

# **Occupational Health and Safety (Commonwealth Employees) (National Standards) Regulations 1995 No. 337**

## **EXPLANATORY STATEMENT**

### **Statutory Rules 1995 No. 337**

Issued by the Authority of the Assistant Minister for Industrial Relations

*Occupational Health and Safety (Commonwealth Employees) Act 1991*

Occupational Health and Safety (Commonwealth Employees) (National Standards) Regulations

Subsection 82(1) of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (the Act) provides that the Governor-General may make regulations for the purposes of the Act.

The Act provides for the health and safety of Commonwealth employees and others at work and establishes a framework within which Commonwealth employers, employees and involved unions, may co-operate to address health and safety issues.

Subsection 23(1) of the Act provides that the regulations may make provisions relating to any matter affecting, or likely to affect the occupational health and safety of employees or contractors.

Under agreement with the States and Territories, it is proposed to establish regulatory occupational health and safety schemes which are standard across the Commonwealth and the States and Territories,

The regulatory schemes to be adopted are based on national standards and codes of practice developed by the National Occupational Health and Safety Commission (the Commission). Subsection 38(1) of the *National Occupational Health and Safety Commission Act 1985* (the NOHSC Act) provides that the Commission may declare national standards and codes of practice relating to occupational health and safety matters.

Subsection 38(2) of the NOHSC Act provides in part that, except as otherwise provided by a law other than that Act, a national standard or code of practice is of advisory character.

In December 1994 the framework for regulations developed from the national standards, with parts covering Competency Requirements and Certification Standards for Users and Operators of Industrial Equipment, and Occupational Noise, were approved and gazetted. These National Occupational Health and Safety (Commonwealth Employees) (National Standards) Regulations (the Regulations) were the first in a series of packages of regulations being developed. In May 1995 requirements of Manual Handling, based on the National Standard for Manual Handling were added.

Amendment to Part 6 and Part 7 of the Regulations now provides for the Hazardous Substances and Confined Spaces National Standards to be put on a legislative basis. The effect of the amendment to Part 6 will be to minimise the risk to the health and safety of workers due to exposure to hazardous substances and the effect of the amendment to Part 7 will be to eliminate, or if it is not reasonably practicable, to minimise the need for workers to enter confined spaces.

To ensure that employers properly identify, assess and control risks relating to the areas covered by the Regulations Part 1 of the Regulations is also amended by prescribing administrative

provisions, for the hazard identification and assessment, and the implementation of risk control measures, that are fundamental to all National Standards but are not covered in the OHS(CE) Act.

A minor amendment to Part 2 of the Regulations (Competency Requirements and Certification Standards for Users and Operators of Industrial Equipment) extends the date to allow compliance with regulation 2.07. This allows State and Territory certifying authorities additional time to finalise their certificate issuing arrangements. Under the provisions of regulations in Part 2 State and Territory issued certificates are recognised as valid in the Commonwealth.

Details of the Amendment Regulation are attached.

The amendments to Part 6 and Part 7 of the Regulations (proposed regulations 5, 6 and 8) are to commence on 30 April 1996. Other amendments, including Part 10 which contains definitions relating generally to the proposed regulations, (regulations 3, 4 and 7 of the amending regulations) are to commence from the date of Gazettal.

## **ATTACHMENT**

Details of the Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations (Amendment)

### **1 - COMMENCEMENT**

Amendments to Part 6 and Part 7 of the Regulations (regulations 5, 6 and 8 of the amending regulations) are to commence on 30 April 1996 and amendments to Part 1, Part 2 and Part 10 of the Regulations (regulations 3, 4 and 7 of the amending regulations) are to commence from the date of Gazettal.

### **2 - AMENDMENT**

The Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations be amended as set out in these regulations.

### **3 - PART 1 (Introduction)**

Regulation 1.05 prescribes that employers must ensure that hazards are identified and a risk assessment is carried out before work is undertaken that may give rise to a risk to health or safety.

Penalties are prescribed for contraventions of regulation 1.05.

Regulation 1.06 prescribes that employers must ensure that risks to health and safety are eliminated, and if this is not possible, minimised. A hierarchy of controls prescribes the minimisation of risks.

A penalty is prescribed for contraventions of regulation 1.06.

