



Safety, Rehabilitation and Compensation Amendment Regulations 2008 (No. 1)¹

Select Legislative Instrument 2008 No. 87

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Safety, Rehabilitation and Compensation Act 1988*.

Dated 30 May 2008

P. M. JEFFERY
Governor-General

By His Excellency's Command

JULIA GILLARD
Minister for Employment and Workplace Relations

1 Name of Regulations

These Regulations are the *Safety, Rehabilitation and Compensation Amendment Regulations 2008 (No. 1)*.

2 Commencement

These Regulations commence on the day after they are registered.

3 Amendment of *Safety, Rehabilitation and Compensation Regulations 2002*

Schedule 1 amends the *Safety, Rehabilitation and Compensation Regulations 2002*.

Schedule 1 Amendments

(regulation 3)

[1] Before regulation 13

insert in Part 5

Division 5.1 Definitions for Part 5

12A Definitions

In this Part:

guarantee means a guarantee for the due discharge of a licensee's liability to pay compensation and other amounts under the Act that is given by a bank or other body.

licensee includes a Commonwealth authority or eligible corporation that was a licensee immediately before its licence was suspended or revoked.

Division 5.2 Consequences of suspension or revocation of licence

12B Outline of Division

- (1) For section 107A of the Act, this Division deals with:
 - (a) the consequences of the suspension of a licence under section 106 of the Act (Commonwealth authorities only); and
 - (b) the consequences of the revocation of a licence under section 106 or 107 of the Act (Commonwealth authorities or eligible corporations).
- (2) Regulation 13 deals with the suspension of the licence of a Commonwealth authority.
- (3) Regulation 13A deals with money payable under a guarantee in relation to a Commonwealth authority whose licence is suspended.
- (4) Regulation 14 deals with the revocation of the licence of a Commonwealth authority.
- (5) Regulation 14A deals with money payable under a guarantee in relation to a Commonwealth authority whose licence is revoked.
- (6) Regulation 14B deals with arrangements for a person to perform the employer functions of a Commonwealth authority whose licence is revoked, if Comcare decides to make such arrangements.
- (7) Regulation 15 deals with the revocation of the licence of an eligible corporation.
- (8) Regulation 15A deals with money payable under a guarantee in relation to an eligible corporation whose licence is revoked, including the use of that money for management of claims.
- (9) Regulation 15B deals with arrangements for a person to perform the employer functions of an eligible corporation whose licence is revoked, if Comcare decides to make such arrangements.

(10) Regulation 15C deals with compensation for the acquisition of property.

[2] Subregulation 13 (1)

omit

[3] Subregulation 13 (2)

omit

an employee:

insert

any of its employees:

[4] Paragraph 13 (2) (b)

omit

, with the consent of the Commission and subject to any directions given by the Commission,

[5] Paragraph 13 (2) (c)

omit

(b).

insert

(b), unless regulation 13A applies.

[6] Paragraph 13 (3) (b)

omit

(ii); and

insert

(ii), unless regulation 13A applies; and

[7] Regulation 13, note

omit

section 14

insert

section 15

[8] After regulation 13

insert

13A Money payable under guarantee — licence of Commonwealth authority suspended

- (1) This regulation applies if the Commission makes a demand for payment under a guarantee that is in force relating to a Commonwealth authority whose licence is suspended.
- (2) The money payable in response to the demand (*guarantee money*) must be paid to Comcare.
- (3) Comcare must pay all guarantee money it receives into a separate bank account until the money can be dealt with in accordance with this regulation.

Note Surplus money may be invested: see subsection 18 (3) of the *Commonwealth Authorities and Companies Act 1997*.

- (4) To avoid doubt, Comcare holds guarantee money on its own account and not on behalf of the Commission or the Commonwealth.
- (5) Comcare may use guarantee money to do any of the following:
 - (a) discharge a liability mentioned in subregulation 13 (2);
 - (b) meet a cost mentioned in paragraph 13 (3) (b);
 - (c) reimburse itself if it has discharged a liability of that kind or met a cost of that kind without using guarantee money.
- (6) If, after the end of the suspension period, Comcare determines that:
 - (a) there are unlikely to be any further outgoings of guarantee money under subregulation (5); and

(b) there is any guarantee money remaining;

Comcare must deal with the remaining money in the way provided for in the guarantee.

