

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2007 No. 95**

Issued by the authority of the Minister for Employment and Workplace Relations

*Occupational Health and Safety Act 1991*

*Occupational Health and Safety (Safety Arrangements) Amendment Regulations 2007 (No. 1)*

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

Subsection 82(1) of the *Occupational Health and Safety Act 1991* (the Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

#### **Occupational Health and Safety (Safety Arrangements) Amendment Regulations 2007 (No. 1)**

Section 14 of the Act deals with the application of the Act in circumstances where a workplace is controlled by a contractor for construction or maintenance purposes. Paragraph 14(1)(c) provides that Parts 1 and 2 of the Act (including the general duty of care provisions) continue to apply to work performed by employees at such a workplace. The remaining provisions of the Act (including the workplace arrangements in Part 3, the enforcement provisions in Part 4 and Schedule 2 and the incident notification requirements in Part 5) only apply if provided for in the Principal Regulations.

The Regulations extend the workplace arrangements in Part 3, the enforcement provisions in Part 4 and Schedule 2 and the incident notification requirements in Part 5 to work performed by employees at a workplace controlled by a contractor for construction or maintenance purposes.

Section 15 of the Act deals with the application of the Act to employees working in non-Commonwealth premises. In these circumstances the employer has general duties to employees working in such premises but the remaining provisions of the Act only apply if provided for in the Principal Regulations. The incident notification requirements in Part 5 have been prescribed.

The Regulations also extend the workplace arrangements in Part 3 and the enforcement provisions in Part 4 and Schedule 2 to employees working in non-Commonwealth premises.

Details of these Regulations are at [Attachment A](#).

The Regulations commenced on the day after they were registered.

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

The *Occupational Health and Safety (Commonwealth Employment) Amendment Regulations 2007 (No.1) Amendment Regulations 2007 (No. 1)* amend the commencement provision of the *Occupational Health and Safety (Commonwealth Employment) Amendment Regulations 2007 (No. 1)* (the Amendment Regulations). The Amendment Regulations were made on 1 March 2007 and amended the *Occupational Health and Safety (Commonwealth Employment) Regulations 1991*. The latter are now known as the *Occupational Health and Safety (Safety Arrangements) Regulations 1991* (the Principal Regulations).

These Regulations remedy a drafting error in the commencement provisions of the Amendment Regulations. Schedule 1 to the Amendment Regulations is expressed to commence ‘immediately after the commencement of items 1 to 50 of the *OHS and SRC Legislation Amendment Act 2006*’ (the Coverage Act) – that is, on 14 March 2007. However, a number of the amendments contained in Schedule 1 are related to, and dependent on, the *Occupational Health and Safety (Commonwealth Employment) Amendment Act 2006* (the Amendment Act) which commenced by Proclamation on 15 March 2007.

In anticipating the provisions of the Amendment Act by one day, those parts of the Amendment Regulations were inoperative notwithstanding they were validly made. The Regulations rectify the error by amending the commencement provision of the Amendment Regulations to ensure that those items that relate to the Amendment Act commence at the same time as the Amendment Act.

The Regulations are taken to have commenced on the commencement of items 1 to 50 of the *OHS and SRC Legislation Amendment Act 2006* – that is, on 14 March 2007. The Regulations are technical amendments that give effect to provisions in the Amendment Act and advice from the Australian Government Solicitor indicates they do not appear to disadvantage or otherwise impose liabilities on a person.

Details of these Regulations are at [Attachment B](#).

Both Regulations are of a minor or machinery nature and do not substantially alter existing arrangements and therefore consultations were not necessary in accordance with section 18 of the *Legislative Instruments Act 2003*.

The Act specifies no conditions that need to be satisfied before the power to make either of the Regulations may be exercised.

The Regulations are legislative instruments for the purposes of the *Legislative Instruments Act 2003*.

**ATTACHMENT A****Details of the Occupational Health and Safety (Safety Arrangements) Amendment Regulations 2007 (No. 1)****Regulation 1 – Name of Regulations**

This identifies the Regulations as the Occupational Health and Safety (Safety Arrangements) Amendment Regulations 2007 (No. 1).

**Regulation 2 – Commencement**

Regulation 2 provides the Regulations commence on the day after they are registered.

**Regulation 3 – Amendment of Occupational Health and Safety (Safety Arrangements) Regulations 1991**

This provides that the Occupational Health and Safety (Safety Arrangements) Regulations 1991 (the Principal Regulations) are amended as set out in Schedule 1.

**Schedule 1 – Amendments****Item [1]      Regulation 40**

This item substitutes new regulations 39A and 40 for current regulation 40. Regulation 39A extends the application of the workplace arrangements in Part 3, the enforcement provisions in Part 4 and Schedule 2 and the incident notification requirements in Part 5 to the Act to work performed by employees at a workplace controlled by a contractor for construction or maintenance purposes. Regulation 40 extends the application of Parts 3 and 4 and Schedule 2 to the Act to employees working in non-Commonwealth licensee premises.

The workplace arrangements in Part 3 of the Act are concerned with the establishment and functions of health and safety representatives and committees. The enforcement provisions in the Act relate to the powers of investigators to investigate and make reports (Part 4) and the civil and criminal penalties that apply in respect of the contraventions of the Act (Schedule 2). The incident notification requirements in Part 5 specify the need to notify the Safety, Rehabilitation and Compensation Commission of accidents and dangerous occurrences and to retain records of such incidents.

**ATTACHMENT B****Details of the Occupational Health and Safety (Commonwealth Employment) Amendment Regulations 2007 (No. 1) Amendment Regulations 2007 (No. 1)****Regulation 1 – Name of Regulations**

Regulation 1 provides that the name of these Regulations is the *Occupational Health and Safety (Commonwealth Employment) Amendment Regulations 2007 (No. 1) Amendment Regulations 2007 (No. 1)*.

**Regulation 2 – Commencement**

Regulation 2 provides that these Regulations are taken to have commenced on the commencement of items 1 to 50 of the *OHS and SRC Legislation Amendment Act 2006*.

**Regulation 3 – Amendment of Occupational Health and Safety (Commonwealth Employment) Amendment Regulations 2007 (No. 1)**

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

**Schedule 1 – Amendment****Item [1] Regulation 2**

This item substitutes a new regulation 2 dealing with the commencement of the various items of Amendment Regulations. The effect of this amendment is that:

- the operative provisions (Regulations 1, 2 and 3) and the amendments to the Principal Regulations that are unrelated to the Amendment Act (items [1]-[3], [5], [23], [26]-[29], [33], [36], [37], [39], [40], [42], [44], [46], [47], [53], [54] and [56] of Schedule 1) commence immediately after commencement of items 1 to 50 of the *OHS and SRC Legislation Amendment Act 2006*, that is on 14 March 2007, as originally provided for in the Amendment Regulations;
- regulation 4 and Schedule 2 to the Amendment Regulations – which change the name of the Principal Regulations as a consequence of the amendments made by the *OHS and SRC Legislation Amendment Act 2006* – commence immediately after the provisions outlined above, as originally provided for in the Amendment Regulations; and
- the remaining provisions of the Amendment Regulations – items [4], [6]-[22], [24], [25], [30]-[32], [34], [35], [38], [41], [43], [45], [48]-[52] and [55] of Schedule 1 – which all relate to the Amendment Act – commence on 15 March 2007 to coincide with the commencement of the Amendment Act.