



Occupational Health and Safety (Commonwealth Employment) Amendment Regulations 2007 (No. 1)¹

Select Legislative Instrument 2007 No. 29

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 *Occupational Health and Safety (Commonwealth Employment) Act 1991*.

Dated 1 March 2007

P. M. JEFFERY
Governor-General

By His Excellency's Command

JOE HOCKEY
Minister for Employment and Workplace Relations

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1 Name of Regulations

These Regulations are the *Occupational Health and Safety (Commonwealth Employment) Amendment Regulations 2007 (No. 1)*.

2 Commencement

These Regulations commence as follows:

- (a) immediately after the commencement of items 1 to 50 of the *OHS and SRC Legislation Amendment Act 2006* — regulations 1, 2 and 3 and Schedule 1;
- (b) immediately after the commencement of Schedule 1 — regulation 4 and Schedule 2.

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

Schedule 1 amends the *Occupational Health and Safety (Commonwealth Employment) Regulations 1991*.

4 Further amendment of *Occupational Health and Safety (Commonwealth Employment) Regulations 1991*

Schedule 2 amends the *Occupational Health and Safety (Commonwealth Employment) Regulations 1991*.

Schedule 1 Amendments

(regulation 3)

[1] Subregulation 2 (1), after definition of *A.C.T. transitional staff*

insert

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

[2] Subregulation 2 (1), definitions of *nomination date* and *prescribed period*

omit

[3] Subregulation 2 (1), definition of *the Act*

omit

[4] After regulation 4A

insert

4B Application by employee representative to represent employees

For subsection 16B (2) of the Act, the form of an application by an employee representative is set out in Form 1A.

Note Under section 16B of the Act, an employee representative may apply to the Chief Executive Officer of Comcare, on behalf of an employee who wishes not to have his or her identity revealed, for the issue of a certificate to the effect that the employee representative is entitled to represent the employee in consultations held by an employer in the course of developing or varying health and safety management arrangements.

[5] Part 2

omit

[6] Part 3, heading

substitute

Part 3 Election of health and safety representatives

[7] Regulations 6 and 7

substitute

5 Application of Part 3

This Part applies if an employer is requested, under subsection 25A (5) of the Act, to conduct an election in accordance with regulations made under the Act.

6 Employer to appoint returning officer

- (1) The employer and employees must agree on the organisation which will conduct the election.

-
- (2) The employer must appoint a person, in writing, as a returning officer to conduct the election.
 - (3) The person who is appointed as a returning officer under subregulation (2) must be a member of the organisation mentioned in subregulation (1).
 - (4) The employer must give the returning officer a list of the candidates who have nominated for the vacant office of health and safety representative for the designated work group.
 - (5) The employer must make a copy of the list given to the returning officer publicly available for inspection by the employees in the designated work group.

[8] Part 3, Division 2

omit

[9] Paragraph 17 (b)

omit

in the form referred to in paragraph 8 (1) (a) and

[10] Paragraph 19 (3) (e)

omit

writing.

insert

writing; and

[11] After paragraph 19 (3) (e)

insert

- (f) retain the spoilt ballot-paper until the end of 6 months after notification of the result of the poll is given under regulation 29.

[12] Subregulation 23 (4)

omit

officer.

insert

officer in the manner prescribed in regulation 23A.

[13] After regulation 23

insert

23A Prescribed manner of drawing of lots

- (1) For subregulation 23 (4), lots are drawn in the prescribed manner if:
 - (a) as soon as practicable before the drawing of lots, the returning officer gives written notice of the time and place of the draw to each candidate; and
 - (b) the draw is carried out in the presence of:
 - (i) subject to subregulation (3) — each candidate, or a scrutineer of each candidate, who received the same number of votes; and
 - (ii) at least one person who is not the returning officer or a candidate or scrutineer mentioned in subparagraph (i); and
 - (c) the returning officer writes the name of each candidate who received the same number of votes on a separate piece of paper of the same colour, texture and size; and
 - (d) the papers and writing are displayed for examination by each person present at the draw; and
 - (e) each paper is folded in the same manner by the returning officer and placed by him or her in a container, the interior surface of which will not snag the papers; and
 - (f) the returning officer shakes or turns the container to mix the papers; and
 - (g) without looking into the container, a person referred to in subparagraph (b) (ii) draws a paper from the container.

-
- (2) The candidate whose name is written on the paper drawn in accordance with paragraph (1) (g) is the successful candidate.
 - (3) If a candidate who has been notified in accordance with paragraph (1) (a) of a drawing of lots, or a scrutineer of the candidate, does not attend the draw at the notified time and place, the draw may be conducted in his or her absence.

