

Western Australia

Public Sector Management Act 1994

**Public Sector Management (General)  
Regulations 1994**

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## **Public Sector Management (General) Regulations 1994**

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## **Public Sector Management (General) Regulations 1994**

### **1. Citation**

These regulations may be cited as the *Public Sector Management (General) Regulations 1994*<sup>1</sup>.

### **2. Commencement**

These regulations come into operation on the day on which Part 9 of the Act comes into operation<sup>1</sup>.

### **3. Prescribed independent departments for purposes of section 3(3) of Act**

For the purposes of section 3(3) of the Act —

- (a) the department designated as the Office of the Environmental Protection Authority; and
- (b) the department designated as the Department of Planning,

are prescribed as independent departments.

*[Regulation 3 amended in Gazette 22 Oct 2010 p. 5224.]*

### **4. Prescribed independent departments for purposes of section 5(2)(a) of Act**

For the purposes of section 5(2)(a) of the Act —

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- (a) the department designated as the Office of the Environmental Protection Authority; and
- (b) the department designated as the Department of Planning,

are prescribed as independent departments.

*[Regulation 4 amended in Gazette 22 Oct 2010 p. 5224.]*

**4A. Deemed chief executive officers for purposes of section 4(5) of Act**

- (1) For the purposes of section 4(5) of the Act, the Director within the meaning of the *Director of Public Prosecutions Act 1991* is deemed to be the chief executive officer of the department designated under section 35 of the Act as the Office of the Director of Public Prosecutions.
- (2) For the purposes of section 4(5) of the Act, the Inspector of Custodial Services under the *Inspector of Custodial Services Act 2003* is deemed to be the chief executive officer of the department designated under section 35 of the Act as the Office of the Inspector of Custodial Services.

*[Regulation 4A inserted in Gazette 18 Aug 1995 p. 3775; amended in Gazette 16 Jun 2000 p. 2958; No. 75 of 2003 s. 56(1).]*

**4B. Deemed chief employee for purposes of section 4(5) of Act**

For the purposes of section 4(5) of the Act, the Director within the meaning of the *Health Services (Conciliation and Review) Act 1995* is deemed to be the chief employee of the Office of Health Review established by section 6(1) of that Act.

*[Regulation 4B inserted in Gazette 7 Jun 1996 p. 2414.]*

**5. Employing authorities for purposes of section 5(3) of Act**

For the purposes of section 5(3) of the Act —

*[(a) deleted]*

- (b) the Commissioner within the meaning of the *Equal Opportunity Act 1984* is the employing authority of the officers referred to in section 79 of that Act; and
- (c) the Law Reform Commission of Western Australia established under the *Law Reform Commission Act 1972* is the employing authority of the public service officer who is for the time being —
  - (i) appointed within the meaning of section 14 of that Act; and
  - (ii) known as the Executive Officer and Director of Research of that Commission; and
- (d) The State Housing Commission established under the *State Housing Act 1946* (now repealed) and preserved and continued under the *Housing Act 1980* is the employing authority of public service officers who are for the time being appointed, or whose services are for the time being co-opted, within the meaning of —
  - (i) section 15 of the *Government Employees' Housing Act 1964*; or
  - (ii) section 15 of the *Industrial and Commercial Employees' Housing Act 1973*<sup>3</sup>.

[Regulation 5 amended in Gazette 18 Aug 1995 p. 3775; 7 Jun 1996 p. 2414; 19 Nov 1999 p. 5792; 29 Dec 2006 p. 5920.]

**5A. Prescribed human resource management activities for purposes of section 21(1)(a)(ii) of Act**

For the purposes of section 21(1)(a)(ii) of the Act, temporary deployment (acting) and grievance resolution are prescribed as human resource management activities relating to employees.

[Regulation 5A inserted in Gazette 19 Sep 1997 p. 5289.]

**6. Prescribed salary level for purposes of section 43(1) of Act**

For the purposes of section 43(1) of the Act, the prescribed salary level is the level of the maximum salary payable in respect of a level 8 officer under the award —

- (a) made by the Industrial Commission under the *Industrial Relations Act 1979*; and
- (b) known as the Public Service Award 1992.

