



Occupational Health and Safety (Safety Standards) Amendment Regulations 2008 (No. 2)¹

Select Legislative Instrument 2008 No. 261

I, QUENTIN BRYCE, 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 Act 1991*.

Dated 12 December 2008

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

JULIA GILLARD
Minister for Employment and Workplace Relations

1 Name of Regulations

These Regulations are the *Occupational Health and Safety (Safety Standards) Amendment Regulations 2008 (No. 2)*.

2 Commencement

These Regulations commence on the day after they are registered.

3 Amendment of *Occupational Health and Safety (Safety Standards) Regulations 1994*

Schedule 1 amends the *Occupational Health and Safety (Safety Standards) Regulations 1994*.

4 Transitional

Despite the repeal of regulation 4.62B of the *Occupational Health and Safety (Safety Standards) Regulations 1994*:

- (a) subregulation 4.62B (2), as in force immediately before the commencement of these Regulations, continues to apply in relation to a special licence that was in effect at that time; and
- (b) subregulation 4.62B (2) ceases to apply in relation to the special licence when the special licence:
 - (i) is renewed; or
 - (ii) ceases to have effect.

Note Subregulation 4.62B (2) makes a special licence subject to particular conditions. The subregulation will cease to apply in relation to a special licence if the licence is renewed, or ceases to have effect, after the commencement of these Regulations.

Schedule 1 Amendments

(regulation 3)

[1] Subregulation 1.06 (3), note

omit

Occupational Health and Safety (Commonwealth Employment) Act 1991

insert

Occupational Health and Safety Act 1991

[2] After subregulation 4.02 (2)

insert

- (2A) This Part applies to alterations to the design of plant that are carried out after this subregulation commences.

[3] Subregulation 4.02 (7), at the foot

insert

Note Regulation 4.02 commenced on 1 July 1996.

[4] Subregulation 4.07A (3)

omit

4.40D (b)

insert

4.40A (b)

[5] Paragraph 4.10 (2) (b), except the penalty and the note

substitute

- (b) the electrical installations associated with the plant comply with AS/NZS 3000:2007 'Electrical installations (known as the Australian/New Zealand Wiring Rules)' as far as it is relevant; and
- (c) the erection and dismantling of scaffolds is carried out to achieve compliance with AS 1576; and
- (d) the erection and dismantling of temporarily erected structures intended or used to support sheeting, hoardings, guard-railings, means of access or egress, or entertainment equipment is carried out to achieve compliance with the appropriate design requirements of AS 1576.

[6] After subregulation 4.10 (2)

insert

- (3) In this regulation:

AS 1576 means the standard comprising:

- (a) AS/NZS 1576.1:1995 'Scaffolding – Part 1: General requirements'; and
- (b) AS 1576.2-1991 'Scaffolding – Part 2: Couplers and accessories'; and
- (c) AS 1576.2-1991/Amdt 1-1992 'Scaffolding – Part 2: Couplers and accessories'; and
- (d) AS/NZS 1576.3:1995 'Scaffolding – Part 3: Prefabricated and tube-and-coupler scaffolding'; and
- (e) AS 1576.4-1991 'Scaffolding – Part 4: Suspended scaffolding'; and
- (f) AS 1576.4-1991/Amdt 1-1992 'Scaffolding – Part 4: Suspended scaffolding'; and
- (g) AS/NZS 1576.5:1995 'Scaffolding – Part 5: Prefabricated splitheads and trestles'; and
- (h) AS/NZS 1576.6:2000 'Scaffolding – Part 6: Metal tube-and-coupler scaffolding—Deemed to comply with AS/NZS 1576.3'.

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- [7] **Regulation 4.18, heading**
substitute
- 4.18 Training, information, instruction and supervision**
- [8] **Subregulation 4.22 (4)**
after
 plant colliding with
insert
 pedestrians or
- [9] **Paragraph 4.25 (1) (i)**
omit
 life
insert
 lift
- [10] **Regulation 4.39, including the note**
omit
- [11] **Subparagraph 4.40 (1) (b) (ii)**
substitute
 (ii) exempted under regulation 4.40A.
- [12] **Paragraph 4.40 (1A) (b)**
substitute
(b) in subparagraph (1) (b) (ii) — that the employer is not
 exempted under regulation 4.40A.

[13] Regulations 4.40A, 4.40B and 4.40C

omit

[14] Regulation 4.40D

renumber as regulation 4.40A

[15] Subregulation 4.43 (1), note

omit

[16] After subregulation 4.45 (4)

insert

- (5) If the Commission cancels or suspends the licence, the employer must return the licence to the Commission no later than 21 days after receipt of the notice.

Penalty: 10 penalty units.

- (6) If the licence is suspended, the Commission must return the licence to the employer at the end of the suspension period if the licence is still in effect.

[17] Paragraph 4.46 (2) (b)

omit

(1) (d)

insert

(1) (e)

[18] Paragraph 4.46 (3) (b)

substitute

(b) must:

- (i) vary the licence to reflect the event mentioned in the application; or
- (ii) refuse to vary the licence; or

- (iii) cancel the licence; or
- (iv) ask the employer to give it additional information that is necessary to assist the Commission to make a decision on the application; and

[19] Paragraph 4.46 (4) (b)

omit

or refuse to vary,

insert

to refuse to vary, or to cancel,

[20] Paragraph 4.46 (5) (a)

substitute

(a) the items of plant to which the variation relates;

[21] After subregulation 4.46 (7)

insert

- (8) A notice under paragraph (3) (c) in relation to a cancellation of a licence must set out the reasons for the cancellation.
- (9) If the Commission cancels the licence, the employer must return the licence to the Commission no later than 21 days after receipt of the notice.

