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Statutory Rules 1995 No. ^L₁

17/

Occupational Health and Safety (Maritime Industry) Regulations

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 (Maritime Industry) Act 1993*.

Dated ^L 1995.

7 February/

^L BILL HAYDEN
Governor-General

By His Excellency's Command,

^L
Minister for Transport

Laurie Brereton/

PART 1—PRELIMINARY

Citation

1. These Regulations may be cited as the Occupational Health and Safety (Maritime Industry) Regulations.

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

Interpretation

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

“**Act**” means the *Occupational Health and Safety (Maritime Industry) Act 1993*;

“**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;

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

- (a) that is caused by an accident at a workplace; and
- (b) for which the person is:
 - (i) given emergency treatment on the prescribed ship or prescribed unit on which the accident occurred; or
 - (ii) given emergency treatment in another place by a registered medical practitioner; or
 - (iii) admitted to a hospital; or
 - (iv) treated in a hospital as a casualty, without being admitted to the hospital;

“**telecommunication**” means communication by means of electronic facsimile, telephone, telex or radio.

(2) A reference in these Regulations to a form by number is a reference to the form so numbered in the Schedule.

Forms, notices and reports

3. (1) A form containing a direction in, or at the foot of, the form must be completed in accordance with the direction.

(2) A form, notice or report must be completed in sufficient detail to allow proper consideration of the 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 order to enable clear and legible reproduction of the contents of the form, notice or report.

What is a dangerous occurrence?

4. An occurrence is a dangerous occurrence for the purpose of the definition of “dangerous occurrence” in section 4 of the Act if it occurs at a workplace, and:

- (a) resulted from operations that arose from an undertaking conducted by or for the operator of the workplace; and
- (b) could have caused:
 - (i) the death of, or serious personal injury to, any person; or
 - (ii) the incapacity of an employee for a duration of 5 or more successive working days;but as a result of which death, serious personal injury or incapacity did not occur.

PART 2—ELECTIONS

Involved union to authorise returning officer

5. (1) An involved union that intends to conduct an election for a health and safety representative must appoint a returning officer to conduct the election for the union.

(2) The returning officer must conduct the election in accordance with the rules of the union.

PART 3—ADVICE, INVESTIGATIONS AND INQUIRIES

Form of provisional improvement notices

6. A provisional improvement notice issued by a health and safety representative to the person in command under subsection 58 (1) of the Act must be in accordance with Form 1.

Taking samples for testing etc.

7. (1) If a sample of a substance or thing taken at a workplace under subsection 91 (1) of the Act is practicably divisible, the inspector 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 one part to the operator of the workplace; and
- (d) arrange for another part to be inspected, examined, measured or tested; and
- (e) retain the remaining part for any further inspection, examination, measuring or testing that is required.

(2) If the sample of a substance or thing is not practicably divisible, the inspector must arrange for the whole sample to be inspected, examined, measured or tested.

(3) An inspector who removes plant, a substance or a thing, or a sample of a substance or thing, from a workplace under subsection 91 (1) of the Act must take all reasonable steps to ensure that, while it is in his or her possession or control:

- (a) the plant, substance or thing is not damaged; or
- (b) the sample is not contaminated.

Form of certain notices

8. A notice issued by an investigator under a provision of the Act referred to in one of the following paragraphs must be in accordance with the form specified in the paragraph:

- (a) subsection 91 (2) (notice of taking possession of plant, taking samples of substances etc.)—Form 2;
- (b) subsection 92 (1) (direction not to disturb workplace etc.)—Form 3;
- (c) subsection 93 (1) (issue of prohibition notices)—Form 4;
- (d) subsection 98 (1) (issue of improvement notices)—Form 5.

Site of accident or dangerous occurrence not to be disturbed

9. (1) The person in command of a prescribed ship or prescribed unit must not, except:

- (a) with reasonable excuse; or
- (b) in circumstances specified in subregulation (3);

alter or disturb, or allow anyone to alter or disturb, the site of an accident or of a dangerous occurrence on the ship or unit unless an inspector has inspected the site or given permission in writing for the site to be altered or disturbed.

