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

Select Legislative Instrument 2007 No. 29 as amended

made under the

*Occupational Health and Safety Act 1991*

This compilation was prepared on 27 April 2007

[This Regulation was amended by SLI 2007 No. 95]

**Amendment from SLI 2007 No. 95**

[Schedule 1 (item 1) repeals and substitutes r. 2
Schedule 1 (item 1) commenced on 14 March 2007]

Prepared by the Office of Legislative Drafting and Publishing, Attorney-General’s Department, Canberra
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 Schedule 1 to the *OHS and SRC Legislation Amendment Act 2006* — regulations 1, 2 and 3 and items [1], [2], [3], [5], [23], [26], [27], [28], [29], [33], [36], [37], [39], [40], [42], [44], [46], [47], [53], [54] and [56] of Schedule 1;

(b) immediately after the commencement of regulations 1, 2 and 3 and items [1], [2], [3], [5], [23], [26], [27], [28], [29], [33], [36], [37], [39], [40], [42], [44], [46], [47], [53], [54] and [56] of Schedule 1 — regulation 4 and Schedule 2;

(c) on 15 March 2007 — the remainder.

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*. 

2 *Occupational Health and Safety (Commonwealth Employment) Amendment Regulations 2007 (No. 1)*
Schedule 1 Amendments
(regulation 3)

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

[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
Part 3, heading

substitute

Part 3 Election of health and safety representatives

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.

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


*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.


*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

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

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[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**

(occupation 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
signature of employee

Signed
signature of employee

Signed
signature of employee

Signed
signature of employee

Signed
signature of employee

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 employee 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**

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**Schedule 2**

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**Schedule 4**

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### Schedule 5

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

Federal Register of Legislative Instruments F2007C00276
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.