[14] Paragraph 26 (b)

omit

election.

insert

election; and

[15] After paragraph 26 (b)

insert

- (c) any spoilt ballot-papers for the election, retained under paragraph 19 (3) (f).

[16] Subregulation 29 (1)

substitute

- (1) As soon as practicable after the failure of an election, a returning officer must, in writing, notify the employer of all the employees in the designated work group to which the election relates of the failure of the election.

[17] **Part 5, heading**

substitute

Part 5 **Service of notices under the
Act and notification of
accidents and dangerous
occurrences**

[18] **Regulation 36A**

omit

and reporting

[19] **Regulation 37, heading**

substitute

37 **Service of notices**

[20] **Subregulation 37 (1)**

omit

or report

[21] **Subregulation 37 (4)**

omit

or report

[22] **Paragraph 37 (4) (a)**

omit

and reporting

[23] Subregulation 37 (5) (second occurring)

renumber as subregulation (6)

[24] Subregulation 37A (1)

omit

and reporting

[25] Subregulation 37B (1)

omit

and reporting

[26] After paragraph 37B (1) (b)

insert

(ba) whether the workplace is a major hazard facility within the meaning of the *Occupational Health and Safety (Safety Standards) Regulations 1994*; and

[27] After paragraph 37B (1) (d)

insert

(da) action that the employer has taken, or proposes to take, to prevent recurrence of an accident of the same kind; and

[28] Paragraph 37B (2) (a)

omit

paragraphs (1) (a), (b), (c) and (d),

insert

paragraphs (1) (a), (b), (ba), (c), (d) and (da),

[29] After subsection 37B (3)

insert

- (4) Any notice under subregulation (1) or (2) must be given, in writing, to Comcare.

Note Despite subregulation (3), notice of death must be given by telephone under regulation 37C.

[30] Regulations 37D to 37F

omit

[31] Regulation 37G

omit

report under regulation 37D ('report of accidents and dangerous occurrences to be given')

insert

notice under regulation 37A ('notice of accidents and dangerous occurrences to be given')

[32] Schedule 1, before Form 1

insert

Form 1A Application for issue of certificate

(regulation 4B)

*Occupational Health and Safety (Safety Arrangements)
Regulations 1991, regulation 4B*

Application for issue of certificate

All sections must be completed

Section 1 For employee representative

Name(s) of employee(s):

Name, address, contact numbers and e-mail address of employee representative:

Name and address of employer:

Name, address, contact numbers and e-mail address of contact person in employer organisation:

Description of proposed consultations:

Please provide sufficient detail about the development or variation of the health and safety management arrangements to make it clear which consultations the certificate is to cover.

Note This certificate becomes invalid at the request of the employee(s) covered by the certificate, or after 12 months from the date on which the certificate is issued, whichever occurs first.

Section 2 *For employees*

I/we confirm that I/we have asked (*name of employee representative*), which is entitled to represent me/us, to do so in the consultations described above.

I/we wish to remain anonymous during these consultations.

I/we confirm that I am/we are current members of (*name of organisation/association*).

| | | | | |
|------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|
| Signed | Signed | Signed | Signed | Signed |
| <i>signature of employee</i> | <i>signature of employee</i> | <i>signature of employee</i> | <i>signature of employee</i> | <i>signature of employee</i> |

Note If the certificate is to cover more than 5 employees, the signatures must be placed on a separate page and attached to this form.

Section 3 *For employee representative*

In compliance with the *Occupational Health and Safety Act 1991*, (*name and address of employee representative*) will not reveal the identity of the employee or employees listed above to any other person.

(signature for employee representative)

Section 4 For employee representative

(Name and address of employee representative) applies for the issue of a certificate to the effect that *(name of employee representative)* is entitled to represent the employee or employees listed in section 1 in the consultations described in section 1.

(signature for employee representative)

(date)

[33] Schedule 1, Form 1, note 2

omit

[34] Schedule 1, Form 1, note 7, third and fourth dot points

substitute

- the health and safety representative or an employee representative in relation to a designated work group when requested by an employee affected by the decision;
- if there is no designated work group — an employee representative when requested by an employee affected by the decision;

[35] Schedule 1, Form 2, note 4, third and fourth dot points

substitute

- the health and safety representative or an employee representative in relation to a designated work group when requested by an employee affected by the decision;
- if there is no designated work group — an employee representative when requested by an employee affected by the decision;

[36] Schedule 1, Form 2, note 6*omit*

The penalty for tampering with or removing this notice is \$3 000 or imprisonment for 6 months, or both.

insert

The maximum criminal penalty for breach of this section by a Government business enterprise, an employee of a Government business enterprise, an employee of a Commonwealth authority, an employee of a Commonwealth entity or an employee of a non-Commonwealth licensee employer is \$3 300 or imprisonment for 6 months, or both.