Penalty: 10 penalty units.

(2) Without limiting the meaning of “reasonable excuse” in subregulation (1), it is a reasonable excuse if the alteration or disturbance was unavoidable or, unless it was done recklessly, it occurred as a result 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 occurring to a substance or thing; or
- (e) the restoration, or attempted restoration, of a workplace to safe working conditions; or
- (f) the performance, or attempted performance, of a task necessary for the proper operation of the ship or unit.

(3) For the purposes of subregulation (1), the following circumstances are specified:

- (a) the Inspectorate has notified in writing the person in command that inspection of the site of the accident or dangerous occurrence by an inspector is not required;
- (b) the ship or unit is in an Australian port when notice is given of the accident or dangerous occurrence and an inspector does not visit the site within 24 hours of notice being given;
- (c) the ship or unit is at sea and proceeding to an Australian port when notice is given of the accident or dangerous

- occurrence and an inspector does not visit the site within 24 hours of the arrival of the ship or unit at the port;
- (d) the ship or unit is at sea and not proceeding to an Australian port when notice of the accident or dangerous occurrence is given.

PART 4—NOTICES AND REPORTS

Period of incapacity requiring notice and report

10. For the purposes of paragraph 107 (1) (b) of the Act, a period of 5 successive days or more is prescribed.

Notifying accidents and dangerous occurrences

11. (1) Subject to subregulation (2), for the purposes of subsection 107 (2) of the Act, notice of an accident or dangerous occurrence must be given:

- (a) in the case of the death of a person—within 2 hours of the operator becoming aware of the death; and
- (b) in the case of serious personal injury to a person—within 24 hours of the operator becoming aware that the person has, or is likely to have, suffered the injury; and
- (c) in the case of an employee being incapacitated as described in paragraph 107 (1) (b) of the Act—within 24 hours of the operator becoming aware of the duration of the incapacity exceeding the prescribed period; and
- (d) in the case of a dangerous occurrence—within 24 hours of the operator becoming aware of the occurrence.

(2) If it is not reasonably practicable for the operator to give notice within the period prescribed, notice must be given as soon as practicable after the end of the period.

Penalty: 10 penalty units.

Reporting accidents and dangerous occurrences

12. (1) Subject to subregulation (2), for the purposes of subsection 107 (2) of the Act, a report of an accident or dangerous occurrence must be given:

- (a) in the case of the death of, or serious personal injury to, a person—within 28 days of the operator becoming aware:
 - (i) of the death; or
 - (ii) that the person has, or is likely to have, received the injury; and
- (b) in the case of an employee being incapacitated as described in paragraph 107 (1) (b) of the Act—within 28 days of the operator becoming aware of the incapacity exceeding the prescribed period; and
- (c) in the case of a dangerous occurrence—within 28 days of the operator becoming aware of the occurrence;

(2) If it is not reasonably practicable for the operator to give the report within the period prescribed, the operator must give the report as soon as practicable after the end of the period.

Penalty: 10 penalty units.

- (3)** A report must be in accordance with Form 6.

Manner of giving notices and reports

13. (1) For the purposes of the Act and these Regulations, a notice is taken to be given to the Inspectorate if:

- (a) in the case of a prescribed ship or prescribed unit that is at an Australian port—the notice is given to an inspector; or
- (b) in the case of a prescribed ship or prescribed unit that is not at an Australian port—the notice is given to an inspector or to the Maritime Rescue Coordination Centre in Canberra; or
- (c) if subregulation (2) applies—notice is given in accordance with that subregulation.