(7) However, if the guarantee does not make any provision about how the remaining money is to be dealt with, Comcare must pay the remaining money:

(a) to the Commonwealth authority; or

(b) if the Commonwealth authority no longer exists:

(i) in accordance with any legislation that makes provision about the distribution of the assets of the former Commonwealth authority; or

(ii) in any other case — to the bank or other body that paid the money to Comcare.

[9] Subregulation 14 (1)

omit

[10] Paragraph 14 (2) (c)

omit

, with the consent of the Commission and subject to any directions given by the Commission,

[11] Paragraph 14 (2) (d)

omit

(c).

insert

(c), unless regulation 14A applies.

[12] Subparagraph 14 (3) (c) (ii)

omit

licensee.

insert

licensee; and

[13] After paragraph 14 (3) (c)

insert

- (d) the licensee must pay to Comcare an amount determined by Comcare as the costs incurred by Comcare in managing claims in respect of an injury, loss or damage suffered by, or the death of, any of its employees that occurred while the licensee held a licence, unless regulation 14A applies.

[14] After regulation 14

insert

14A Money payable under guarantee — licence of Commonwealth authority revoked

- (1) This regulation applies if the Commission makes a demand for payment under a guarantee that is in force relating to a Commonwealth authority whose licence is revoked.
- (2) The money payable in response to the demand (*guarantee money*) must be paid to Comcare.
- (3) Comcare must pay all guarantee money it receives into a separate bank account until the money can be dealt with in accordance with this regulation.
- Note* Surplus money may be invested: see subsection 18 (3) of the *Commonwealth Authorities and Companies Act 1997*.
- (4) To avoid doubt, Comcare holds guarantee money on its own account and not on behalf of the Commission or the Commonwealth.
- (5) Comcare may use guarantee money to do any of the following:
- (a) discharge a liability mentioned in paragraph 14 (2) (b);
 - (b) meet a cost mentioned in paragraph 14 (3) (d);
 - (c) reimburse itself if it has discharged a liability of that kind or met a cost of that kind without using guarantee money;
 - (d) reimburse itself for the cost of any arrangements made by it under subregulation 14B (1) that is not paid directly to Comcare by the Commonwealth authority.

- (6) If Comcare has received an actuarial report assessing the total value of any amounts of a kind mentioned in paragraph (5) (a), (b) or (d) that are likely to become payable in the future, Comcare may take from the guarantee money an amount equal to the assessment.
- (7) If Comcare determines that:
 - (a) there are unlikely to be any further outgoings of guarantee money under subregulations (5) and (6); and
 - (b) there is any guarantee money remaining;
Comcare must deal with the remaining money in the way provided for in the guarantee.
- (8) However, if the guarantee does not make any provision about how the remaining money is to be dealt with, Comcare must pay the remaining money:
 - (a) to the Commonwealth authority; or
 - (b) if the Commonwealth authority no longer exists:
 - (i) in accordance with any legislation that makes provision about the distribution of the assets of the former Commonwealth authority; or
 - (ii) in any other case — to the bank or other body that paid the money to Comcare.

14B Performance of employer functions following revocation of licence — Commonwealth authorities

- (1) If:
 - (a) the Commission revokes the licence of a Commonwealth authority; and
 - (b) Comcare considers that it would be appropriate to do so;
Comcare may arrange for the employer functions of the Commonwealth authority in relation to affected employees to be performed by a person:
 - (c) whom it considers suitable to perform those functions; and
 - (d) who is willing to enter into an arrangement with Comcare for the performance of the functions.

(2) In this regulation:

affected employee means an employee to whom a liability mentioned in paragraph 14 (2) (b) relates.

employer functions, in relation to an affected employee, are the following:

- (a) acting as the rehabilitation authority for the employee;
- (b) acting as the relevant employer, within the meaning of subsection 40 (2) of the Act, of the employee;
- (c) acting for the Commonwealth authority in making:
 - (i) a request for reconsideration of a determination under paragraph 62 (2) (c) of the Act; or
 - (ii) an application for review of a reviewable decision under paragraph 64 (1) (c) of the Act.

[15] Subregulation 15 (1)

omit

[16] After regulation 15

insert

15A Money payable under guarantee — eligible corporations

- (1) This regulation applies if:
 - (a) the Commission makes a demand for payment under a guarantee that is in force relating to an eligible corporation; and
 - (b) the licence of the eligible corporation is revoked:
 - (i) at the initiative of the Commission under paragraph 106 (1) (b) of the Act; or
 - (ii) at the request of the eligible corporation under section 107 of the Act.
- (2) The money payable in response to the demand (*guarantee money*) must be paid to Comcare.

