

Occupational Health and Safety (Commonwealth Employment) Amendment Regulations 2003 (No. 1) 2003 No. 313

EXPLANATORY STATEMENT

Statutory Rules 2003 No. 313

Issued by the authority of the Minister for Employment and Workplace Relations

Occupational Health and Safety (Commonwealth Employment) Act 1991

Occupational Health and Safety (Commonwealth Employment) Amendment Regulations 2003 (No. 1)

The *Occupational Health and Safety (Commonwealth Employment) Act 1991* (the Act) establishes a statutory framework to secure the health and safety of Commonwealth Government employees (including employees of Commonwealth agencies, statutory authorities and Government Business Enterprises) while at work.

Subsection 82(1) of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 23(1) of the Act provides that the regulations may make provision relating to any matter affecting, or likely to affect, the occupational health and safety of employees or contractors, or other persons at or near a workplace.

The *Occupational Health and Safety (Commonwealth Employment) Regulations 1991* (the OHS (CE) Regulations) prescribe various matters which are necessary for the effective operation of the scheme established by the Act including matters relating to: elections conducted by unions and returning officers; advice, investigations and inquiries under the Act; other miscellaneous matters, for example witness allowances and expenses; and the review of decisions. The OHS(CE) Regulations also provide for modifications of the Act in relation to certain employees.

The Regulations make minor technical and housekeeping amendments to update the OHS (CE) Regulations.

The Regulations:

- omit a definition of 'State Manager of Comcare' and replace references to specific State or Territory Comcare employees with references to 'Comcare' or 'a Comcare office';
- omit a reference in regulation 4 to the Australian Bureau of Agricultural and Resource Economics as an employing authority for the purpose of section 5 of the OHS (CE) Act;
- replace an incorrect reference to the Australian Geological Survey Organisation;
- create a separate Part to contain all regulations relating to the notification and reporting of accidents and dangerous occurrences and other amendments consequential to this change;
- replace references to 'Secretary' and 'Department' with 'Agency Head' and 'Entity', consistent with the *Public Service Act 1999*;

- substitute Notes to the Forms in Schedule 1 to better reflect provisions in the Act relating to the issuing of notices; and
- amend Forms 1-5 in Schedule 1, by replacing references to 'Occupational Health and Safety (Commonwealth Employment) Regulations' with '*Occupational Health and Safety (Commonwealth Employment) Regulations 1991*' consistent with current drafting practice.

Details of the Regulations are set out in the attachment.

The Regulations commence on gazettal.

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ATTACHMENT

OCCUPATIONAL HEALTH AND SAFETY (COMMONWEALTH EMPLOYMENT) AMENDMENT REGULATIONS 2003 (No. 1)

Regulation 1: Name of Regulations

This is a formal provision that provides for the name of the Regulations.

Regulation 2: Commencement

This regulation provides that the Regulations commence on gazettal.

Regulation 3: Amendment of *Occupational Health and Safety (Commonwealth Employment) Regulations 1991*

This regulation provides that the *Occupational Health and Safety (Commonwealth Employment) Regulations 1994* (the Regulations) are amended as set out in Schedule I.

Schedule 1: Amendments

Item 1: Subregulation 2 (1), definition of State Manager of Comcare

Subregulation 2(1) defines 'State Manager of Comcare'. This term is no longer current given restructures to Comcare. Item 1 omits this definition.

Item 2: Subparagraph 4 (b) (i) and (ii)

The Australian Bureau of Agricultural Resource Economics (ABARE) is a business unit within the Department of Agriculture, Fisheries and Forestry (AFFA). Under regulation 4(b)(i)(A) ABARE has status as an 'employing authority' for the purposes of section 5 of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (the Act).

Prior to 1999 ABARE had its own budget appropriation and was considered appropriate to have status as an 'employing authority'. Since 1999 ABARE has received its appropriation funding through AFFA. Accordingly, it is no longer necessary for ABARE to continue to be prescribed in regulation 4 as an 'employing authority' for the purposes of section 5 of the Act. Item 2 repeals regulation 4(b)(i)(A).

Subregulation 4(b)(ii) currently prescribes the Executive Director of the Australian Geological Survey Organisation as the employing authority of officers and employees of the Australian Geological Survey Organisation. The Australian Geological Survey Organisation has recently changed its name to Geoscience Australia.

To reflect this change, Item 2 replaces the reference to 'Australian Geological Survey Organisation' with a reference to 'Geoscience Australia'.

Item 3: Regulation 6

Item 4: Paragraph 29(1)(b)

Regulation 6 and paragraph 29(1)(b) refer to the 'State Manager of Comcare'. Comcare has been restructured since these Regulations were made and references to the term 'State Manager of Comcare' are accordingly no longer current.

Items 3 and 4 replace the references to 'State Manager of Comcare' in regulation 6 and paragraph 29(1)(b) with references to 'Comcare'.

Item 5: Part 5, heading

Part 5 of the OHS(CE) Regulations, titled 'Miscellaneous', currently contains, amongst others, provisions relating to the notification and reporting of accidents and dangerous occurrences for the purposes of section 68 of the Act. In particular, regulations 36A, 37A, 37B, 37C, 37D, 37E, 37F and 37G prescribe matters relating to section 68 of the Act.