(2) If the notice to be given is notice of the death of a person, the notice:

- (a) if the prescribed ship or prescribed unit is in an Australian port—must be given:
 - (i) to an inspector during business hours; or
 - (ii) to the Maritime Rescue Coordination Centre in Canberra outside business hours by telecommunication; and
 - (b) if the prescribed ship or prescribed unit is not in an Australian port—must be given to the Maritime Rescue Coordination Centre in Canberra by telecommunication.
- (3) For the purposes of the Act and these Regulations, a report is taken to be given to the Inspectorate if:
- (a) in the case of a prescribed ship or prescribed unit that is at an Australian port—it is sent to an inspector; and
 - (b) in the case of a prescribed ship or prescribed unit that is not at an Australian port—it is sent to the General Manager, Ship and Personnel Safety Services in the Australian Maritime Safety Authority.

Form of notice of accidents or dangerous occurrences

14. (1) For the purposes of subsection 107 (2) of the Act, notice of an accident must include the following information:

- (a) the name of the operator of the prescribed ship or prescribed unit on which the workplace is located; and
- (b) the name of the ship or unit; and
- (c) the location of the ship or unit at the time of the accident; and
- (d) the date and time of the accident; and
- (e) details of the accident, including a description of:
 - (i) the location, in the workplace, of the occurrence of the accident; and
 - (ii) any plant and equipment that was involved in the accident; and
 - (iii) any process or substance used at the workplace that was involved in the accident; and
- (f) the full name of:
 - (i) each person who died; and
 - (ii) each person who received serious personal injury; and

- (iii) each person incapacitated as described in paragraph 107 (1) (b) of the Act; and
- (g) action that the person in command has taken, or proposes to take, to prevent an accident of the same kind from happening again; and
- (h) in respect of the person giving the notice:
 - (i) his or her name; and
 - (ii) the classification and designation (if any) of the position that is occupied, or the duties that are performed, by the person.

(2) For the purposes of subsection 107 (2) of the Act, notice of a dangerous occurrence must include information referred to in paragraphs (1) (a), (b), (c), (d), (e), (g) and (h) as if a reference in those paragraphs to an accident were a reference to a dangerous occurrence.

Records of accidents and dangerous occurrences

15. For the purposes of section 108 of the Act, an operator must retain a record of a report of an accident or a dangerous occurrence for 5 years after the day on which the report was made.

Statistical reports

16. (1) An operator must report in writing to the Authority within the period of 30 days after the end of a financial year:

- (a) the average number of full-time equivalent employees of the operator in that financial year; and
- (b) the total number of hours worked by employees of the operator in the financial year;

unless it is not reasonably practicable for the operator to report within that period.

Penalty: 1 penalty unit.

(2) In subregulation (1), “average number of full-time equivalent employees” means the number calculated in accordance with Australian Standard AS1885.1—1990, as in force at the commencement of this regulation.

SCHEDULE

Subregulation 2 (2)

FORMS

Form 1

Regulation 6

**OCCUPATIONAL HEALTH AND SAFETY (MARITIME
INDUSTRY) REGULATIONS****PROVISIONAL IMPROVEMENT NOTICE**

To the person in command of *(insert name of prescribed ship or prescribed unit)*

I, *(insert name of the health and safety representative issuing the notice)*, selected as the health and safety representative under section 41 of the *Occupational Health and Safety (Maritime Industry) Act 1993* for *(insert name of the prescribed ship or prescribed unit)*, after consultation in accordance with subsection 57 (1) of the Act, believe that the following contravention of the Act or Regulations is occurring, or has occurred and is likely to occur again:

The contravention is *(give a brief description)*

The contravention is occurring at *(specify location)*

The reasons for my opinion are as follows:

(give reasons briefly)

In accordance with paragraph 58 (2) (c) 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 *(insert the date of a day that is:*

SCHEDULE—continued

(page 2 of Form 1)

- (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 the meantime, the following action should be taken in accordance with subsection 58 (3) of the Act:

(give a brief description)

Dated

(signature)
Health and safety representative

NOTES:

1. Under subsection 59 (1) of the Act, a person to whom a provisional improvement notice is given may, within 7 days, request the Inspectorate or an inspector to conduct an investigation into the subject matter of the notice.
2. Under subsection 59 (2) of the Act, the operation of a provisional improvement notice is suspended if a request is made for an investigation into the subject matter of the notice. The suspension remains in effect until an inspector makes a determination that confirms, varies or cancels the notice.
3. Subsection 60 (1) of the Act requires the person in command to whom a provisional improvement notice is given:
 - to notify each employee who is affected by the notice 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.

