

Safety, Rehabilitation and Compensation Act 1988 Amendment Regulations 2001 2001 No. 70

EXPLANATORY STATEMENT

Statutory Rules 2001 No. 70

Issued by authority of the Prime Minister

Public Employment (Consequential and Transitional) Amendment Act 1999

Occupational Health and Safety (Commonwealth Employment) Act 1991 Amendment Regulations 2001

Safety, Rehabilitation and Compensation Act 1988 Amendment Regulations 2001

The *Public Employment (Consequential and Transitional) Amendment Act 1999* (the Act) received the Royal Assent on 11 November 1999. The Act and the accompanying *Public Service Act 1999* (PS Act 1999) commenced on 5 December 1999.

The Act deals with consequential and transitional matters arising from the repeal of the *Public Service Act 1922* (the old Act) and its replacement with the PS Act 1999.

Subsection 14(1) of the Act provides that the Governor-General may make regulations in relation to matters required or permitted to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 14(5) of the Act provides that the regulations may:

- (a) amend other Acts, by making amendments of a kind that are consequential on the repeal of the old Act and its replacement by the PS Act 1999; and
- (b) make provision of a transitional or savings nature in relation to amendments made under paragraph (a).

Subsection 14(6) of the Act provides that, for the purposes of the *Amendments Incorporation Act 1905*, amendments made by regulations under paragraph 14(5)(a) of the Act are to be treated as if they had been made by an Act.

The Department of Employment, Workplace Relations and Small Business has identified a number of consequential amendments to the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (OHS(CE) Act) and the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) arising from the repeal of the old Act and its replacement with the PS Act 1999.

The Regulations amend the OHS(CE) Act and the SRC Act to replace references to 'Department' and 'Secretary' with references that are more appropriate to the structure of the Australian Public Service contained in the PS Act 1999 in relation to Departments, Statutory Agencies and Executive Agencies. The revisions also take into account the establishment of a separate Parliamentary Service under the *Parliamentary Service Act 1999*.

The OHS(CE) Act and the SRC Act currently refer to 'Departments' and 'Commonwealth authorities'. There is a range of bodies, some established by legislation, some by other means, that do not fit easily into either category. Before the passage of the PS Act 1999 these bodies were deemed to be a separate branch or part of the Australian Public Service and were treated

as if they were a separate Department. This meant that the obligations under the OHS(CE) Act and the SRC Act could be applied to these bodies.

The PS Act 1999 contains a definition of 'Department' which specifically excludes new categories of 'Executive Agency' and 'Statutory Agency'. While a new definition of 'Agency' includes these bodies as well as Departments, the provisions that allowed for the deeming of agencies as a separate Department have been removed. This creates difficulty in administering the OHS(CE) Act and the SRC Act.

To overcome these difficulties the Regulations remove references to 'Department' and 'Secretary of a Department' from the OHS(CE) Act and the SRC Act and replace them with the new terms 'Entity' and 'Principal Officer of an Entity'.

An 'Entity' means: an Agency within the meaning of the PS Act 1999 (but not a Commonwealth authority); a Parliamentary Department within the meaning of the *Parliamentary Service Act* 1999; or, a person, body, organisation or group of persons prescribed for this definition.

'Principal officer in relation to an Entity' means: the Agency Head within the meaning of the PS Act 1999; the Secretary of a Parliamentary Department; or the person prescribed as the principal officer of an Entity.

Details of the Regulations are set out in Attachments A and B.

ATTACHMENT A

DETAILS OF OCCUPATIONAL HEALTH AND SAFETY (COMMONWEALTH EMPLOYMENT) ACT 1991 AMENDMENT REGULATIONS 2001 (No. 1)

Regulation 1 - Name of Regulations

This is a formal provision that provides the name for the Regulations as the *Occupational Health and Safety (Commonwealth Employment) Act 1991 Amendment Regulations 2001 (No. 1)*.

Regulation 2 - Commencement

This regulation provides that the Regulations commence on gazettal.

Regulation 3 - Amendment of *Occupational Health and Safety (Commonwealth Employment) Act 1991*

Regulation 3 is a formal provision stating that the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (OHS(CE) Act) is amended by Schedule 1.

SCHEDULE 1 Amendments

1. Subsection 5(1), definition of *annual report*

This amendment substitutes a definition of 'annual report', replacing an existing reference to 'Department' with a reference to 'Entity'.

