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Department

Statutory Rules 1991 No. *L*

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Occupational Health and Safety (Commonwealth Employment) Regulations

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Statutory Rules 1991 No. ¹

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Occupational Health and Safety (Commonwealth Employment) Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and under section 4 of the *Acts Interpretation Act 1901*, make the following Regulations under the *Occupational Health and Safety (Commonwealth Employment) Act 1991*.

Dated 23 August 1991.

BILL HAYDEN

Governor-General

By His Excellency's Command,

Peter Cook

Minister of State for Industrial Relations

PART 1—PRELIMINARY

Citation

1. These Regulations may be cited as the Occupational Health and Safety (Commonwealth Employment) Regulations.

Interpretation

2. In these Regulations, unless the contrary intention appears:

“approved form” means a form provided by the Commission for the purposes of the provision where the expression appears;

“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);

“returning officer” means a person appointed under regulation 6;

“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;

“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.

What is a dangerous occurrence?

3. (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:

- (a) an occurrence that endangers the health or safety of an employee at a workplace; or
- (b) an occurrence that:
 - (i) arises from operations carried on at a workplace; and
 - (ii) endangers the health or safety of another person at or near the workplace.

(2) Without limiting the generality of subregulation (1), each of the following occurrences at a workplace is taken to be a dangerous occurrence:

- (a) a malfunction of apparatus intended to permit the user to breath independently of the surrounding atmosphere, with the result that a person using the apparatus is:
 - (i) deprived of oxygen; or
 - (ii) exposed to an atmospheric contaminant to a health-threatening degree;

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- (b) damage to, or a malfunction of, equipment, being:
 - (i) a conveyor, crane, escalator, hoist or lift; or
 - (ii) scaffolding; or
 - (iii) winding machinery;with the result that the equipment, or the workplace where the equipment is installed, is inoperative for a period of 24 hours or longer;
- (c) an uncontrolled:
 - (i) explosion; or
 - (ii) fire; or
 - (iii) release of a dangerous substance, whether in a solid, liquid or gaseous form;in a workplace, with the result that plant in the workplace, or the workplace, is inoperative for a period of 24 hours or longer;
- (d) an electrical short circuit or other malfunction in a workplace, with the result that plant in the workplace, or the workplace, is inoperative for a period of 24 hours or longer;
- (e) collapse, or partial collapse, of an excavation that is more than 1.5 metres deep or failure, or partial failure, of shoring for an excavation of that kind;
- (f) collapse, or partial collapse, of a ceiling, floor, roof or wall of a building that is, or is part of, a workplace.

What is an employing authority?

4. For the purposes of subparagraph (a) (i) of the definition of “employing authority” in subsection 5 (1) of the Act, the Chief of the Defence Force is the employing authority in relation to a member of the Australian Defence Force.

PART 2—ELECTIONS CONDUCTED BY UNIONS

Involved union to authorise returning officer

5. (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.

PART 3—ELECTIONS CONDUCTED BY RETURNING OFFICERS

Division 1—Preliminary matters

Commission to authorise person to conduct election

6. A person holding, or performing the duties of, an office of State Manager in the Commission may appoint a person in writing to conduct an election, being a person authorised by the Commission in writing to conduct elections.

Dates to be fixed for elections

7. (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 a statement to the effect that any employee of the work group may be a candidate for election.

Division 2—Nominations

Manner of nomination

8. (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.

Correction of defective nominations

9. (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
- (d) asking the person to establish his or her eligibility; and

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- (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.

Withdrawal of nomination

10. 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.

Declaration of nominations

11. (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

Number of votes

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

Right to secret ballot

13. 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.

Conduct of poll by secret ballot

14. (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.

Conduct of poll if no request made for secret ballot

15. 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.

If no candidate is elected

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

Division 4—Polling by secret ballot

Ballot-papers

17. 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.

Distribution of ballot papers

18. (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.

Manner of voting by secret ballot

19. (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

- (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 spoiled 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

Envelopes given to returning officer

20. (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.

Scrutineers

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

Returning officer to be advised of scrutineers

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

Conduct of the count

23. (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.

(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.

Informal ballot-papers

24. 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.

Completion of the count

25. 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.

Destruction of election material

26. 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

Request for recount

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

- (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.