SCHEDULE—continued*(page 3 of Form 1)*

4. Under subsection 60 (2) of the Act, a provisional improvement notice ceases to have effect if:
- it is cancelled by the health and safety representative or an inspector; or
 - the person in command, or a person who is given a copy of the notice under subsection 58 (5), 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.
5. Section 61 of the Act requires the person in command:
- to ensure, as far as practicable, 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.
6. Under subsection 100 (2) of the Act, if an inspector has confirmed, varied or cancelled a provisional improvement notice the following persons may request the Australian Industrial Relations Commission in writing to review the decision of the inspector:
- the operator affected by the inspector's decision;
 - the person in command;
 - the person to whom the notice was given by the person in command under subsection 58 (5) of the Act;
 - the health and safety representative for the designated work group that includes an employee who is affected by the decision or an involved union for the designated work group;
 - if there is no designated work group of that kind—an involved union in relation to the affected employee;
 - the owner of any plant, substance or thing to which the decision relates.
-

SCHEDULE—continued

Form 2

Paragraph 8 (a)

**OCCUPATIONAL HEALTH AND SAFETY (MARITIME
INDUSTRY) REGULATIONS**

NOTICE OF REMOVAL OF PLANT OR SAMPLE

To the person in command of *(insert name of prescribed ship or prescribed unit)*
and *(insert name of health and safety representative for the prescribed ship or prescribed unit)*

I, *(insert name of inspector)*, an inspector appointed under section 84 of the *Occupational Health and Safety (Maritime Industry) Act 1993*, in the course of conducting an investigation under section 87 of the Act, have taken possession of:
(insert description of item removed)

from *(insert name of the prescribed ship or prescribed unit)* located at *(insert location of ship or unit)*

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

Signed: *(signature of inspector)*

Dated: *(insert date)*

NOTES:

1. Subsection 91 (3) of the Act requires the person in command of the prescribed ship or prescribed unit to display this notice in a prominent place on the ship or unit from which the item was removed.

SCHEDULE—continued*(page 2 of Form 2)***2.**

Under subsection 100 (2) of the Act, any of the following persons may request the Australian Industrial Relations Commission in writing to review the inspector's decision:

- the operator affected by the inspector's decision;
 - the health and safety representative for a designated work group that includes an employee affected by the decision or the involved union for the designated work group;
 - if there is no designated work group—an involved union in relation to the employee;
 - the owner of any plant, substance or thing to which the inspector's decision relates.
-

Form 3

DO NOT DISTURB NOTICE

SCHEDULE—continued*(page 2 of Form 3)***NOTES:**

- 1.** Subsection 92 (4) of the Act requires the person in command of the prescribed ship or prescribed unit to display this notice in a prominent place on the ship or unit.
 - 2.** Under subsection 92 (6) of the Act, if the operator of the prescribed ship or prescribed unit does not ensure that the notice is complied with, the operator may be liable for a fine not exceeding \$25,000 (if the operator is an individual), or not exceeding \$125,000 (if the operator is a body corporate).
 - 3.** Under subsection 100 (2) of the Act, any of the following persons may request the Australian Industrial Relations Commission in writing to review the inspector's decision to issue a prohibition notice:
 - the operator affected by the inspector's decision;
 - the health and safety representative for a designated work group that includes an employee affected by the decision or the involved union for the designated work group;
 - if there is no designated work group—an involved union in relation to the employee;
 - the owner of any plant, substance or thing to which the inspector's decision relates.
-

