



Statutory Rules 1993 No. <sup>h</sup>1

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## Occupational Health and Safety (Commonwealth Employment) Regulations<sup>2</sup> (Amendment)

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

Dated 27 May 1993.

**BILL HAYDEN**  
Governor-General

By His Excellency's Command,

LAURIE BRERETON  
Minister for Industrial Relations

### 1. Amendment

1.1 The Occupational Health and Safety (Commonwealth Employment) Regulations are amended as set out in these Regulations.

[NOTE: These Regulations commence on gazettal: see *Acts Interpretation Act 1901*, s.48]

**2. New regulation 38A**

2.1 After regulation 38, insert:

**Modification of the Act in relation to certain authorised officers appointed under the *Export Control Act 1982* or the *Meat Inspection Act 1983***

“38A. (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 32 of the *Meat Inspection Act 1983*; and

(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.”

**3. New Schedule 5**

3.1 Add at the end of the Regulations:

**SCHEDULE 5**

Subregulation 38A (2)

**MODIFICATIONS OF THE ACT IN RELATION TO CERTAIN  
AUTHORISED OFFICERS APPOINTED UNDER THE *EXPORT  
CONTROL ACT 1982* OR THE *MEAT INSPECTION ACT 1983***

**1. New section 23A**

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

**Interpretation and application**

“23A. (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:

**Interpretation and application**

“38A. 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:

**Interpretation and application**

“67L. 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.”.

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**NOTES**

1. Notified in the *Commonwealth of Australia Gazette* on 4 1993.
2. Statutory Rules 1991 No. 266 as amended by 1992 No. 244; 1993 No. 5.

3 June/