### **4 - PART 2 - Regulation 2.07A (Employee performing work without previously holding a certificate)**

Amendment to Regulation 2.07A extends the date after which an employee performing work of a regulation 2.03 occupation would be required to have a certificate of competency issued by a certifying authority. This extension provides for compliance with the requirements of regulation 2.07 during the additional time some states and territories require to finalise certificate issuing arrangements.

### **5 - PART 6 (Hazardous Substances)**

In this part regulations make provision for the use of hazardous substances.

#### **Division 1 -General Provisions Relating To All Hazardous Substances**

##### **Subdivision A - General Provisions Relating To Hazardous Substances**

Regulation 6.01 defines the object of Division 1 of Part 6, being to (ensure certain steps are taken that will) minimise the risk to the health of persons due to exposure to hazardous substances.

Regulation 6.02 provides for the Scope of the Division by firstly defining the range of substances included and by excluding a range of substances from it.

Regulation 6.03 defines a number of the terms included in Division 1 of the Regulations.

### **Subdivision B - Duties of a manufacturer, and a supplier of a hazardous substance for the purposes of the Commonwealth**

Regulation 6.04 prescribes the obligation of a manufacturer of a substance to determine whether the substance is a hazardous substance according to certain criteria and to keep a record of that determination.

Penalties are prescribed for contraventions of regulation 6.04.

Regulation 6.05 prescribes the obligation of a manufacturer of a hazardous substance to prepare a Material Safety Data Sheet, containing certain information which is to be accurate and kept up-to-date.

Penalties are prescribed for contraventions of regulation 6.05.

Regulation 6.06 prescribes the obligation of a supplier of a hazardous substance to provide a Material Safety Data Sheet to an employer and also sets out circumstances in which the requirement in subregulation (1) does not apply.

Penalties are prescribed for contraventions of regulation 6.06.

Regulation 6.07 prescribes the obligation of a supplier to label containers of hazardous substances with relevant health and safety information.

A penalty is prescribed for contraventions of regulation 6.07.

Regulation 6.08 prescribes the circumstances and manner in which manufacturers may disclose information about ingredients on labels and Material Safety Data Sheets.

Regulation 6.09 prescribes the circumstances and manner in which ingredient information is to be disclosed by a manufacturer in the case where an employer has requested it in a non-emergency situation.

Regulation 6.10 prescribes the obligation of a manufacturer to immediately disclose the chemical identity of an ingredient to an employer when a medical emergency exists.

A penalty is prescribed for contraventions of regulation 6.10.

Regulation 6.11 prescribes that a supplier provide on request certain information additional to that contained within MSDS (material safety data sheets) or on labels.

A penalty is prescribed for contraventions of regulation 6.11.

### **Subdivision C - Duties of an employer in relation to the use of hazardous substances**

Regulation 6.12 prescribes the obligation of a Commonwealth employer to obtain MSDS from suppliers and to ensure that the MSDS are made available to all employees who could be exposed to hazardous substances. The regulation contains exclusions for hazardous substances in retail packages.

Penalties are prescribed for contraventions of regulation 6.12.

Regulation 6.13 prescribes the obligation of a Commonwealth employer to ensure that the containers of hazardous substances are appropriately labelled.

Penalties are prescribed for contraventions of regulation 6.13.

Regulation 6.14 prescribes the obligation of a Commonwealth employer to ensure that a register is kept of all hazardous substances used or produced at work. The regulation contains exclusions for hazardous substances in retail packages.

Penalties are prescribed for contraventions of regulation 6.14.

Regulation 6.15 prescribes the obligation of an employer to provide information to employees about hazardous substances in enclosed systems.

A penalty is prescribed for contraventions of regulation 6.15.

Regulation 6.16 prescribes the obligation of a Commonwealth employer to ensure certain hazardous substances referred to in Schedule 3 are not used at work for certain purposes listed in a schedule.

A penalty is prescribed for contraventions of regulation 6.16.

Regulation 6.17 prescribes the obligation of an employer to ensure that risk assessments are carried out on work that involves potential exposure to a hazardous substance.

Penalties are prescribed for contraventions of regulation 6.17.

Regulation 6.18 prescribes the obligation of an employer to train employees who are likely to be exposed to a hazardous substance on the nature of the hazards, the level of risk and the control procedures devised for the use of the hazardous substance.

A penalty is prescribed for contraventions of regulation 6.18.

Regulation 6.19 prescribes the obligation of an employer to carry out risk control measures to limit the exposure of employees to a hazardous substance.

