each health and safety representative for a designated workgroup of employees performing work that is affected by this notice; and
- (b) display a copy of this notice in a prominent place at or near each workplace at which that work is being performed.

Note 3 Under subsection 48 (1) of the Act, any of the following persons may, in writing, ask the Australian Industrial Relations Commission to review the investigator's decision, under section 47 of the Act, to issue this notice:

- an employer affected by the investigator's decision;
- the person to whom this notice was issued;
- the health and safety representative or an involved union for a designated work group in which is included an employee affected by the decision;
- if there is no such designated work group — an involved union in relation to the employee;

- the owner of any plant, substance or thing to which the investigator's decision relates.

Note 4 Under subsection 48 (4) of the Act, where the decision appealed against is a decision of an investigator, under section 47 of the Act, to issue this notice, the operation of the decision is suspended pending determination of the appeal, except to the extent that the reviewing authority makes an order to the contrary.

Note 5 Under section 50 of the Act, this notice must not be tampered with or removed before the notice has ceased to have effect. The penalty for tampering with or removing this notice is \$3 000 or imprisonment for 6 months, or both.

Schedule 1A **Entities**

(regulation 4A)

Item	Entity	Principal officer
1	Australian Federal Police, comprising: (a) the Commissioner of Police; and (b) any Deputy Commissioner of Police; and (c) AFP employees; and (d) special members	Commissioner of Police
2	Australian Secret Intelligence Service, comprising: (a) the Director-General of the Australian Secret Intelligence Service; and (b) persons employed by the Director-General	Director-General
3	Australian Security Intelligence Organisation, comprising: (a) the Director-General of Security; and (b) persons employed under section 84 of the Australian Security Intelligence Organisation Act 1979	Director-General of Security
4	Commonwealth Bureau of Meteorology	Director
5	Commonwealth Grants Commission	Chairperson
6	Comsuper, comprising: (a) the Commissioner for Superannuation; and (b) the staff mentioned in section 26 of the <i>Superannuation Act 1976</i>	Commissioner for Superannuation
7	Alligator Rivers Region Research Institute (also known as the Environment Research Institute of the Supervising Scientist), established under section 23 of the <i>Environment Protection (Alligator Rivers Region) Act 1978</i>	Supervising Scientist

Item	Entity	Principal officer
8	High Court of Australia, comprising: (a) the Chief Executive and Principal Registrar of the High Court; and (b) officers and employees engaged or appointed under section 26 of the <i>High Court of Australia Act 1979</i>	Chief Executive and Principal Registrar
9	National Archives of Australia (also known as Australian Archives)	Director-General
10	Office of Official Secretary to the Governor-General, comprising: (a) the Official Secretary; and (b) persons employed under section 13 of the <i>Governor-General Act 1974</i> as members of the Governor-General's staff	Official Secretary

Schedule 2 Identity card

(subregulation 31 (1))

Occupational Health and Safety (Commonwealth Employment) Regulations

This identifies (*name of investigator*), whose photograph and signature appear below, as an investigator appointed by Comcare under subsection 40 (2) of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*.

(*photograph*)

(*signature of investigator*)

(*common seal of Comcare*)

Dated

Schedule 3 Witnesses expenses and allowances

(regulation 41)

- 1** If a person lives more than 50 kilometres from the place at which he or she is summoned, the cost of transport between the usual place of residence of the person and the place that he or she attends in accordance with the summons.
- 2** If a person is required to be absent overnight from the usual place of residence of the person, the cost of meals and accommodation during the absence.
- 3** A person summoned to appear as a witness because of his or her professional, scientific or other special skill or knowledge must be paid:
 - (a) if the person is remunerated in his or her occupation by wages, salary or fees — an amount equal to the amount of wages, salary or fees not paid to the person because of his or her attendance for that purpose; and
 - (b) in any other case:
 - (i) an amount of not less than \$45, or more than \$225, for each day when he or she so attends; and
 - (ii) a reasonable amount for any research or other preparation in relation to the attendance.
- 4** A person summoned to appear as a witness, other than a witness referred to in clause 3, must be paid:
 - (a) if the person is remunerated in his or her occupation by wages, salary or fees — an amount equal to the amount of wages, salary or fees not paid to the person because of his or her attendance for that purpose; and
 - (b) in any other case — an amount of not less than \$52, or more than \$86, for each day when he or she so attends.

Schedule 4 Modifications of the Act in relation to an employee who is a member of the A.C.T. transitional staff or in relation to the employee's place of work

(subregulation 38 (2))

1. New section 23A

1.1 After section 23, insert in Part 3:

“Division 1A Interpretation

23A Interpretation

‘In this Part, unless the contrary intention appears:

employee means a person to whom regulation 38 of the Occupational Health and Safety (Commonwealth Employment) Regulations applies.

workplace means a place:

- (a) at which employees work; and
- (b) that is owned or occupied by the Australian Capital Territory Executive established by section 36 of the *Australian Capital Territory (Self-Government) Act 1988*.’”