Penalty: 10 penalty units.

[22] Paragraph 4.56 (3) (b)

substitute

(b) include:

- (i) a list of each type of plant mentioned in Part 2 of Schedule 6 that the Australian Defence Organisation currently operates under a licence, or intends to operate if the special licence is granted; and

- (ii) the number of items of each type of plant that the Australian Defence Organisation currently operates or intends to operate.

[23] Subregulation 4.57 (1)

substitute

- (1) If the licensee wishes to continue operating plant mentioned in Part 2 of Schedule 6, the licensee may apply for a renewal of the special licence.

[24] Paragraph 4.57 (2) (c)

substitute

(c) include:

- (i) a list of each type of plant being operated under the special licence at the time of the application; and
- (ii) the number of items of each type of plant being operated under the special licence; and
- (iii) a statement to the effect that each item of plant being operated under the special licence has been maintained in a safe condition and is safe to operate.

[25] Subregulation 4.57 (3)

omit

the plant to which the special licence relates

substitute

plant under the special licence

[26] Subregulation 4.57 (4), note

omit

4.40D

insert

4.40A

[27] Paragraph 4.58 (4) (b)

omit

[28] Subregulation 4.60 (1)

substitute

- (1) A special licence granted under subregulation 4.58 (1) or renewed under subregulation 4.58 (2) is subject to the following conditions:
- (a) the Australian Defence Organisation must establish and maintain a system for licensing the operation of plant that is consistent with the procedure relating to licensing in regulations 4.40, 4.40A, 4.41, 4.42, 4.46, 4.47 and 4.48;
 - (b) the Australian Defence Organisation must establish and maintain a system for registering plant designs that is consistent with the procedure relating to registration in regulations 4.49, 4.50, 4.51, 4.52, 4.53 and 4.54;
 - (c) the Australian Defence Organisation must audit each of the systems established under paragraphs (a) and (b) once every 12 months;
 - (d) the Australian Defence Organisation must, if requested by Comcare or the Commission, provide an investigator with access to any system it has established to manage its obligations under the special licence;
 - (e) the Australian Defence Organisation must identify each item of plant operated under the special licence with a unique identifying number;
 - (f) the Australian Defence Organisation must ensure that the unique identifying number is displayed on or near the item of plant;
 - (g) the Australian Defence Organisation must keep a record of the details of all inspections, checks, tests, maintenance and cleaning that have been carried out for each item of plant operated under the licence;
 - (h) the Australian Defence Organisation must, upon request, provide an investigator with the maintenance records that relate to an item of plant;

- (i) the Australian Defence Organisation must provide the Commission with the details of a person it can contact for any enquiries relating to the special licence;
- (j) the Australian Defence Organisation must pay the fee set out in a notice under paragraph 4.58 (1) (c) or (2) (c) by the time stated in the notice;
- (k) the Australian Defence Organisation must comply with a direction given by the Commission that the Commission considers necessary for ensuring the safe operation of the plant.

Note for paragraph (g) Subregulation 4.15 (1) requires an employer to take all reasonably practicable steps to ensure that a risk to the health and safety of a relevant person arising from plant used by employees at work, or the associated systems of work, under the employer's control is eliminated or, if it is not reasonably practicable to eliminate the risk, minimised in accordance with Division 7. Paragraph 4.15 (2) (h) requires an employer to take all reasonably practicable steps to ensure that inspections, maintenance and cleaning are carried out having regard to procedures recommended for the plant by its designer or manufacturer, or developed for the plant by a competent person.

[29] Subregulation 4.60 (3), note

omit

[30] Regulation 4.60A

omit

[31] Regulations 4.62, 4.62A and 4.62B

omit

[32] Regulation 4.63, paragraphs (a) to (e)

omit

[33] Regulation 4.63, paragraph (i)*omit*

to refuse

insert

to cancel or refuse

[34] Subregulation 8.04 (1), definition of *dangerous occurrence**substitute*

dangerous occurrence has the meaning given by regulation 3 of the *Occupational Health and Safety (Safety Arrangements) Regulations 1991*.

[35] Subregulation 8.40 (3), note 1*omit*

Occupational Health and Safety (Commonwealth Employment) Regulations 1991

insert

Occupational Health and Safety (Safety Arrangements) Regulations 1991

[36] Subregulation 8.40 (3), note 2*omit*

Occupational Health and Safety (Commonwealth Employment) Regulations 1991

insert

Occupational Health and Safety (Safety Arrangements) Regulations 1991

[37] Regulation 9.38, note

substitute

Note The employer may also be required to notify the Commission of the major accident — see Part 5 of the *Occupational Health and Safety (Safety Arrangements) Regulations 1991*.

[38] Subregulation 20.01 (1), before definition of ADG Code

insert

Act means the *Occupational Health and Safety Act 1991*.

[39] Subregulation 20.01 (1), definition of *the Act*

omit

[40] Subregulation 20.01 (3), note 1

omit

Occupational Health and Safety (Commonwealth Employment) Regulations 1991

insert

Occupational Health and Safety (Safety Arrangements) Regulations 1991

[41] Subregulation 20.01 (3), note 3

omit

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>.