Penalties are prescribed for contraventions of regulation 6.19.

Regulation 6.20 prescribes the obligation of an employer to carry out atmospheric monitoring where an assessment indicates the need to obtain an estimate of the exposure of employees to a hazardous substance.

Penalties are prescribed for contraventions of regulation 6.20.

Regulation 6.21 prescribes the obligation of an employer to undertake, at their expense, health surveillance of those employees who are assessed as having been exposed to certain hazardous substances specified in Schedule 2.

Penalties are prescribed for contraventions of regulation 6.21.

Regulation 6.22 prescribes the obligation of an employer to keep records of assessment reports, atmospheric monitoring, health surveillance and training for certain periods of time.

Penalties are prescribed for contraventions of regulation 6.22.

Regulation 6.23 prescribes the obligation of an employer to keep all records relating to hazardous substances accessible to emergency services, Comcare and investigators.

A penalty is prescribed for contraventions of regulation 6.23.

### **Subdivision D - Employees' duties in relation to hazardous substances**

Regulation 6.24 prescribes that an employee must report to the employer anything that may affect the employer's compliance with the provisions of this Part.

A penalty is prescribed for contraventions of regulation 6.24.

## **6 - PART 7 (Confined Spaces)**

Regulation 7.01 defines the object of Part 7, being for manufacturers of confined spaces to eliminate, or if not reasonably practicable, to minimise the need to enter confined spaces, and for employers in control of confined spaces to eliminate, or if not reasonably practicable, to minimise risks to persons who enter or work in confined spaces.

Regulation 7.02 defines certain terms in relation to their meaning when used in Part 7.

Regulation 7.03 prescribes the requirements imposed on manufacturers of confined spaces.

A penalty is prescribed for contraventions of regulation 7.03

Regulation 7.04 prescribes the requirements imposed on employers and manufacturers in relation to the modification of confined spaces.

Penalties are prescribed for contraventions of regulation 7.04

Regulation 7.05 prescribes that employers must identify, confined spaces where work is to be carried out, the hazards associated with the work, and carry out a risk assessment that fulfils prescribed requirements. Provision is also made in this regulation for generic assessment of confined spaces of the same kind.

Penalties are prescribed for contraventions of regulation 7.05

Regulation 7.06 requires employers to eliminate, or if not reasonably practicable, to minimise the risks determined in the risk assessment carried out in accordance with regulation 7.05. Certain prescribed requirements are specified, where reasonably practicable, before a person enters a confined space, and where these can not be attained remedial action must be taken, appropriate equipment supplied and personal protective equipment provided and used. Appropriate signs and protective barriers have to be provided by employers, and in the case where a risk assessment is not yet undertaken a stand-by person is to wait outside the confined space during its occupation.

Penalties are prescribed for contraventions of regulation 7.06

Regulation 7.07 prescribes the requirements of equipment that employers are required to provide and ensure is used and maintained correctly.

Penalties are prescribed for contraventions of regulation 7.07

Regulation 7.08 prescribes the requirements on employers in relation to the issue, of written entry permits to control the access to confined spaces by the person specified.

Penalties are prescribed for contraventions of regulation 7.08

Regulation 7.09 limits the conditions under which work may be carried out in or on the outside of a confined space depending on the lower explosion level of flammable contaminants, a risk of fire or explosion, or other risk to the health or safety of a person. In certain specified cases evacuation is required.

Penalties are prescribed for contraventions of regulation 7.09

Regulation 7.10 prescribes the requirement for a stand-by person if the risk assessment indicates a risk to health and safety, and the need for rescue and first aid procedures to be planned established and rehearsed.

Penalties are prescribed for contraventions of regulation 7.10

Regulation 7.11 prescribes that employers must provide instruction and training for persons doing work in or on the surface of confined spaces and for other workers involved in activities related to confined spaces.

Penalties are prescribed for contraventions of regulation 7.11

Regulation 7.12 provides that employers must keep records of risk assessments, entry permits and employees training and specifies the time records must be kept.

A penalty is prescribed for contraventions of regulation 7.12

## **7 - PART 10 (Interpretation)**

Amendment to regulation 10.01 defines a number of words and terms used commonly in the Regulations.

## **8 - NEW SCHEDULES**

Two new schedules in relation to Part 6 (hazardous substances) are added.