2. New section 38A

2.1 After section 38, insert in Part 4:

“Division 1A Interpretation

38A Interpretation

‘In this Part, unless the contrary intention appears,

employee and *workplace* have the same meanings as in section 23A.’.”

3. Section 65 (Report to be given to Minister in certain circumstances)

3.1 Subsection 65 (1):

After “Minister”, insert “and the Chief Minister of the Australian Capital Territory”.

3.2 Add at the end:

“(3) The Chief Minister is to cause a copy of the report to be laid before the Legislative Assembly of the Australian Capital Territory as soon as practicable after the report is given to the Chief Minister.”.

4. Section 66 (Report to be given to Minister of failure to comply with directions etc)

4.1 Subsection 66 (1):

After “Minister”, insert “and the Chief Minister of the Australian Capital Territory”.

4.2 Add at the end:

“(3) The Chief Minister is to cause a copy of the report to be laid before the Legislative Assembly of the Australian Capital Territory as soon as practicable after the report is given to the Chief Minister.”.

5. New section 67A

5.1 After section 67, insert in Part 5:

67A Interpretation

“In this Part, unless the contrary intention appears, *employee* and *workplace* have the same meanings as in section 23A.”.

Schedule 5 **Modifications of the Act in relation to officers under the *Export Control Act 1982*, the *Imported Food Control Act 1992*, the *Meat Inspection Act 1983* and the *Quarantine Act 1908***

(subregulation 38A (2))

1. **New section 23A**

1.1 After section 23, insert in Division 1 of Part 3:

23A Interpretation and application

‘(1) In this Part, unless the contrary intention appears:

employee means a person to whom regulation 38A of the
Occupational Health and Safety (Commonwealth Employment)
Regulations applies.

operator means a person who carries on a business at a
workplace, being a business in relation to which an employee
ordinarily performs his or her work.

workplace means a place at which an employee ordinarily
performs his or her work.’.

2. **Section 24 (Designated work groups)**

2.1 Subsection 24 (7):

Add at the end:

“; and

- (i) the effect on the operation of the workplace of the
new or varied work group.”.

3. Section 25 (Health and safety representatives)**3.1 Subsection 25 (9):**

Omit “in a prominent place at such workplaces, under the employer’s control, as will allow”, substitute “in a manner that allows”.

4. Section 28 (Powers of health and safety representatives)**4.1 Sub-subparagraph 28 (1) (a) (i) (B):**

After “employer”, insert “and the operator”.

4.2 After sub-subparagraph 28 (1) (d) (i) (A), insert:

“(AA) at the workplace; or”.

4.3 Subsection 28 (3):

Omit the subsection, substitute:

“(3) A health and safety representative for a designated work group must not be assisted by a consultant at a workplace at which work is performed for an employer of the employees in the group unless:

(a) the operator; and

(b) either:

(i) the employer; or

(ii) the Commission;

agree, in writing, to the provision of the assistance at the workplace.

“(3A) A health and safety representative for a designated work group must not provide to a consultant information that has been provided to the health and safety representative by an employer under paragraph (1) (d) unless the employer or the Commission has agreed, in writing, to the provision to the consultant of the information.”.

4.4 Subsection 28 (4):

After “An employer”, insert “or an operator”.

4.5 Subsection 28 (4):

After “the employer”, insert “or the operator”.

4.6 Paragraph 28 (6) (a):

Omit the paragraph, substitute:

“(a) to information in respect of which:

- (i) the employer; or
- (ii) the operator; or
- (iii) if the premises on which the operator’s business is located are not owned by the operator—the owner of the premises;
is entitled to claim, and does claim, legal professional privilege; and”.

5. Section 29 (Provisional improvement notices)

5.1 Subsection 29 (2):

Omit “the person”, substitute “the employer”.

5.2 Subsection 29 (2):

Omit “responsible for the contravention”.

6. Section 30 (Duties of employers and operators in relation to health and safety representatives)

6.1 Subsection 30 (1):

After paragraph 30 (1) (a), insert:

“(aa) make all reasonable efforts to enter into an agreement with the relevant operator to carry out changes at the workplace that the employer is unable to carry out; and”.

6.2 Subparagraph 30 (1) (b) (i):

Omit the subparagraph, substitute:

“(i) accompany an investigator during an investigation at the workplace; and”.

6.3 Add at the end:

“(4) The operator of a prescribed workplace must assist the representative to make an inspection of the workplace that the representative is entitled to make in accordance with subparagraph 28 (1) (a) (i).