**7. Prescribed amount for purposes of section 56(3)(a) of Act**

For the purposes of section 56(3)(a) of the Act, the prescribed amount is an amount equal to the amount of remuneration payable to the executive officer concerned for the period of 12 weeks immediately preceding the day on which remuneration ceased to be payable to that executive officer.

**8. Prescribed amount for purposes of section 56(5)(b) of Act**

For the purposes of section 56(5)(b) of the Act —

- (a) the prescribed maximum amount is an amount equal to the amount of remuneration payable to the executive officer concerned for the period of 12 weeks immediately preceding the day on which remuneration ceased to be payable to that executive officer; and
- (b) the prescribed minimum amount is an amount equal to the amount of remuneration payable to the executive officer concerned for the last day on which remuneration is payable to that executive officer.

**8A. Prescribed arrangements for purposes of section 57(1)(b) of Act in relation to CEOs**

- (1) In this regulation —  
*class*, in relation to a non-SAT CEO, means the classification of the officer determined by the Minister under a classification system approved by the Minister under section 3(2) of the Act;



**non-SAT CEO** means a chief executive officer whose office is not a SAT office;

**SAT office** means an office referred to in section 6(1)(d) or (e) of the *Salaries and Allowances Act 1975*;

**Tribunal** means the Salaries and Allowances Tribunal established by the *Salaries and Allowances Act 1975*.

- (2) For the purposes of section 57(1)(b) of the Act, the remuneration to be accorded a non-SAT CEO under a contract of employment between the CEO and the CEO's employing authority must be in accordance with this regulation.
- (3) Subject to subregulations (6), (8) and (9), the remuneration to be accorded a non-SAT CEO of a class referred to in Column 1 of the Table to this subregulation must not exceed the remuneration determined by the Tribunal to be paid to a SAT office-holder at a salary point, as described by the Tribunal, specified in Column 2.

**Table**

| <b>Column 1</b>            | <b>Column 2</b> |
|----------------------------|-----------------|
| Below class 1              | Group 1 minimum |
| Class 1 or Group 1 minimum | Group 1 minimum |
| Class 2 or Group 1 maximum | Group 1 maximum |
| Class 3 or Group 2 minimum | Group 2 minimum |
| Class 4 or Group 2 maximum | Group 2 maximum |
| Group 3 minimum            | Group 3 minimum |
| Group 3 maximum            | Group 3 maximum |
| Group 4 minimum            | Group 4 minimum |
| Group 4 maximum            | Group 4 maximum |

- (4) If the remuneration to be paid to the SAT office-holder referred to in subregulation (3) consists of more than one component, then each component of the remuneration to be accorded the non-SAT CEO must not exceed the corresponding component of the remuneration to be paid to the holder of the SAT office.

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- (5) If a determination of the Tribunal that is in force provides that the SAT office-holder referred to in subregulation (3) is to be paid an allowance if the holder's performance in the office meets eligibility conditions determined by the Tribunal (***personal merit allowance***), then the remuneration to be accorded the non-SAT CEO may include an allowance, not exceeding that personal merit allowance, to be paid if the non-SAT CEO's employing authority is satisfied that the CEO meets similar conditions.
- (6) If the CEO's employing authority is satisfied that the remuneration otherwise payable under this regulation would be insufficient in order to recruit and retain a particular person as a particular non-SAT CEO, then —
  - (a) subregulations (3) and (4) do not apply; and
  - (b) the remuneration to be accorded that non-SAT CEO may be as determined by the employing authority.
- (7) Subregulations (8) and (9) apply to a person who was employed in a SAT office as a chief executive officer under a contract of employment but before the contract of employment expired, was transferred under section 50(1)(a)(ii) of the Act to the performance of other functions in the Senior Executive Service.
- (8) If a person is a person to whom this subregulation applies, for the purpose of section 57(1)(b) of the Act, the remuneration to be accorded the person under a contract of employment entered into between the person and an employing authority must not exceed the remuneration determined by the Tribunal to be paid to a SAT office-holder at the salary point equivalent to the salary point at which the person was remunerated immediately before he or she ceased to hold the SAT office.
- (9) If the remuneration to be paid to the SAT office-holder referred to in subregulation (8) consists of more than one component, then each component of the remuneration to be accorded a person to whom this subregulation applies must not exceed the

corresponding component of the remuneration to be paid to the holder of the SAT office.

