

Model Safe Work Regulations

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Part 1 Preliminary

1 Citation

These Regulations may be cited as the *Safe Work Regulations 2009*.

2 Commencement

These Regulations commence on 1 January 2012.

3 Definition

In these Regulations:

the Act means the *Safe Work Act 2009*.

Part 2 Consultation

Division 1 Election of health and safety representatives

4 Negotiation of agreement for work groups

Negotiations concerning the determination of work groups must be directed at ensuring that the workers are grouped in a way that:

- (a) best and most conveniently enables the interests of the workers relating to occupational health and safety to be represented and safeguarded; and
- (b) best takes account of the need for a health and safety representative for the work group to be accessible to each worker in the work group so that the health and safety representative can perform his or her role effectively.

5 Matters to be taken into account in negotiations

The following matters must be taken into account in negotiations for determining work groups:

- (a) the number of workers;
 - (b) the nature of each type of work carried out by the workers;
 - (c) the number and grouping of workers who carry out the same or similar types of work;
 - (d) the areas or places where each type of work is carried out;
 - (e) the extent to which any worker must move from place to place while at work;
 - (f) the diversity of workers and their work;
 - (g) the nature of any risks to health and safety at the workplace or workplaces;
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- (h) the pattern of work carried out by workers, for example whether the work is full-time, part-time, casual or short-term work;
- (i) the times at which work is carried out;
- (j) any arrangements at the workplace or workplaces relating to overtime or shift work;
- (k) any other relevant matter.

6 Variation of work groups

- (1) The parties to an agreement to determine a work group may at any time negotiate a variation of the agreement.
- (2) Regulations 4 and 5 must be taken into account in determining the variation of the agreement.

7 Procedures for election of health and safety representatives

- (1) An election for a health and safety representative for a work group must comply with the following procedures:
 - (a) the person conducting the business or undertaking or the persons conducting the relevant businesses or undertakings must be consulted about the election before the arrangements are finalised;
 - (b) notice of the election must be displayed in a prominent place:
 - (i) at the principal place of business of the business or undertaking; and
 - (ii) at any other workplace that is appropriate taking into account the constitution of the relevant work group or work groups;

- (c) the notice must be displayed at least 2 weeks before the date of the election;
 - (d) the notice must:
 - (i) invite nomination of candidates;
 - (ii) state the closing date for nominations (which must be reasonable in the circumstances);
 - (iii) state the date and times for the conduct of the election and the place or places where the election is to be held;
 - (e) the election must be conducted in a manner that is consistent with recognised democratic principles;
 - (f) the person conducting the election must advise the person conducting the business or undertaking of the results of the election, as soon as practicable after those results are determined.
- (2) The person conducting the business or undertaking must notify the workers in the affected work group or work groups of the results of an election notified under subregulation (1).
- (3) Elections relating to more than one work group may be held together as a single process.

Division 2 Training for health and safety representatives

8 Training for health and safety representatives

A health and safety representative is entitled to attend the following training in occupational health and safety:

- (a) an initial course of training of 5 days;

- (b) one day's refresher training each year, with the first refresher training commencing 1 year after the initial training;
- (c) any further training agreed between the worker and the person conducting the business or undertaking.

Division 3 Issue resolution

9 Default procedure for issue resolution

- (1) This regulation sets out the default procedure for issue resolution for the purposes of section 73(3) of the Act.
- (2) The parties to the issue must first determine the nature and scope of the issue.
- (3) The matters to be considered by the parties to the issue include:
 - (a) the degree and immediacy of the risk to workers and other persons;
 - (b) the ability of the parties to minimise the risk (including the ability to influence others who may be able to minimise the risk);
 - (c) any relevant accepted industry practice;
 - (d) whether any other persons may be reasonably required to be involved to assist the early resolution of the issue.
- (4) If the issue is resolved the details of the issue and its resolution must be set out in writing to the satisfaction of all the parties.
- (5) As soon as is reasonably possible after the resolution of an issue, the person conducting the business or undertaking must ensure that:

- (a) details of the agreement between the parties are brought to the attention of the workers affected by the issue; and
 - (b) a copy of the agreement is forwarded to any relevant health and safety representative.
- (6) Any of the parties to the resolution of an issue may forward a copy of the agreement between the parties to any union or employer organisation that represents the party.