SCHEDULE—continued

Form 4

Paragraph 8 (c)

**OCCUPATIONAL HEALTH AND SAFETY (MARITIME
INDUSTRY) REGULATIONS**

PROHIBITION NOTICE

To the person in charge of (*insert name of prescribed ship or prescribed unit*)

I, (*insert name of inspector*), an inspector appointed under section 84 of the *Occupational Health and Safety (Maritime Industry) Act 1993*, am of the opinion that activity being undertaken on (*insert name of prescribed ship or prescribed unit*) is of a kind that immediately threatens the health and safety of a person.

I THEREFORE PROHIBIT the following activity or activities:
(*specify prohibited activity or activities*)

*Action that may be taken that will be adequate to remove the threat to health and safety of the person is:
(*if insufficient space, use additional page or pages*)

Signed: (*signature of inspector*)

Date: (*insert date*)

[* Omit if inapplicable]

(*see notes over*)

SCHEDULE—continued*(page 2 of Form 4)***NOTES:**

- 1.** Section 96 of the Act requires the person in command of the prescribed ship or prescribed unit to give a copy of this notice to the health and safety representative on the ship or unit and to display a copy of this notice in a prominent place on the ship or unit.
- 2.** Under subsection 93 (5) of the Act, if the operator of the prescribed ship or prescribed unit does not ensure that the notice is complied with, the operator may be liable to a fine not exceeding \$25,000 (if the operator is an individual), or not exceeding \$125,000 (if the operator is a body corporate).
- 3.** This notice ceases to have effect when the inspector notifies the person in command that the inspector is satisfied that the operator has taken adequate action to remove the threat to health and safety.
- 4.** Under subsection 100 (2) of the Act, any of the following persons may request the Australian Industrial Relations Commission to review the inspector's decision to issue a prohibition notice:
 - the operator affected by the inspector's decision;
 - the health and safety representative for a designated work group that includes an employee affected by the decision or the involved union for the designated work group;
 - if there is no designated work group—an involved union in relation to the employee;
 - the owner of any plant, substance or thing to which the inspector's decision relates.
- 5.** Under subsection 100 (3) of the Act, any of the following persons may request the Australian Industrial Relations Commission to review the inspector's decision that adequate action has been taken to remove the threat to health and safety:

SCHEDULE—continued

(page 3 of Form 4)

- the health and safety representative for a designated workgroup that includes an employee affected by the decision or the involved union for the work group;
 - if there is not a designated work group—an involved union in relation to the affected employee.
-

SCHEDULE—continued

Form 5

Paragraph 8 (d)

**OCCUPATIONAL HEALTH AND SAFETY (MARITIME
INDUSTRY) REGULATIONS****IMPROVEMENT NOTICE**

To the person in command of *(insert name of prescribed ship or prescribed unit)*

I, *(insert name of inspector)*, an inspector appointed under section 84 of the *Occupational Health and Safety (Maritime Industry) Act 1993*, am satisfied that *(insert name of person responsible for the contravention)* is contravening, or has contravened, or is likely to contravene, section of the Act or regulation of the Occupational Health and Safety (Maritime Industry) Regulations on *(insert name of prescribed ship or prescribed unit)*.

The reasons for my opinion are:
(give a 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 person in command within the period specified above:
(if insufficient space, use additional page or pages)

Signed: *(signature of inspector)*

Date: *(insert date)*

[* Omit if inapplicable]

SCHEDULE—continued

(page 2 of Form 5)

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

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)* hours on: *(insert date)*

(See notes over)