[37] Schedule 1, Form 3, note 2*omit*

The penalty for non-compliance with this requirement by a Government business enterprise is \$25 000.

insert

The maximum civil penalty for non-compliance with this requirement by a non-Commonwealth licensee employer, a Commonwealth entity or a Commonwealth Authority, including a Government business enterprise is \$27 500 (see Part 1 of Schedule 2 to the Act). The maximum criminal penalty for non-compliance with this requirement by a non-Commonwealth licensee employer or a Government business enterprise is \$55 000 (see Part 2 of Schedule 2 to the Act).

[38] Schedule 1, Form 3, note 3, third and fourth dot points*substitute*

- the health and safety representative or an employee representative in relation to a designated work group when requested by an employee affected by the decision;
- if there is no designated work group — an employee representative when requested by an employee affected by the decision;

[39] Schedule 1, Form 3, note 5

omit

The penalty for tampering with or removing this direction is \$3 000 or imprisonment for 6 months, or both.

insert

The maximum criminal penalty for breach of this section by a non-Commonwealth licensee employer, a Government business enterprise, an employee of a Government business enterprise, an employee of a Commonwealth authority, an employee of a Commonwealth entity or an employee of a non-Commonwealth licensee employer is \$3 300 or imprisonment for 6 months, or both.

[40] Schedule 1, Form 4, note 1

omit

The penalty for non-compliance with this requirement by a Government business enterprise is \$25 000.

insert

The maximum civil penalty for non-compliance with this requirement by a non-Commonwealth licensee employer, a Commonwealth entity or Commonwealth Authority, including a Government business enterprise, is \$27 500 (see Part 1 of Schedule 2 to the Act). The maximum criminal penalty for non-compliance with this requirement by a non-Commonwealth licensee employer or a Government business enterprise is \$55 000 (see Part 2 of Schedule 2 to the Act).

[41] Schedule 1, Form 4, note 5, third and fourth dot points

substitute

- the health and safety representative or an employee representative in relation to a designated work group when requested by an employee affected by the decision;
- if there is no designated work group — an employee representative when requested by an employee affected by the decision;

[42] Schedule 1, Form 4, note 7*omit*

The penalty for tampering with or removing this notice is \$3 000 or imprisonment for 6 months, or both.

insert

The maximum criminal penalty for breach of this section by a non-Commonwealth licensee employer, a Government business enterprise, an employee of a Government business enterprise, an employee of a Commonwealth authority, an employee of a Commonwealth entity or an employee of a non-Commonwealth licensee employer is \$3 300 or imprisonment for 6 months, or both.

[43] Schedule 1, Form 5, note 1*omit*

Under subsections 47 (6) and (7) of the Act,

insert

Under subsection 47 (6) of the Act,

[44] Schedule 1, Form 5, note 1*omit*

The penalty for non-compliance with this requirement by a government business enterprise or an employee of a Government business enterprise is \$10 000.

insert

The maximum civil penalty for non-compliance with this requirement by a non-Commonwealth licensee employer, a Government business enterprise, an employee of a non-Commonwealth licensee employer or an employee of a Government business enterprise is \$110 for every day of the breach (see Part 1 of Schedule 2 to the Act). The maximum criminal penalty for non-compliance with this requirement by a non-Commonwealth licensee employer, a Government business enterprise, an employee of a non-Commonwealth licensee employer or an employee of a Government business enterprise is \$99 000 (see Part 2 of Schedule 2 to the Act).

[45] Schedule 1, Form 5, note 3, third and fourth dot points

substitute

- the health and safety representative or an employee representative in relation to a designated work group when requested by an employee affected by the decision;
- if there is no designated work group — an employee representative when requested by an employee affected by the decision;

[46] Schedule 1, Form 5, note 5

omit

The penalty for tampering with or removing this notice is \$3 000 or imprisonment for 6 months, or both.

insert

The maximum criminal penalty for breach of this section by a non-Commonwealth licensee employer, a Government business enterprise, an employee of a non-Commonwealth licensee employer, an employee of a Government business enterprise, an employee of a Commonwealth authority or an employee of a Commonwealth entity is \$3 300 or imprisonment for 6 months, or both.

[47] Schedule 1, Form 5, after note 5

insert

Note 6 This Improvement Notice is being issued in accordance with section 47 of the Act on the grounds that a person is failing to comply with a provision of the Act or regulations, or has failed to comply with a provision of the Act or regulations, and is likely to do so again.