*[Regulation 8A inserted in Gazette 19 Nov 1999 p. 5792-4; amended in Gazette 5 Apr 2002 p. 1833-4; 16 Sep 2005 p. 4347-8.]*

**9. Prescribed period for purposes of section 59(4) of Act**

For the purposes of section 59(4) of the Act, the prescribed period is a period equal to the period in respect of which the amount of compensation paid to the person concerned under section 59 of the Act was calculated.

**10. Prescribed class for purposes of section 64(5)(b) of Act**

For the purposes of section 64(5)(b) of the Act, the prescribed classes are —

- (a) the class constituted by persons holding clerical, administrative and keyboard offices, posts or positions, appointment to the base grade of which is dependent on the satisfactory completion of the test known as the Public Service Clerical Aptitude Test;
- (b) the class constituted by persons holding appointments made on the grounds of locality in the non-metropolitan area, after merit selection processes have been undergone;
- (c) the class constituted by persons holding appointments made under the terms and conditions of a cadetship;
- (d) the class constituted by persons holding appointments as a trainee graduate;
- (e) the class constituted by persons employed through any recruitment programme conducted by the Workforce Management and Development Office; and
- (f) the class constituted by persons holding appointments as field officers in accordance with section 43(1) of the *Conservation and Land Management Act 1984*, after a recruitment programme has been conducted by the

Department of Conservation and Land Management and merit selection processes have been undergone.

*[Regulation 10 amended in Gazette 9 Dec 1994 p. 6714-15; 22 Apr 1997 p. 2061.]*

**11. Prescribed period for purposes of section 70(6) of Act**

For the purposes of section 70(6) of the Act, the prescribed period is a period equal to the period in respect of which the amount of compensation paid to the person concerned under section 70 of the Act was calculated.

**12. Prescribed amount for purposes of section 72(2)(b) of Act**

For the purposes of section 72(2)(b) of the Act, the prescribed amount is an amount equal to the amount of salary payable to the ministerial officer concerned for the period of 12 weeks immediately preceding the day on which remuneration ceased to be payable to that ministerial officer.

**13. Prescribed salary level for purposes of section 75(2)(a) of Act**

For the purposes of section 75(2)(a) of the Act, the prescribed salary level is the level of the maximum salary payable in respect of a level 5 office under the award —

- (a) made by the Industrial Commission under the *Industrial Relations Act 1979*; and
- (b) known as the Public Service Award 1992.

**14. Prescribed classes of employees for purposes of section 76 of Act**

For the purposes of section 76(1)(b) of the Act, the following classes of employees are prescribed —

- (a) persons employed under the *Education Act 1928*<sup>5</sup> in the Western Australian Department of Training; and

- (b) academic and other staff, and other officers, employed under section 31(1)(a) of the *Colleges Act 1978*<sup>6</sup> at Karratha College, being a college established under section 6 of that Act.

*[Regulation 14 inserted in Gazette 1 Oct 1996 p. 5112.]*

**15. Prescribed notice for purposes of section 81(1) of Act**

For the purposes of section 81(1) of the Act, the prescribed notice is notice of all the allegations made against the person referred to in that section which are relevant to the breach of discipline which the employing authority suspects that person of having committed.

**16. Prescribed procedures for purposes of section 81(2) of Act**

For the purposes of section 81(2) of the Act, the prescribed procedures in accordance with which a suspected breach of discipline is to be investigated are that the respondent is notified in writing —

- (a) that an investigation of the suspected breach of discipline is being initiated and of the purpose of that investigation;
- (b) that the investigation referred to in paragraph (a) will lead to a finding being made in respect of, and may lead to action being taken against, the respondent under Division 3 of Part 5 of the Act and of the range of possible findings and possible action;
- (c) of the steps which may be taken in the conduct of that investigation prior to the making of a finding, and the taking of any action, against the respondent;
- (d) of any interviews or meetings which the respondent is required to attend; and
- (e) of his or her right to have present during any interviews or meetings attended by the respondent a representative capable of providing advice to the respondent.

