EXPLANATORY STATEMENT

Issued by the authority of the
Minister for Tertiary Education, Skills, Jobs and Workplace Relations.

Work Health and Safety Act 2011
Subsection 7(2F)

Work Health and Safety (Class of worker) Notice 2011 (No. 1)

The Work Health and Safety Act 2011 (WHS Act), is the Commonwealth’s new occupational health and safety Act which, from 1 January 2012, will replace the Occupational Health and Safety Act 1991. The WHS Act aims to provide a balanced and nationally consistent framework to secure the health and safety of workers and workplaces in a number ways, including by:

- protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work;
- providing for fair and effective workplace representation;
- encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices;
- securing compliance with the Act through effective and appropriate compliance and enforcement measures; and
- providing a framework for continuous improvement and progressively higher standards of work health and safety.

Section 7 of the WHS Act contains a number of definitions of ‘worker’. Specifically, subsection 7(2F) provides that:

The Minister may, by instrument in writing, declare that a person of a class specified in the declaration is, for the purposes of this Act:
(a) a worker; and
(b) at work throughout the time specified in the declaration; and
(c) carrying out work for a business or undertaking conducted by the Commonwealth, or a public authority specified in the declaration, when the person is performing functions of the kind specified in the declaration; and
(d) an employee of the Commonwealth, or a public authority specified in the declaration.

In this legislative instrument the Minister has declared that a person who volunteers and is accepted into the Air Training Corps, Australian Cadet Corps or Naval Reserve Cadets is:
- a worker
- at work throughout the time that the person is engaged in activities as a member of the relevant body; and
- carrying out work for a business or undertaking for the Commonwealth when the person is engaged in activities connected with the relevant body.

This means that the cadets will be covered by, and have the protection of, the WHS Act when participating in the activities of their relevant body.
This instrument has been made in response to comments received during consultation on the exposure draft of the WHS Act earlier this year and replaces a similar instrument made under section 9(5) of the *Occupational Health and Safety Act 1991* that deemed cadets to be ‘employees’ for the purpose of that Act. The OHS Act (and any instruments made under that Act) will be repealed upon commencement of the WHS Act on 1 January 2012.

The Office of Best Practice Regulation confirmed that a Regulation Impact Statement was not required for this instrument. It does not impact on business or have any compliance costs for business [Ref. 13325].

This notice is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The instrument commences on 1 January 2012.