SCHEDULE—continued*(page 3 of Form 5)***NOTES:**

- 1.** Subsection 99 (1) of the Act requires the person in command of the prescribed ship or prescribed unit to give a copy of this notice to the health and safety representative on the ship or unit and to display a copy of this notice in a prominent place on the ship or unit.
 - 2.** If this notice relates to any plant, substance or thing that is owned by a person other than the operator, subsection 99 (2) of the Act requires the inspector to give a copy of this notice to the owner.
 - 3.** Under subsection 98 (5) of the Act, if the person in command of the prescribed ship or prescribed unit does not ensure that this notice is complied with, the person in command may be liable to a fine not exceeding \$10,000.
 - 4.** Under subsection 100 (2) of the Act, any of the following persons may request the Australian Industrial Relations Commission to review the inspector's decision:
 - the health and safety representative for a designated work group that includes an employee affected by the decision or the involved union for the designated work group;
 - if there is no designated work group—an involved union in relation to the employee.
-

SCHEDULE—continued

Form 6

Subregulation 11 (2)

**OCCUPATIONAL HEALTH AND SAFETY (MARITIME
INDUSTRY) REGULATIONS**

**OCCUPATIONAL HEALTH AND SAFETY INCIDENT
REPORT**

1. Name of ship
2. Official number
3. When did the incident happen?
Local time (*24 hour clock*)
Date (*day/month/year*)
4. Did anyone see the incident happen?
No—Go to 6
Yes—Please complete the details below
5. Name of witness
Job classification on ship (if applicable)
Home address of witness

Home telephone number of witness
6. Did the incident result in injury, illness or death?
No—Go to 19
Yes—Please complete the details below

SCHEDULE—continued*(page 2 of Form 6)*

(If more than 1 person is affected, insert an additional page, or additional pages, for the answers relating to each other affected person)

7. Which of the following happened to the person?
- (a) Death
 - (b) Serious personal injury (had emergency treatment on board ship, had emergency treatment by a doctor or was taken to a hospital)
 - (c) Had 5 or more consecutive days off work
8. What is the full name and home address of the injured or otherwise affected person?
- Given names
- Surname/family name
- Home address
9. Is the affected person male or female?
- Male
- Female
10. What is the date of birth of the affected person?
- (Day/month/year)*
11. Was the affected person a member of the crew?
- Yes—Go to 13
- No—Name and address of the affected person's employer (if not employed, enter *N/A* or *not applicable*)

SCHEDULE—continued

(page 3 of Form 6)

12. In what capacity was the affected person on, or in the vicinity of, the ship?

As a repairer or maintenance contractor Go to 13

As a stevedore or waterside worker Go to 13

As a supplier of goods Go to 13

Other (*specify*) Go to 16

13. What was the job classification of the affected person?

14. What were the affected person's official hours of duty on the day of the incident:

From...(24 hour clock)

To.....(24 hour clock)

(if the affected person was a watch-keeper, state the watch periods)

15. What are the main tasks performed by the affected person?

16. What was the affected person doing at the time of the incident?

17. How many years' experience did the affected person have in doing the task being carried out at the time of the incident?

SCHEDULE—continued

(page 4 of Form 6)

*(if information not available , eg because affected person was
not a member of the crew, enter N/A here)*

18. Describe the injury or illness, including the parts of the body
that were affected

19. Describe how the incident happened

What started the sequence of events?

What was the sequence of events?

What was the final thing that happened?

Name of any particular substance, product, process or
equipment that was involved:

20. Where was the ship when the incident happened?

SCHEDULE—continued

(page 5 of Form 6)

If in port, state the name of the port and the designation of the berth or anchorage

If at sea, state “at sea between *(name of port)* and *(name of port)*”

21. Where did the incident occur?

Deck spaces (including cargo spaces)

Machinery spaces

Accommodation block

Galley

Gangway/pilot ladder

Wharf

Other *(specify)*

22. Has any action been taken, or is any action intended to be taken, to prevent similar accidents?

No

Yes *(please specify the action)*

SCHEDULE—continued

(page 6 of Form 6)

- 23. Your name
- 24. Your position
- 25. Signature and date

NOTE

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

L 1995. 14 February