**17. Prescribed procedures for purposes of section 83(1)(a)(i), (ii) or (iii) of Act**

For the purposes of section 83(1)(a)(i), (ii) or (iii) of the Act, the prescribed procedures in accordance with which the action referred to in that section is to be taken against the respondent are that the respondent —

- (a) is to be notified in writing of the finding that a minor breach of discipline has been committed by the respondent;
- (b) is to be notified in writing of the action proposed to be taken under that section against the respondent;
- (c) is to be given a reasonable opportunity to make written or oral representations to the relevant employing authority concerning that action; and
- (d) is to be notified in writing of —
  - (i) the action taken under that section against the respondent; and
  - (ii) the right of objection under section 85 available to the respondent in respect of that finding or action.

**18. Prescribed procedures for purposes of section 83(1)(b) and 85 of Act**

For the purposes of section 83(1)(b) and 85 of the Act, the procedures by which a respondent is to be charged with an alleged breach of discipline are that the employing authority must ensure, and must make a record of, the receipt of the written charge by the respondent.

**19. Prescribed details of breaches of discipline for purposes of section 86(1)(b) of Act**

- (1) For the purposes of section 86(1)(b) of the Act, the prescribed details of the alleged breach of discipline are a written description of the breach of discipline with which the

respondent is charged framed in such a manner and with such particulars of —

- (a) the alleged time and place of commission of that breach of discipline;
- (b) the other persons, if any, involved in committing that breach of discipline;
- (c) the person, if any, against whom that breach of discipline was committed; and
- (d) the property, if any, in respect of which that breach of discipline was committed,

as are necessary to inform the respondent of the nature of that breach of discipline.

- (2) If the time or place of commission of an alleged breach of discipline is unknown, it is sufficient for the purposes of subregulation (1)(a) to give particulars of the period or area within which that breach of discipline was committed.

**20. Prescribed procedures for purposes of section 86(4)(a) of Act**

For the purposes of section 86(4)(a) of the Act, the prescribed procedures in accordance with which a disciplinary inquiry is to be held are that the respondent is notified in writing —

- (a) that a disciplinary inquiry into the charge is being held and of the purpose of that disciplinary inquiry;
- (b) that the disciplinary inquiry referred to in paragraph (a) will lead to a finding being made, and may lead to action being taken, against the respondent under Division 3 of Part 5 of the Act and of the range of possible findings and possible action;
- (c) of the steps which may be taken in the conduct of that disciplinary inquiry prior to the making of a finding, and the taking of any action, against the respondent;

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- (d) of any interviews or meetings which the respondent is required to attend; and
- (e) of his or her right to have present during any interviews or meetings attended by the respondent a representative capable of providing advice to the respondent.

**21. Prescribed period for purposes of section 90 of Act**

For the purposes of section 90 of the Act, the prescribed period is 14 days.

**22. Prescribed offences for purposes of section 92(1)(b) of Act**

For the purposes of section 92(1)(b) of the Act, offences —

- (a) which involve —
  - (i) fraud or dishonesty; or
  - (ii) wilful damage to, or destruction of, the property of others;
- (b) which are committed against the persons of others; or
- (c) which are punishable on conviction by imprisonment for 2 years or more,

are prescribed offences.

**23. Prescribed period for purposes of section 92(2) of Act**

For the purposes of section 92(2) of the Act, the prescribed period is 14 days.

**24. Prescribed matters for purposes of section 99(c) of Act**

- (1) Matters concerning the management or structure of the Public Sector that are dealt with by —
  - (a) Parts 5, 6 or 7 of the Act; or
  - (b) the *Occupational Safety and Health Act 1984*<sup>7</sup>,are prescribed matters for the purposes of section 99(c) of the Act.



- (2) For the purposes of the management of the Public Sector, compensatory loadings or allowances payable for loss or absence of indefinite tenure of offices, posts or other employment in the Public Sector, other than —
- (a) offices referred to in section 6(1)(d) and (e) of the *Salaries and Allowances Act 1975*; and
  - (b) offices of non-SAT CEOs, as defined in regulation 8A,
- are prescribed matters for the purposes of section 99(c) of the Act.

