This declaration repeals and replaces the Work Health and Safety (Class of worker) Notice 2011 (No.1) because Item 3 of that notice failed to reflect name changes made to the cadet forces. In this notice the name changes are updated and corrected.

The Work Health and Safety Act 2011 (the WHS Act) is the Commonwealth’s new occupational health and safety Act which, from 1 January 2012, replaced the Occupational Health and Safety Act 1991 (the OHS Act). 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 Australian Air Force Cadets, Australian Army Cadets or Australian Navy 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.

The Work Health and Safety (Class of worker) Notice 2011 (No.1) was made in response to comments received during consultation on the exposure draft of the WHS Act and replaced a similar instrument made under section 9(5) of the OHS Act that deemed cadets to be ‘employees’ for the purpose of that Act. The OHS Act (and any instruments made under that Act) was 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 the Work Health and Safety (Class of worker) Notice 2011 (No.1) because it was not deemed to impact on business or to have any compliance costs for business [Ref. 13325]. Because the substantive content of this notice is the same as the Work Health and Safety (Class of worker) Notice 2011 (No.1) the Office of Best Practice Regulation has advised that a Regulation Impact Statement is similarly unnecessary.

This notice is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. The instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.
Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Work Health and Safety (Class of worker) Notice 2012 (No. 1)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Legislative Instrument

In the Work Health and Safety (Class of worker) Notice 2012 (No. 1), the Minister has declared that a person who volunteers and is accepted into the Australian Air Force Cadets, Australian Army Cadets or Australian Navy 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 Work Health and Safety Act 2011 (the WHS Act) when participating in the activities of their relevant body.

Human rights implications

This legislative instrument engages Article 7 of International Covenant on Economic, Social and Cultural Rights, which recognises the right of everyone to the enjoyment of just and favourable conditions of work that ensure safe and healthy working conditions. This particular right is advanced by the Work Health and Safety (Class of worker) Notice 2012 (No. 1) because it ensures that volunteer cadets will be covered by the WHS Act, which requires persons conducting a business or undertaking to ensure, so far as is reasonably practicable, the health and safety of workers and others who may be affected by the carrying out of work.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Bill Shorten, Minister for Employment and Workplace Relations