EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 63

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


Safe Work Australia (Consequential and Transitional Provisions) Regulations 2010

Schedule 3 to the Safe Work Australia (Consequential and Transitional Provisions) Act 2008 (the CTP Act) provides Safe Work Australia (SWA) with the ability to declare national standards and codes of practice relating to work health and safety. Before declaring a national standard or code of practice, Schedule 3 requires SWA to complete certain preparatory steps. These steps are primarily concerned with consultation.

Subitem 7(1) of Schedule 3 to the CTP Act provides that the Governor-General may make regulations prescribing matters: required or permitted by the CTP Act; or necessary or convenient to be prescribed for carrying out or giving effect to the Act. Further subitem 7(2) provides that regulations may be made prescribing matters of a transitional nature relating to the amendments or repeals made by the CTP Act.

The preparatory steps imposed on SWA in Schedule 3 replicate the preparatory processes previously adopted by SWA’s predecessor, the Australian Safety and Compensation Council (the ASCC). Schedule 3 does not, however, contain provisions that address the situation where the ASCC had completed various preparatory steps but had not had the opportunity to declare a national standard or code of practice before being superseded by SWA.

The Regulations amend the operation of Schedule 3 to the CTP Act by providing that, where the ASCC had taken steps preparatory to declaring national standards and codes of practice, those steps may be attributed to SWA.

In the absence of the Regulations, Schedule 3 would require SWA to repeat any preparatory steps previously undertaken by the ASCC, resulting in unnecessary, and potentially costly, duplication.

Details of the Regulations are included in the Attachment.

The Regulations are a legislative instrument for the purposes of the Legislative Instruments Act 2003.

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

A preliminary assessment was made under the Office of Best Practice Regulation guidelines which indicated that a Regulation Impact State was not required. The Regulations have no compliance cost to business or impact on business and individuals or the economy. Safe Work Australia was consulted on the making of the Regulations.
Details of the Safe Work Australia (Consequential and Transitional Provisions) Regulations 2010

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the Safe Work Australia (Consequential and Transitional Provisions) Regulations 2010.

Regulation 2 – Commencement

This regulation provides that the Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Regulation 3 – Definitions

This regulation provides for the definitions of ‘Act’ and ‘commencement day.’

Regulation 4 – Transitional provisions – actions taken by Australian Safety and Compensation Council before commencement day

This regulation amends the operation of Schedule 3 to the CTP Act by providing that, where the Australian Safety and Compensation Council (ASCC) had taken steps preparatory to declaring national standards or codes of practice, those steps may be attributed to SWA.

Subregulation 4(1) provides that regulation 4 applies if:
- before 1 November 2009, the ASCC had undertaken any action under the Australian Workplace Safety Standards Act 2005 in relation to the declaration of a national standard or code of practice (standard or code); and
- the ASCC had not declared the standard or code before 1 November 2009; and
- Safe Work Australia (SWA) now wishes to declare a standard or code that is the same or substantially the same as that on which the ASCC worked.

Subregulation 4(2) provides that for the purposes of items 2 and 3 of Schedule 3 to the CPT Act, and having regard to paragraph 4(1)(c), action taken by the ASCC preparatory to declaring a standard or code is to be attributed to SWA.