

Occupational Health and Safety (Commonwealth Employment) Regulations (Amendment) 1993 No. 112

EXPLANATORY STATEMENT

Statutory Rules 1993 No. 112

(Issued by the Authority of the Minister for Industrial Relations)

Occupational Health and Safety (Commonwealth Employment) Act 1991

Occupational Health and Safety (Commonwealth Employment) Regulations (Amendment)

Section 82 of the Occupational Health and Safety (Commonwealth Employment) Act 1991 (the Act) provides that the Governor-General may make regulations for the purposes of the Act. Section 15 of the Act provides that regulations may be made which modify the Act so it can fully apply to Commonwealth employees who usually work at non-Commonwealth premises.

The purpose of the regulations is to apply the Act, in full, to Commonwealth meat inspectors who usually work in privately operated workplaces such as abattoirs. The regulations amend the Occupational Health and Safety (Commonwealth Employment) Regulations (the Regulations) to extend the obligation on the employer (the Commonwealth) to ensure that the health and safety of meat inspectors is protected at non-Commonwealth premises. Where any matter is outside the employer's control, the employer is obliged to negotiate an agreement with the operator of a workplace to provide a safe work environment. An obligation is also placed on the operator of the workplace to provide relevant information on health and safety issues and to assist in inspections of the workplace.

Details of the regulations are as follows.

Regulation 1 is a formal provision,

Regulation 2 inserts a new regulation 38A into Part 5 of the Act. The regulation applies the Act (other than Parts 1 and 2 and section 82 which already apply), to meat inspectors who are authorised, under the Export Control Act 1982 and the Meat Inspection Act 1983, and who usually work at non-Commonwealth premises. The Act is applied to these employees subject to modifications contained in new Schedule 5.

Regulation 3 inserts new Schedule 5 at the end of the Regulations. The Schedule contains 18 paragraphs of modifications to the Act which are detailed below. The modifications are necessary to apply the Act to the situation where the employer does not have control over the workplace.

Paragraph 1 of the Schedule will insert a new section 23A into Division 1 of Part 3 of the Act. The new section defines the terms 'employee', 'operator', and 'workplace' for the purposes of Part 3 of the Act.

The definition of 'employee' refers to the officers who are authorised under the Export Control Act 1982 and the Meat Inspection Act 1983. An 'operator' is defined as a person carrying on a business at a workplace in which an employee ordinarily works. The 'workplace' is defined as a place at which an employee ordinarily performs his or her work.

Paragraph 2 of the Schedule adds a new paragraph 24(7)(i) to the Act. The new paragraph requires parties involved in establishing a designated work group to have regard to the effect such a group will have on the operation of the workplace.

Paragraph 3 of the Schedule amends subsection 25(9) to provide that the employer must ensure effective notification of the identity of health and safety representatives, to employees.

Paragraph 4 of the Schedule contains several amendments to section 28 of the Act. The provision allows for the inspection of workplaces by health and safety representatives and requires:

- appropriate notification to be given to the operator of an inspection of the workplace or the proposed use of a consultant in the workplace, and
- access to be provided to information at a workplace with protection being given to information for which the operator claims legal professional privilege.

Paragraph 5 of the Schedule amends subsection 29(2) of the Act so that provisional improvement notices will only be issued to the employer. In cases where the operator is partly responsible for a contravention of the Act, the employer will remain the responsible person for the purposes of the Act.

Paragraph 6 of the Schedule modifies section 30 of the Act which sets out the duties of employers in relation to health and safety representatives. The provisions will:

- require the employer to make all reasonable efforts to enter into an agreement with an operator to implement any changes that may be necessary to protect the health and safety of employees;
- omit the power the employer formerly had to give permission to inspect a workplace;
- allow the employer to accompany a health and safety representative on an inspection; and
- ensure that the operator assists a health and safety representative in any inspection of the workplace.

Paragraph 7 of Schedule 5, amends subsections 31(3) and 31(4) of the Act, to require notification to the operator when a health and safety representative resigns or ceases to be the representative of a work group.

Paragraph 8 of the Schedule modifies section 32 of the Act to allow the disqualification of a health and safety representative where action taken by the representative is done with the intention of causing harm to the operator, to an undertaking of the operator, or to the owner of the premises.

Paragraph 9 of the Schedule omits paragraph 34(1)(a) to remove the requirement that there be 50 employees at a workplace before a health and safety committee can be established.

Paragraph 10 of the Schedule requires the employer to make all reasonable efforts to obtain information relating to risks to the health and safety of employees from the operator or owner of the relevant workplace. The provision acknowledges that the employer may not possess the relevant information which relates to a workplace.

Paragraph 11 applies the definitions of 'employee', 'operator' and 'workplace', described above, to Part 4 of the Act.

Paragraph 12 of the Schedule modifies paragraphs 44(2)(a) and (b) of the Act to require investigators to inform:

- the operator when possession has been taken of plant, substances or things; and

- the owner of the plant, substances or things when possession is taken and the owner is not the employer or the operator.

Paragraph 13 of the Schedule deals with the power to issue prohibition notices under section 46 of the Act, omitting subsection 46(2). This means that a prohibition notice may not be issued to the person who may reasonably be presumed to be in charge of the activity which threatens health and safety of employees. The change prevents the notices being issued to the operator. The prohibition notice may only be issued to the employer.

Paragraph 14 of the Schedule modifies the operation of section 47 of the Act which deals with the power to issue improvement notices. The provision requires that the operator be given a copy of any improvement notice.

Paragraph 15 of the Schedule omits section 52 of the Act as the provision is not relevant to the employees covered by the regulations.

Paragraph 16 of the Schedule amends paragraph 53(3)(b) of the Act to require that the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees (the Commission) give a copy of a report of any investigation to the operator, or an owner of a workplace.

Paragraph 17 applies the definitions of 'employee', 'operator' and 'workplace', described above, to Part 5 of the Act.

Paragraph 18 of the Schedule deals with notifying the Commission of accidents and dangerous occurrences. The employer is required to notify the Commission of any incident which occurs as a result of:

- work performed by an employee for an employer; and
- the conduct of the operator's business.