- (3) Comcare must pay all guarantee money it receives into a separate bank account until the money can be dealt with in accordance with this regulation.

Note Surplus money may be invested: see subsection 18 (3) of the *Commonwealth Authorities and Companies Act 1997*.

- (4) To avoid doubt, Comcare holds guarantee money on its own account and not on behalf of the Commission or the Commonwealth.

- (5) Comcare may take from the guarantee money:

- (a) any amounts needed:

- (i) to discharge any liability mentioned in paragraph 15 (2) (b) that it decides to discharge; and
- (ii) to meet claims management costs, for any claims mentioned in paragraph 15 (3) (a) (*relevant claims*) that it decides to manage or arrange to be managed, that are not paid directly to Comcare by the eligible corporation; and
- (iii) to enable Comcare to meet the cost of any arrangement mentioned in subregulation 15B (1) that it decides to make; and

- (b) if Comcare has received an actuarial report assessing the total value of any amounts needed for a purpose mentioned in paragraph (a) that are likely to become payable in the future — an amount equal to the assessment.

- (6) If Comcare determines that:

- (a) there are unlikely to be any further outgoings of guarantee money under subregulation (5); and

- (b) there is any guarantee money remaining;

Comcare must deal with the remaining money in the way provided for in the guarantee.

- (7) However, if the guarantee does not make any provision about how the remaining money is to be dealt with, Comcare must pay the remaining money:

- (a) to the eligible corporation; or

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- (b) if the eligible corporation no longer exists:
 - (i) in accordance with any legislation that makes provision about the distribution of the assets of the former eligible corporation; or
 - (ii) in any other case — to the bank or other body that paid the money to Comcare.
 - (8) Comcare may decide:
 - (a) to manage relevant claims; or
 - (b) to arrange for some, or all, relevant claims to be managed by a person:
 - (i) whom it considers suitable to manage the claims; and
 - (ii) who is willing to enter into an arrangement with Comcare for the management of the claims.
 - (9) If Comcare manages a relevant claim under paragraph (8) (a), Comcare must determine an amount as the costs incurred by Comcare in managing the claim.
 - (10) Each of the following is a claims management cost:
 - (a) the cost of an arrangement mentioned in subparagraph (8) (b) (ii);
 - (b) the amount mentioned in subregulation (9).
 - (11) The eligible corporation must:
 - (a) on receiving a relevant claim or a notice or communication about a relevant claim — give the claim, notice or communication to Comcare; and
 - (b) give Comcare all documents, information and assistance reasonably required for Comcare to manage the relevant claim.

15B Performance of employer functions following revocation of licence — eligible corporations

- (1) Comcare may arrange for the employer functions in relation to affected employees of an eligible corporation whose licence is revoked to be performed by a person:
 - (a) whom it considers suitable to perform those functions; and

(b) who is willing to enter into an arrangement with Comcare for the performance of the functions.

(2) In this regulation:

affected employee means an employee to whom a liability mentioned in paragraph 15 (2) (b) relates.

employer functions, in relation to an affected employee, are the following:

- (a) acting as the rehabilitation authority for the employee;
- (b) acting as the relevant employer, within the meaning of subsection 40 (2) of the Act, of the employee.

15C Compensation for acquisition of property

(1) If the payment of money by Comcare under subregulation 14A (7) or (8) or 15A (6) or (7) results in the acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.

(2) If the Commonwealth and the person do not agree on the amount of compensation, the person may start proceedings in a court of competent jurisdiction for recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

(3) In determining a reasonable amount of compensation under this regulation, regard must be had to any amount of compensation paid or payable to the person in relation to the acquisition by a person other than the Commonwealth.

(4) In this regulation:

acquisition of property has the same meaning as in paragraph 51 (xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51 (xxxi) of the Constitution.

[17] Schedule 3, Part 6, items 1 and 2

omit each mention of

obtain a bank guarantee

insert

arrange for a guarantee acceptable to the Commission to be provided

[18] Schedule 3, Part 6, paragraph 2 (a)

omit the first mention of

bank

[19] Schedule 3, Part 6, paragraph 2 (a)

omit the second mention of

bank

insert

body

[20] Schedule 3, Part 6, item 4

omit

obtain a bank guarantee

insert

arrange for a guarantee acceptable to the Commission to be provided

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.