2. Subsection 5(1), definition of *Department*

This amendment omits the definition of 'Department' as the term is replaced with references to an 'Entity', throughout the OHS(CE) Act. The current definition of Department includes an 'Agency' as defined in the *Public Service Act 1999*. 'Agency' includes an Executive Agency, a Statutory Agency, and a Department. The current definition has the potential to create uncertainty in the context of the OHS(CE) Act where 'Department' and 'Commonwealth authority' are separately defined.

3. Subsection 5(1), after definition of *employing authority*

This amendment includes a new definition of 'Entity'. Under this proposed definition, 'Entity' would mean an Agency within the meaning of the PS Act 1999 that is not a Commonwealth authority; a Parliamentary Department within the meaning of the *Parliamentary Service Act 1999*; or, a person, body, organisation or group of persons prescribed for this definition.

4. Subsection 5(1), after definition of *principal officer*

This amendment includes a new definition of 'principal officer in relation to an Entity'. The definition ensures that: for an Agency, the Agency Head within the meaning of the PS Act 1999 will be the principal officer; for a Parliamentary Department, the Secretary within the *Parliamentary Service Act 1999* will be the principal officer; and, for other bodies that are prescribed as Entities, the principal officer will also be a prescribed person.

5. Subsection 5(1), definition of *Secretary*

This amendment omits the definition of 'Secretary'.

The current definition of Secretary refers to an 'Agency Head' within the meaning of the PS Act 1999. This includes the Head of an Executive Agency or Statutory Agency. This creates potential confusion when used in the OHS(CE) Act because the head of a Commonwealth authority could fall within the definition of a Secretary, yet is referred to throughout the Act as the principal officer of the Commonwealth authority.

The amendments replace references to 'Secretary' in the OHS(CE) Act with the expression 'principal officer of an Entity'.

6. Subsection 67A(1)

7. Subsection 67D(1)

8. Subsection 67E(1)

Part 4A of the OHS(CE) Act allows for the recovery of the cost of administering the Act from Departments and Commonwealth authorities. The amendments include corrected references to a principal officer of an or the Entity, as appropriate, instead of the existing references to 'Secretary of a Department', 'Secretary to a Department' and 'Secretary to the Department'.

9. Subsection 67E(2)

Section 67E provides for written estimates of amounts that are to be contributed for administering the Act. The amendment omits unnecessary references to 'Secretary or'. The existing references to principal officer in the subsection allow a principal officer of an Entity to ask for a review of a written estimate.

10. Paragraphs 67E(4)(b) 67F(1)(b)

11. Paragraphs 67F(1)(b)

The amendments include corrected references to 'the principal officer of the Entity', instead of the existing references to 'the Secretary to the Department'.

12. Subsection 67F(1)

Section 67F allows the Minister to review estimates of charges imposed under Part 4A of the OHS(CE) Act. The amendment omits an unnecessary reference to 'Secretary or'. The existing reference to principal officer in the subsection allow a principal officer of an Entity to ask for a review.

13. Paragraph 67H(1)(a)

Section 67H deals with notices that confirm that an estimated contribution toward the cost of administering the Act is to be paid. The amendment inserts a reference to 'the principal officer of the Entity', instead of the existing reference to 'the Secretary to the Department'.

14. Further amendments

The amendments replace a number of references to 'Secretary' and 'Department', throughout the Act with references to 'principal officer', 'principal officer of an Entity' and 'Entity', as appropriate.

ATTACHMENT B

DETAILS OF *SAFETY, REHABILITATION AND COMPENSATION ACT 1988*

AMENDMENT REGULATIONS 2001 (No. 1)

Regulation 1 - Name of Regulations

This is a formal provision that provides the name for the Regulations as the *Safety, Rehabilitation and Compensation Act 1988 Amendment Regulations 2001 (No. 1)*.

Regulation 2 - Commencement

This Regulation provides that that the Regulations commence on gazettal.

Regulation 3 - Amendment of *Safety, Rehabilitation and Compensation Act 1988*.

Regulation 3 is a formal provision stating that the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act) is amended by Schedule 1

SCHEDULE 1 Amendments

1. Subsection 4(1), after definition of *employee*

This amendment includes a new definition of 'Entity'. Under the definition 'Entity' would mean: an Agency within the meaning of the PS Act 1999 that is not a Commonwealth authority; a Parliamentary Department within the meaning of the *Parliamentary Service Act 1999*; or, a body, organisation or group of persons prescribed for this definition.