Item 5 creates a separate part which contains all regulations relating to the notification and reporting of accidents and dangerous occurrences for the purposes of section 68 of the Act. This will assist employers with identifying the requirements and obligations with respect to notification and reporting.

Item 6: Regulations 36AA and 36

regulations 36AA and 36 do not relate to the notification and reporting of accidents and dangerous occurrences for the purposes of section 68 of the Act.

Item 6 omits regulations 36AA and 36 from the existing Part 5, to facilitate the creation of the separate part in Item 5 containing regulations relating to notification and reporting. The substance of regulations 36AA and 36 are contained instead in the new Part 8 created by Item 10.

Item 7: Subregulation 37(1)

Subregulation 37(1) refers to 'the relevant State or Territory Occupational Health and Safety Manager'. Comcare has been restructured since this regulation was made, thus this term is outdated.

Item 7 replaces the reference to 'the relevant State or Territory Occupational Health and Safety Manager' in subregulation 37(1) with a reference to 'a Comcare office'.

Item 8: Paragraph 37(2)(a)

Paragraph 37(2)(a) refers to 'Secretary' and 'Department'. The *Public Service Act 1999* changed references to 'Secretary' and 'Department' with references to 'Agency Head' and 'Entity'. In addition, the *Public Employment (Consequential and Transitional) Amendment Act 1999* allows regulations to be made to amend references to 'Secretary' and 'Department' in other Acts. The *Occupational Health and Safety (Commonwealth Employment) Amendment Regulations 2001* (No. 1) Statutory Rules 2001 No. 69 amended the Principal Act to replace references to 'Department' and 'Secretary'. Item 8 replaces references to 'Secretary' and 'Department' in paragraph 37(2)(a) with references to 'Agency Head' and 'Entity', consistent with these changes to the Principal Act.

Item 9: Regulation 37C

Subregulation 37C(a) refers to 'State Manager of Comcare'. Comcare has been restructured and this term is no longer current. Item 9 replaces the reference to 'State Manager of Comcare' in Regulation 37C with a reference to 'Comcare employee'.

Subregulation 37C(b) currently provides that those persons notifying of the death of a person outside of business hours must be 'reasonably satisfied that the telephone message is being recorded on receipt at the office of the State Manager'.

Item 9 changes the requirements for notifying fatalities outside of business hours to better reflect Comcare's current practices. New paragraph 37C(b) provides that notices of a death outside of business hours must be given to Comcare by contacting, by telephone, the Comcare office in the relevant State or Territory and following the instructions given to callers

Item 9 also amends regulation 37C to include a note to assist compliance with the amended requirements in regulation 37C. This note states that the telephone numbers for Comcare offices in each State and Territory are listed on the Comcare website and that Comcare's telephone service includes a call diversion and message recording facility outside business hours.

Item 10: After Part 7

Consequential to the amendments in Item 6, Item 10 inserts the current regulations 36AA and 36 into a new Part 8 and renumbers them as regulation 40 and regulation 41 respectively.

Item 11: Schedule 1, Form 1, notes 1 to 4

Item 12: Schedule 1, Form 2, notes 1 to 4

Item 13: Schedule 1, Form 3, heading

Item 14: Schedule 1, Form 3, notes 1 to 3

Item 15: Schedule 1, Form 4, notes 1 to 5

Item 16: Schedule 1, Form 5, notes 1 to 5

Regulation 30 provides that a provisional improvement notice issued by a health and safety representative under subsection 29(2) of the Act must be set out in accordance with Form 1.

Regulation 34 provides that a notice issued by an investigator under the following provisions must be in accordance with the form specified:

- (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 workplaces not be disturbed) - Form 3;
- (c) subsection 46(1) (power to issue prohibition notices) - Form 4; and
- (d) subsection 47(1) (power to issue improvement notices) - Form 5.

Items 11, 12, 14, 15 and 16 amend the Forms in Schedule 1 by substituting new notes. The new notes contain amendments to a number of the notes and add additional notes, to better reflect the relevant provisions in the Regulations relating to issuing of notices.

For example, additional notes have been inserted into forms 2, 3, 4, and 5 which:

- (a) reflect section 50 of the Act which provides that a notice must not be removed or tampered with before the notice ceases to have effect; and
- (b) set out the penalty for breaching section 50.

Item 13 will amend the heading to Form 3 to better reflect section 45 of the Act.

Item 17: Schedule 3, heading

Schedule 3 is headed 'Witnesses expenses and allowances (regulation 36)'. Item 17 is consequential to the amendments introduced in Items 5, 6 and 10. Accordingly, this Item changes the heading of Schedule 3 from 'Witnesses expenses and allowances (regulation 36)' to

'Witnesses expenses and allowances (regulation 41)' to reflect the renumbering of the regulation relating to witnesses expenses and allowances.

Item 18: Further amendments

Schedule 1, Forms 1 to 5 refer to the 'Occupational Health and Safety (Commonwealth Employment) Regulations'. Consistent with current drafting practice, Item 18 replaces this reference with a reference to the '*Occupational Health and Safety (Commonwealth Employment) Regulations 1991*'.