10 Minimum requirements for issue resolution

- (1) This section sets out the minimum requirements for an agreed procedure for issue resolution under Division 4 of Part 4 of the Act.
 - (2) The agreed procedure must be set out in writing.
 - (3) The agreed procedure must include, as a minimum, terms that:
 - (a) require the parties to the issue to first determine the nature and scope of the issue; and
 - (b) specify the relevant matters to be considered by the parties; and
 - (c) specify a process for reporting the outcome of the issue resolution procedure to the workers affected by the issue.
 - (4) An agreed procedure must not prohibit the disclosure by a party of the outcome of the issue resolution procedure to any union or employer organisation that represents the party.
 - (5) If an agreed procedure does not comply with a required minimum requirement, the corresponding provision in regulation 9 is taken to be a term of the agreement.
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Part 3 Incident notification

11 Notice of incidents

- (1) A notice to the regulator under section 37 of the Act must be given:
 - (a) by telephone; or
 - (b) in writing.

Example

The written notice can be given by facsimile, email or other electronic means.

- (2) A person giving notice by telephone must:
 - (a) give the details of the incident requested by the regulator; and
 - (b) if required by the regulator, give a written notice of the incident within 48 hours of that requirement being made.
- (3) A written notice must be in a form, or contain the details, approved by the regulator.
- (4) If the regulator receives a notice by telephone and a request for a written notice is not made, the regulator must give the person conducting the business or undertaking:
 - (a) details of the information received; or
 - (b) an acknowledgement of receiving the notice.

12 Records of incidents

A person conducting a business or undertaking must keep a record of each notifiable incident for at least 5 years from the day that notice of the incident is given to the regulator under section 37 of the Act.

Part 4 Workplace entry by OHS entry permit holders

13 Training requirements for OHS entry permits

- (1) The prescribed training for the purposes of section 122 of the Act is training in relation to the following matters:
 - (a) the right of entry requirements under Part 6 of the Act;
 - (b) the issue resolution requirements under the Act and these regulations;
 - (c) the duties under, and the framework of, the Act and these regulations;
 - (d) the application of the principle of risk management;
 - (e) the relationship between the Act and these regulations and the Fair Work Act or any relevant State or Territory industrial laws.
- (2) The training must include any guidance material published by the regulator in relation to the Act and these regulations.

14 Form of OHS entry permit

An OHS entry permit must include:

- (a) the section of the Act under which the OHS entry permit is issued;
- (b) the full name of the OHS entry permit holder;
- (c) the name of the union that the OHS entry permit holder represents;

- (d) a statement that the OHS entry permit holder is entitled, while the OHS entry permit is in force, to exercise the rights given to the OHS entry permit holder under the Act;
- (e) the date of issue of the OHS entry permit;
- (f) the expiry date for the OHS entry permit;
- (g) the signature of the OHS entry permit holder;
- (h) any conditions on the OHS entry permit.

15 Notice of entry—general

A notice of entry under section 108, 109 or 111 of the Act must include:

- (a) the full name of the OHS entry permit holder;
- (b) the name of the union that the OHS entry permit holder represents;
- (c) the section of the Act under which the OHS entry permit is issued;
- (d) the name and address of the workplace entered or proposed to be entered;
- (e) the date of entry or proposed entry.

16 Additional requirements—entry under section 108

A notice of entry under section 108 of the Act must also include:

- (a) the particulars of the suspected contravention to which the notice relates;
 - (b) the section of the Act under which the entry is authorised;
 - (c) a declaration stating:
 - (i) that the union is entitled to represent the industrial interests of a worker who carries out work at the workplace
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entered and is a member, or eligible to be a member, of that union;

- (ii) the provision in the union's rules that entitles the union to represent the industrial interests of that worker;
- (iii) that the suspected contravention relates to, or affects, that worker.

17 Additional requirements—entry under section 109

A notice of entry under section 109 of the Act must also include:

- (a) the particulars of the suspected contravention to which the notice relates;
- (b) the section of the Act under which the proposed entry is authorised;
- (c) a list of the records or documents proposed to be inspected;
- (d) a declaration stating:
 - (i) that the union is entitled to represent the industrial interests of a worker who carries out work at the workplace proposed to be entered and is a member, or eligible to be a member, of that union;
 - (ii) the provision in the union's rules that entitles the union to represent the industrial interests of that worker;
 - (iii) that the suspected contravention relates to, or affects, that worker.

18 Additional requirements—entry under section 111

A notice of entry under section 111 of the Act must also include:

- (a) the section of the Act under which the entry is authorised;
 - (b) a declaration stating:
 - (i) that the union is entitled to represent the industrial interests of a worker who carries out work at the workplace proposed to be entered and is a member, or eligible to be a member, of that union;
 - (ii) the provision in the union's rules that entitles the union to represent the industrial interests of that worker.
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