[48] Schedule 5, item 3

omit

[49] Schedule 5, subitem 7.1

omit

“the operator in relation to the work group,”

insert

“the operator in relation to the work group and”

[50] Schedule 5, subitem 7.2

omit

[51] Schedule 5, subitem 9.1

omit

Paragraph 34 (1) (a)

insert

Paragraph 34 (2) (a)

[52] Schedule 5, item 18, heading

substitute

18. Section 68 (Notification of accidents and dangerous occurrences)

[53] Schedule 5, subitem 18.1

omit

[54] Schedule 5, subitem 18.2

omit

Omit “the conduct of the undertaking, substitute the work performed for an employer by an employee”.

insert

Omit “the conduct of the undertaking”, substitute “the work performed for an employer by an employee”.

[55] Schedule 5, subitem 18.3*omit*

the employer must notify the Commission, and give it a report concerning the accident or occurrence, in accordance with the regulations.”.

insert

the employer must notify the Commission in accordance with the regulations.”.

[56] Further amendments

| <i>Provision</i> | <i>omit each mention of</i> | <i>insert</i> |
|---------------------------|--|--|
| <i>Regulations</i> | | |
| Paragraph 20 (1) (a) | ballots | ballot-papers |
| Paragraph 20 (1) (b) | ballots-papers | ballot-papers |
| <i>Schedule 1</i> | | |
| Form 1 | <i>Occupational Health and Safety (Commonwealth Employment) Regulations 1991</i> | <i>Occupational Health and Safety (Safety Arrangements) Regulations 1991</i> |
| Form 1 | <i>Occupational Health and Safety (Commonwealth Employment) Act 1991</i> | <i>Occupational Health and Safety Act 1991</i> |
| Form 1 | contravened | breached |
| Form 1 | contravention | breach |
| Form 1, note 1 | the Commission | Comcare |
| Form 1, note 5 | contravention | breach |
| Form 2 | <i>Occupational Health and Safety (Commonwealth Employment) Regulations 1991</i> | <i>Occupational Health and Safety (Safety Arrangements) Regulations 1991</i> |

| <i>Provision</i> | <i>omit each mention of</i> | <i>insert</i> |
|------------------|--|--|
| Form 2 | <i>Occupational Health and Safety (Commonwealth Employment) Act 1991</i> | <i>Occupational Health and Safety Act 1991</i> |
| Form 3 | <i>Occupational Health and Safety (Commonwealth Employment) Regulations 1991</i> | <i>Occupational Health and Safety (Safety Arrangements) Regulations 1991</i> |
| Form 3 | <i>Occupational Health and Safety (Commonwealth Employment) Act 1991</i> | <i>Occupational Health and Safety Act 1991</i> |
| Form 4 | <i>Occupational Health and Safety (Commonwealth Employment) Regulations 1991</i> | <i>Occupational Health and Safety (Safety Arrangements) Regulations 1991</i> |
| Form 4 | <i>Occupational Health and Safety (Commonwealth Employment) Act 1991</i> | <i>Occupational Health and Safety Act 1991</i> |
| Form 5 | <i>Occupational Health and Safety (Commonwealth Employment) Regulations 1991</i> | <i>Occupational Health and Safety (Safety Arrangements) Regulations 1991</i> |
| Form 5 | <i>Occupational Health and Safety (Commonwealth Employment) Act 1991</i> | <i>Occupational Health and Safety Act 1991</i> |
| Form 5 | contravention | breach |
| Form 5 | contravening | breaching |
| Form 5 | contravened | breached |
| 2007, 29 | <i>Occupational Health and Safety (Commonwealth Employment) Amendment Regulations 2007 (No. 1)</i> | 19 |

| <i>Provision</i> | <i>omit each mention of</i> | <i>insert</i> |
|--|--|--|
| Form 5 | contravene | breach |
| Schedule 2 | | |
| Schedule 2 | Occupational Health and Safety (Commonwealth Employment) Regulations | <i>Occupational Health and Safety (Safety Arrangements) Regulations 1991</i> |
| Schedule 2 | <i>Occupational Health and Safety (Commonwealth Employment) Act 1991</i> | <i>Occupational Health and Safety Act 1991</i> |
| Schedule 4 | | |
| Subclause 1.1, inserted section 23A, definition of employee | Occupational Health and Safety (Commonwealth Employment) Regulations | <i>Occupational Health and Safety (Safety Arrangements) Regulations 1991</i> |
| Schedule 5 | | |
| Subitem 1.1, inserted section 23A, definition of employee | Occupational Health and Safety (Commonwealth Employment) Regulations | <i>Occupational Health and Safety (Safety Arrangements) Regulations 1991</i> |

Schedule 2 **Further amendment of
*Occupational Health and
Safety (Commonwealth
Employment) Regulations
1991***

(regulation 4)

[1] Regulation 1

substitute

1 Name of Regulations [see Note 1]

These Regulations are the *Occupational Health and Safety
(Safety Arrangements) Regulations 1991*.

Note

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