2. Subsection 4(1), after the second definition of *principal officer*

The SRC Act contains two definitions of 'principal officer', one relates to Commonwealth authorities and the other to licensed corporations. This amendment includes a new definition of 'principal officer in relation to an Entity'. The definition ensures that: for an Agency, an Agency Head within the meaning of the PS Act 1999 will be the principal officer; for a Parliamentary Department, a Secretary within the *Parliamentary Service Act 1999* will be the principal officer; and, for other bodies that are prescribed to be an Entity, the principal officer will also be the person prescribed.

3. Subsection 4(1), after definition of *rehabilitation authority*, paragraph (c)

This amendment includes the new references to 'Entity' and 'principal officer of the Entity' in the existing definition of 'rehabilitation authority'.

4. Section 41A

5. Paragraph 54(4)(b)

6. Section 70A

7. Subsection 71(1)

The amendments omit references to 'Secretary to a Department' and 'Secretary to the Department' and replace them with references to 'principal officer of an or the Entity', as appropriate.

8. Subsection 71(1)

Section 71 allows Comcare to obtain information that is relevant to a workers' compensation claim from Departments and Commonwealth authorities. This amendment omits a number of references to 'the Department', replacing them with references to 'the Entity'.

9. Subsection 71(1) and (2)

This amendment omits unnecessary references to 'Secretary or'.

10. Subsection 96C(2)

11. Subsection 96C(3)

12. Subsection 96D(1)

Division 4A of the SRC Act (sections 96-98) deals with premiums for financing the workers' compensation benefits available under that Act. Division 4A establishes a process whereby the Commission estimates premiums that will apply to Departments and Commonwealth authorities for each financial year. Departments and Commonwealth authorities can object to the estimates and ask for a review of them by the Commission or the Minister.

The amendments omit references to 'Secretary to each Department', 'Secretary of a Department' and 'Secretary to the Department' and replace them with references to 'principal officer of each or an or the Entity', as appropriate. The powers of Departments and agencies to object and ask for review are unchanged.

13. Subsection 96D(2)

This amendment omits unnecessary references to 'Secretary or'.

14. Paragraph 96D(4)(b)

15. Paragraph 96(1)(b)

The amendments omit references to 'Secretary to the Department' and replaces it with references to 'principal officer of the Entity'.

16. Subsection 96F(1)

This amendment omits an unnecessary reference to 'Secretary or'.

17. Paragraph 96G(2)(a)

This amendment omits a reference to 'Secretary to the Department' and replaces it with a reference to 'principal officer of the Entity'.

18. Paragraph 96G(2)(c) and subsection 96G(3)

This amendment omits unnecessary references to 'Secretary or'.

19. Subsection 96G(4)

This amendment omits a reference to 'Secretary to a Department' and replaces it with a reference to 'principal officer of an Entity'.

20. Subsection 96G(4)

This amendment omits an unnecessary reference to 'Secretary or'.

21. Subsection 96H(2) and paragraph 96H(5)(a)

22. Subsection 96J(3)(b)

23. Subsection 96K(1)

The amendments omit references to 'Secretary to a Department', 'Secretary to the Department' and 'Secretary of the relevant Department' and replace them with references to 'principal officer of an Entity' or 'principal officer of the relevant Entity', as appropriate.

24. Paragraph 96K(2)(b)

This amendment omits an unnecessary reference to 'Secretary or'.

25. Paragraph 98(1)(b) and subsection 98(2)

The proposed amendments omit references to 'Secretary to the Department' and replace them with references to 'principal officer of the Entity'.

26. Subsection 114A(2), definition of *appropriate officer*, paragraph (a)

27. Subsection 114A(2), definitions of *Department* and *Secretary*

Section 114A concerns circumstances where an employer will be required to inform Comcare that an employee, who is entitled to receive compensation under the SRC Act, has retired from employment. A substituted paragraph makes reference to employees of an 'Entity', and the 'principal officer of the Entity', instead of the 'Department' and 'Secretary of the Department'. The amendments also remove the definitions of the terms 'Department' and 'Secretary' contained in the section, as they are no longer used.

28. Further amendments

The amendments replace a number of references to 'Department', throughout the Act with references to 'Entity', as appropriate.