“(5) In subregulation (4), *prescribed workplace* means a workplace at which there are employees in a designated work group for which there is a health and safety representative.”.

7. Section 31 (Resignation etc. of health and safety representative)

7.1 Subsection 31 (3):

After “notify”, insert “the operator in relation to the work group,”.

7.2 Subsection 31 (4):

After paragraph (4) (b), insert:

“(ba) the operator in relation to the work group; and”.

8. Section 32 (Disqualification of health and safety representatives)

8.1 After subparagraph 32 (1) (a) (i), insert:

“(iA) with the intention of causing harm to the operator or to an undertaking of the operator; or

(iB) if the premises on which the operator’s business is located are not owned by the operator — with the intention of causing harm to the owner of the premises or to an undertaking of the owner; or”.

8.2 Paragraph 32 (2) (a):

Omit the paragraph, substitute:

“(a) the harm (if any) that was caused to:

(i) the employer or to an undertaking of the employer;
or

(ii) the operator or to an undertaking of the operator; or

-
- (iii) the owner of the premises or to an undertaking of owner;
as a result of the action of the representative; and”.

9. Section 34 (Health and safety committees)

- 9.1 Paragraph 34 (1) (a):
Omit the paragraph.

10. Section 36 (Duties of employers in relation to health and safety committees)

- 10.1 After paragraph 36 (1) (a), insert:
“(aa) make all reasonable efforts to obtain information of a kind referred to in paragraph (a) from:
(i) the operator of the relevant workplace; or
(ii) if the premises on which the operator’s business is located are not owned by the operator — the owner of the premises; and”.

11. New section 38A

- 11.1 After section 38, insert in Division 1 of Part 4:

38A Interpretation and application

“In this Part, unless the contrary intention appears, *employee*, *operator* and *workplace* have the same meanings as in Part 3.”.

12. Section 44 (Power to take possession of plant, take samples of substances etc)

- 12.1 Paragraph 44 (2) (a):
Omit “for which work is performed using the plant, substance or thing”, substitute “and the operator of the workplace”.

12.2 Paragraph 44 (2) (b):

After “an employer”, insert “or the operator of the workplace”.

13. Section 46 (Power to issue prohibition notices)

13.1 Subsection 46 (2):

Omit the subsection.

14. Section 47 (Power to issue improvement notices)

14.1 Subsection 47 (2):

Omit the subsection, substitute:

“(2) If the operator of the workplace is not the responsible person, the investigator must, as soon as practicable, give the operator a copy of the improvement notice.”.

15. Section 52 (Application)

15.1 Omit the section.

16. Section 53 (Report of investigation)

16.1 Paragraph 53 (3) (b):

Add at the end “, to the operator of the relevant workplace and, if the premises on which the operator’s business is located are not owned by the operator, to the owner of the premises.”.

17. New section 67L

17.1 After section 67K, insert in Part 5:

67L Interpretation and application

“In this Part, unless the contrary intention appears, *employee*, *operator* and *workplace* have the same meanings as in Part 3.”.

18. Section 68 (Notification and reporting of accidents and dangerous occurrences)

18.1 Subsection 68 (1):

Omit “at which an undertaking is being conducted by an employer”.

18.2 Subsection 68 (1):

Omit “the conduct of the undertaking, substitute the work performed for an employer by an employee”.

18.3 After subsection 68 (1), insert:

“(1A) If, at or near a workplace, there is, arising out of the conduct of the operator’s business:

- (a) an accident that causes the death of, or serious personal injury to, an employee; or
- (b) an accident that causes an employee who is working at the workplace to be incapacitated from performing work for the period prescribed for the purposes of paragraph (1) (b); or
- (c) a dangerous occurrence in the vicinity of an employee who is working at the workplace;

the employer must notify the Commission, and give it a report concerning the accident or occurrence, in accordance with the regulations.”.

Table of Instruments

Notes to the *Occupational Health and Safety (Commonwealth Employment) Regulations 1991*

Note 1

The *Occupational Health and Safety (Commonwealth Employment) Regulations 1991* (in force under the *Occupational Health and Safety (Commonwealth Employment) Act 1991*) as shown in this compilation comprise Statutory Rules 1991 No. 266 amended as indicated in the Tables below.

Under the *Legislative Instruments Act 2003*, which came into force on 1 January 2005, it is a requirement for all non-exempt legislative instruments to be registered on the Federal Register of Legislative Instruments. From 1 January 2005 the Statutory Rules series ceased to exist and was replaced with Select Legislative Instruments (SLI series). Numbering conventions remain the same, ie Year and Number.