*[Regulation 24 amended in Gazette 27 Sep 1996 p. 4826-7; 19 Nov 1999 p. 5794.]*

## **25. Prescribed personnel records**

- (1) A public sector body is required to establish, keep and maintain for each permanent or contract employee, including trainees and cadets, personnel records containing (as a minimum) the following details —
- (a) information relating to the appointment of the employee;
  - (b) the employment history of the employee;
  - (c) details of the employee's performance and any disciplinary matters relating to that employee; and
  - (d) information relating to the cessation of employment of that employee.
- (2) Where an employee is employed as a part of the Public Service, the following details, in addition to those set out in subregulation (1), are to be recorded —
- (a) the name and date of birth of the employee;
  - (b) the date of appointment of that employee to the Public Service; and
  - (c) the title and classification of the office held by that employee.

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- (3) When an employee moves from one public sector body to another public sector body —
- (a) the body to which the employee moves is required to seek the transfer the employee's record from the previous body; and
  - (b) the body from which the employee moves is required to transfer the employee's record to the new body.

**26. Prescribed period for purposes of clause 13(14) of Schedule 5 to Act**

For the purposes of clause 13(14) of Schedule 5 to the Act, the prescribed period is a period equal to the period in respect of which the amount of compensation paid to the person concerned under clause 13(11) of that Schedule was calculated.

**Notes**

<sup>1</sup> This is a compilation of the *Public Sector Management (General) Regulations 1994* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

**Compilation table**

| <b>Citation</b>   | <b>Gazettal</b>   | <b>Commencement</b>  |
|---|---|--|
| <i>Public Sector Management (General) Regulations 1994</i>  | 16 Sep 1994<br>p. 4798-803  | 1 Oct 1994 (see r. 2 and <i>Gazette</i><br>30 Sep 1994 p. 4948)  |
| <i>Public Sector Management (General) Amendment Regulations 1994</i>  | 9 Dec 1994<br>p. 6714-15  | 9 Dec 1994   |
| <i>Public Sector Management (General) Amendment Regulations 1995</i>  | 18 Aug 1995<br>p. 3774-5  | 18 Aug 1995  |
| <i>Public Sector Management (General) Amendment Regulations 1996</i>  | 7 Jun 1996<br>p. 2413-14  | 7 Jun 1996   |
| <i>Public Sector Management (General) Amendment Regulations (No. 4) 1996</i>  | 27 Sep 1996<br>p. 4826-7<br>(Correction<br>8 Oct 1996<br>p. 5313) | 27 Sep 1996  |
| <i>Public Sector Management (General) Amendment Regulations (No. 3) 1996</i>  | 1 Oct 1996<br>p. 5112   | 1 Oct 1996   |
| <i>Public Sector Management (General) Amendment Regulations 1997</i>  | 22 Apr 1997<br>p. 2061  | 22 Apr 1997  |
| <i>Public Sector Management (General) Amendment Regulations (No. 2) 1997</i>  | 19 Sep 1997<br>p. 5289  | 19 Sep 1997  |
| <b>Reprint of the <i>Public Sector Management (General) Regulations 1994</i> as at 18 Dec 1997</b> (includes amendments listed above) |   |  |
| <i>Public Sector Management (General) Amendment Regulations 1999</i>  | 19 Nov 1999<br>p. 5792-4  | 19 Nov 1999  |
| <i>Public Sector Management (General) Amendment Regulations 2000</i>  | 16 Jun 2000<br>p. 2957-8  | 18 Jun 2000 (see r. 2 and <i>Gazette</i><br>16 Jun 2000 p. 2939) |
| <i>Public Sector Management (General) Amendment Regulations 2002</i>  | 5 Apr 2002<br>p. 1833-4   | 5 Apr 2002   |
| <b>Reprint 2: The <i>Public Sector Management (General) Regulations 1994</i> as at 25 Jul 2003</b> (includes amendments listed above) |   |  |
| <i>Inspector of Custodial Services Act 2003</i> s. 56(1)  |   | 15 Dec 2003 (see s. 2)<br>assented to 15 Dec 2003                |