Irregularities at election

28. (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.

Result of poll

29. (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) the State Manager of the Commission who appointed the returning officer to conduct the election;

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 paragraph 25 (1) (a) (completion of count).

PART 4—ADVICE, INVESTIGATIONS AND INQUIRIES

Form of provisional improvement notices

30. 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 the Form in Schedule 1.

Investigators—identity cards

31. (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 the Commission.

Penalty: \$1,000.

Investigators—certificates of appointment

32. (1) The Commission 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 the Commission.

(3) If a restriction is imposed on the investigator under subsection 40 (5) of the Act after the issue of a certificate of appointment, the Commission must cancel the certificate 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 the Commission.

Penalty: \$1,000.

Taking samples for testing etc.

33. (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 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.

Form of certain notices

34. A notice issued by an investigator under any of the following provisions of the Act must be in the approved form:

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

Form of reports of investigations

35. The report prepared by an investigator under subsection 53 (1) of the Act must be in the approved form.

PART 5—MISCELLANEOUS

Witnesses allowances and expenses

36. For the purposes of section 63 of the Act (allowances to witnesses), the allowances and expenses reasonably allowed by the Commission in accordance with Schedule 3 are prescribed.

Service of notices

37. (1) For the purposes of the Act and these Regulations, a notice that is to be given to the Commission may be delivered:

- (a) if the notice relates to a matter that has taken, or may take, place in a State—to the State Manager of the Commission in the State; and
- (b) if the notice relates to a matter that has taken, or may take, place in the Australian Capital Territory—to the State Manager of the Commission in the Territory; and
- (c) if the notice relates to a matter that has taken, or may take, place in the Northern Territory—to the State Manager of the Commission in South Australia; and
- (d) in any case—to the Chief Executive Officer of the Commission.

(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 Secretary of the relevant Department; 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.

(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 that is to be given to a person may be delivered:

- (a) by electronic facsimile message transmitted to a facsimile facility installed at the address of the person last known to the person giving the notice; or
- (b) by a message transmitted to a computer system used by the first-mentioned person at the time when the message is transmitted, being a message that is recorded by the computer system.

(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.

SCHEDULE 1

Regulation 30

FORM

Occupational Health and Safety (Commonwealth Employment) Act 1991

PROVISIONAL IMPROVEMENT NOTICE

To:

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

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SCHEDULE 1—continued

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).*

SCHEDULE 1—continued

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

Dated

(signature)

Health and safety representative

NOTES:

1. Under subsection 29 (8) of the Act, a person to whom a provisional improvement notice is given may, within 7 days, request the Commission or an investigator to conduct an investigation into the subject matter of the notice.

Subsection 29 (12) of the Act requires an employer to whom a provisional improvement notice is given:

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

2. Under subsection 29 (13) of the Act, a provisional improvement notice ceases to have effect when:
 - it is cancelled by the health and safety representative or an investigator, and
 - the responsible person takes the action specified in the notice, or if no action is specified, takes the action that is necessary to prevent the contravention, or likely contravention, with which the notice is concerned.

3. Subsection 29 (14) of the Act requires the responsible person:
 - to ensure, as far as possible, that a provisional improvement notice is complied with, and
 - to inform the health and safety representative who issued the notice of the action taken to comply with the notice.

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SCHEDULE 1—continued

4. Under section 48 of the Act, if an investigator has confirmed or varied a provisional improvement notice:
- an employer affected by the investigator's decision, or
 - the health and safety representative or involved union for a designated work group whose employees are affected by the decision, or
 - the owner of any plant substances or thing to which that decision relates,
 - the person to whom the notice was issued,
 - if there is no designated work group—an involved union in relation to the affected employee,
- may request the Australian Industrial Relations Commission in writing to review the investigator's decision.

SCHEDULE 2

IDENTITY CARD

Subregulation 31 (1)

Occupational Health and Safety (Commonwealth Employment) Act 1991

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

(*photograph*)

(*signature of investigator*)

SCHEDULE 2—continued

(common seal of Commission)

Valid until (*date when appointment ceases*)

Dated

SCHEDULE 3

Regulation 36

WITNESSES EXPENSES AND ALLOWANCES

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

SCHEDULE 3—continued

- (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.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on

1991. 30 August