Table of Instruments

Year and number	Date of notification in <i>Gazette</i> or FRLI registration	Date of commencement	Application, saving or transitional provisions
1991 No. 266	30 Aug 1991	6 Sept 1991	
1992 No. 244	29 July 1992	29 July 1992	—
1993 No. 5	29 Jan 1993	29 July 1993	—
1993 No. 112	3 June 1993	3 June 1993	—
1994 No. 22	18 Feb 1994	18 Feb 1994	—
1998 No. 115	27 May 1998	27 May 1998	R. 4
1998 No. 355	22 Dec 1998	1 Jan 1999	—
2001 No. 54	29 Mar 2001	29 Mar 2001	—
2001 No. 90	17 May 2001	17 May 2001	—
2001 No. 270	5 Oct 2001	5 Oct 2001	—
2001 No. 326	13 Dec 2001	15 Dec 2001	—
2003 No. 313	11 Dec 2003	11 Dec 2003	—
2005 No. 268	24 Nov 2005 (see F2005L03634)	25 Nov 2005	—

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
R. 1	rs. 1998 No. 355
R. 2	am. 1992 No. 244; 1993 No. 5; 1998 No. 355; 2003 No. 313
R. 2A.....	ad. 1993 No. 5
Heading to r. 3	rs. 1998 No. 355
R. 3	am. 1993 No. 5; 1998 No. 355
R. 4	rs. 1993 No. 5 am. 1998 Nos. 115 and 355; 2003 No. 313 rs. 2005 No. 268
R. 4A.....	ad. 2001 No. 90
Part 3	
Division 1	
R. 6	am. 1993 No. 5 rs. 2003 No. 313
R. 7	am. 1993 No. 5
Division 2	
R. 9	am. 1993 No. 5
Division 5	
R. 22A.....	ad. 1993 No. 5 am. 2001 No. 326
Division 6	
R. 29	am. 1993 No. 5; 2003 No. 313
Part 4	
R. 30	am. 1993 No. 5
R. 31	am. 1993 No. 5; 2001 No. 326
R. 32	am. 1993 No. 5; 2001 Nos. 54 and 326
R. 34	rs. 1993 No. 5
R. 35	rs. 1993 No. 5; 2001 No. 326
Part 5	
Heading to Part 5.....	rs. 2003 No. 313
R. 36AA	ad. 1994 No. 22 rep. 2003 No. 313
R. 36	rep. 2003 No. 313
R. 36A.....	ad. 1993 No. 5 am. 1998 No. 355
R. 37	am. 1993 No. 5; 1998 No. 355; 2003 No. 313

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 37A.....	ad. 1993 No. 5 am. 2001 No. 326
R. 37B.....	ad. 1993 No. 5 am. 1998 No. 355
R. 37C.....	ad. 1993 No. 5 rs. 2003 No. 313
R. 37D.....	ad. 1993 No. 5 am. 1998 No. 355; 2001 No. 326
R. 37E.....	ad. 1993 No. 5 am. 1998 No. 355
R. 37F.....	ad. 1993 No. 5 rs. 1998 No. 355
R. 37G.....	ad. 1993 No. 5
R. 37H.....	ad. 1993 No. 5 rep. 2001 No. 54
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Heading to Part 6.....	ad. 1993 No. 5
R. 38.....	ad. 1992 No. 244
Heading to r. 38A.....	rs. 2001 No. 270
R. 38A.....	ad. 1993 No. 112 am. 2001 No. 270
Part 7	
Part 7.....	ad. 1993 No. 5
R. 39.....	ad. 1993 No. 5
Part 8	
Part 8.....	ad. 2003 No. 313
R. 40.....	ad. 2003 No. 313
R. 41.....	ad. 2003 No. 313
Schedule 1	
Heading to Schedule 1.....	am. 1993 No. 5
Schedule 1.....	am. 1993 No. 5
Form 1.....	1991 No. 266 am. 1993 No. 5; 2003 No. 313
Form 2.....	ad. 1993 No. 5 am. 2003 No. 313
Form 3.....	ad. 1993 No. 5 am. 2003 No. 313
Form 4.....	ad. 1993 No. 5 am. 2003 No. 313
Form 5.....	ad. 1993 No. 5 am. 2003 No. 313

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Provision affected	How affected
Schedule 1A	
Schedule 1A	ad. 2001 No. 90
Schedule 2	
Schedule 2	am. 1993 No. 5; 2001 No. 54
Schedule 3	
Heading to Schedule 3.....	rs. 2003 No. 313
Schedule 4	
Schedule 4	ad. 1992 No. 244
Schedule 5	
Heading to Schedule 5.....	rs. 2001 No. 270
Schedule 5	ad. 1993 No. 112

Table A

Table A Application, saving or transitional provisions

Statutory Rules 1998 No. 155

4 Application of amendment

- 4.1 The amendment made by regulation 3 has effect from the commencement of the *Productivity Commission Act 1998*.