| <b>Citation</b>  | <b>Gazettal</b>          | <b>Commencement</b>  |
|--|--------------------------|--|
| <i>Public Sector Management (General) Amendment Regulations 2005</i>         | 16 Sep 2005<br>p. 4347-8 | 16 Sep 2005  |
| <i>Public Sector Management (General) Amendment Regulations 2006</i>         | 29 Dec 2006<br>p. 5920   | 1 Jan 2007 (see r. 2 and <i>Gazette</i> 8 Dec 2006 p. 5369)  |
| <i>Public Sector Management (General) Amendment Regulations (No. 2) 2010</i> | 22 Oct 2010<br>p. 5223-4 | r. 1 and 2: 22 Oct 2010<br>(see r. 2(a));<br>Regulations other than r. 1 and 2:<br>23 Oct 2010 (see r. 2(b)) |

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### **Provisions that have not come into operation**

| <b>Short title</b>  | <b>Number and year</b>  | <b>Assent</b> | <b>Commencement</b>  |
|---|-------------------------|---------------|--|
| <i>Public Sector Management (General) Amendment Regulations 2010 Pt. 2 and 3</i> <sup>2</sup> | 5 Nov 2010<br>p. 5570-3 | 1 Oct 2010    | Pt. 2: 1 Dec 2010 (see r. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563);<br>Pt. 3: 28 Mar 2011 (see r. 2(c) and <i>Gazette</i> 5 Nov 2010 p. 5563) |

<sup>2</sup> On the date as at which this compilation was prepared, the *Public Sector Management (General) Amendment Regulations 2010 Pt. 2 and 3* had not come into operation. They read as follows:

## **Part 2 — Amendments relating to *Public Sector Reform Act 2010* Part 2**

### **4. Regulation 8A amended**

In regulation 8A(1) delete the definition of *class* and insert:

*class*, in relation to a non-SAT CEO, means the classification of the officer determined under a classification system specified in a Commissioner's instruction;

5. **Regulation 24 deleted**

Delete regulation 24.

**Part 3 — Amendments relating to *Public Sector Reform Act 2010* Part 3**

6. **Regulation 15 replaced**

Delete regulation 15 and insert:

15. **Serious offence: section 80A of the Act**

For the purposes of paragraph (d) of the definition of *serious offence* in section 80A of the Act, the following offences are prescribed —

- (a) offences which involve —
  - (i) fraud or dishonesty; or
  - (ii) wilful damage to or destruction of, the property of others;
- (b) offences which are committed against the persons of others;
- (c) offences which are punishable on conviction by imprisonment for 2 years or more.

7. **Regulation 16 amended**

In regulation 16 delete “Act,” and insert:

Act, as continued under Schedule 8 clause 2(1) of the Act,

8. **Regulation 17 amended**

In regulation 17 delete “Act,” and insert:

Act, as continued under Schedule 8 clause 2(1) of the Act,

9. **Regulation 18 amended**

In regulation 18 delete “Act,” and insert:

Act, as continued under Schedule 8 clause 2(1) of the Act,

**10. Regulation 19 amended**

In regulation 19 delete “Act,” and insert:

Act, as continued under Schedule 8 clause 2(1) of the Act,

**11. Regulation 20 amended**

In regulation 20 delete “Act,” and insert:

Act, as continued under Schedule 8 clause 2(1) of the Act,

**12. Regulation 21 amended**

In regulation 21 delete “Act,” and insert:

Act, as continued under Schedule 8 clause 2(1) of the Act,

**13. Regulation 22 amended**

In regulation 22 delete “Act,” and insert:

Act, as continued under Schedule 8 clause 2(1) of the Act,

**14. Regulation 23 amended**

In regulation 23 delete “Act,” and insert:

Act, as continued under Schedule 8 clause 2(1) of the Act,

<sup>3</sup> Repealed by the *Country Housing Act 1998*.

<sup>4</sup> Footnote no longer applicable.

<sup>5</sup> Repealed by the *School Education Act 1999*.

<sup>6</sup> Repealed by the *Vocational Education and Training Act 1996*.

<sup>7</sup> Formerly referred to the *Occupational Health, Safety and Welfare Act 1984*, the short title of which was changed to the *Occupational Safety and Health Act 1984* by the *Occupational Safety and Health Legislation Amendment Act 1995*. Reference changed under the *Reprints Act 1984* s. 7(3)(gb).

