

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2012 No. 218**

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

Subject - *Work Health and Safety Act 2011*

*Fair Work Act 2009*

*Work Health and Safety Legislation Amendment Regulation 2012 (No. 1)*

Section 276 of the *Work Health and Safety Act 2011* (the WHS Act) and section 796 of the *Fair Work Act 2009* (the FW Act) provide, in part, that the Governor-General may make regulations prescribing matters required or permitted by those Acts, or necessary or convenient to be prescribed for carrying out or giving effect to those Acts.

The WHS Act and *Work Health and Safety Regulations 2011* (the WHS Regulations) commenced on 1 January 2012 and implement the Model Work Health and Safety Act and Regulations (the Model WHS legislation) within the Commonwealth jurisdiction. The Model WHS legislation has been developed in accordance with the Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety and is intended to be mirrored in all jurisdictions as part of a harmonised scheme of work health and safety (WHS) laws.

The *Work Health and Safety Legislation Amendment Regulation 2012 (No. 1)* (the Regulation) makes amendments to the WHS Regulations and the *Fair Work Regulations 2009* (the FW Regulations) to address issues identified during the implementation of the new WHS laws.

#### **Amendment to WHS Regulations**

The Regulation amends the WHS Regulations to enable a Health and Safety Representative (HSR) who has previously completed training under the repealed *Occupational Health and Safety Act 1991* (OHS Act) to attend a shortened bridging course approved by Comcare, as an alternative to the full five day training course prescribed in Regulation 21 of the WHS Regulations.

HSRs are elected by workers to represent them in relation to WHS in the workplace and are conferred with various rights and powers to enable them to effectively undertake this role. An HSR must complete a course of prescribed training before they may exercise some of these powers, namely the power to issue a provisional improvement notice (requiring a person conducting a business or undertaking to remedy or prevent a contravention of the WHS Act) or to direct that unsafe work cease (if there is reasonable concern that the work would expose a worker to a risk to health or safety).

Subitem 10(1) of schedule 2 of the *Work Health and Safety (Transitional and Consequential Provisions) Act 2011* deems a HSR who has completed training under the OHS Act to have

completed the training required under sections 85(6) or 90(4) of the WHS Act before they exercise these specific powers. Subitem 10(2) of this schedule provides a 12 month grace period for HSRs to complete updated training under the new WHS laws.

After the expiry of the grace period (on 1 January 2013), an HSR would be required to complete a course of training that the HSR is entitled under the WHS regulations to attend (see subsections 72(1)(b), 85(6), 90(4)).

Regulation 21 of the WHS Regulations provides that an HSR is entitled to attend an initial training course of five days and one day's refresher training each year. As such, an HSR who had already completed training under the repealed OHS Act would be required to attend the initial training course of five days, after the 12 month grace period.

Subitem 1(1) of schedule 1 of the Regulation amends subregulation 21(1) of the WHS Regulations to allow HSRs who had completed training under the repealed OHS Act to attend a shortened bridging course as an alternative to the initial five days of training.

Subitem 1(1A) of the Regulation enables the regulator to approve a course of training in WHS as a bridging course for the purposes of subregulation 21(2) of the WHS Regulations.

The introduction of a shortened bridging course for HSRs will mitigate previously unforeseen training costs for employers and ensure HSRs are able to access training so they may continue to exercise their powers under the new WHS laws.

These amendments have been developed in response to concerns raised by employers who have an obligation to train large numbers of HSRs in their workplace, and following consultation with the Australian Council of Trade Unions (ACTU). WHS regulators from each state and territory have also been consulted through the Work Health Safety Implementation Temporary Advisory Group (TAG) at Safe Work Australia.

#### Amendment to FW Regulations

The Regulation also amends the FW Regulations to enable the President of Fair Work Australia (FWA) to delegate the power to issue a WHS entry permit under section 134 of the WHS Act. A WHS permit enables a permit holder to enter a workplace to inquire into a suspected contravention of the WHS Act.

Section 134 of the WHS Act empowers the 'authorising authority', which is FWA, to issue a WHS entry permit to a member of a union. Subsection 625(2) of the FW Act provides that the President may delegate a function or power of FWA that is prescribed in the regulations to a person referred to in subsection 625(3).

Subitems 1, 3 and 4 of schedule 2 of the Regulation amend regulation 5.01 of the FW Regulations to enable the President of FWA to delegate FWA's power to issue a WHS entry permit under the WHS Act to senior staff in FWA referred to in subsection 625(3) of the FW Act. The delegation of FWA's power to issue WHS entry permits will result in greater administrative efficiency for FWA.

Schedule 2 of the Regulation also updates the list of state and territory WHS laws in regulation 3.25 of the FW Regulations to reflect the passage of new WHS laws in NSW, Queensland, ACT, NT and Tasmania. Although the *Work Health and Safety Act 2012* (Tas) will commence on 1 January 2013, the inclusion of the Act as part of this amendment to

regulation 3.25 avoids the need to make further changes to the WHS Regulations following commencement. The Department of Justice in Tasmania has been consulted and has confirmed that it supports this amendment.

In accordance with the requirements of the *Multilateral Inter-Governmental Agreement for a National Workplace Relations System for the Private Sector*, relevant state and territory bodies have been consulted in relation to the amendment to the FW Regulations.

The WHS Act and the FW Act do not impose any conditions that need to be satisfied before the power to make the proposed Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required.

The Regulation commences 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 Legislation Amendment Regulation 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**

The *Work Health and Safety Legislation Amendment Regulation 2012 (No. 1)* (the Regulation) makes amendments to the *Work Health and Safety Regulations 2011* (the WHS Regulations) and the *Fair Work Regulations 2009* (the FW Regulations) to address issues identified during the implementation of the new Work Health and Safety (WHS) laws. In particular, the Regulation:

- amends the WHS Regulations to enable a Health and Safety Representative (HSR) who has previously completed training under the repealed *Occupational Health and Safety Act 1991* to attend a shortened bridging course approved by Comcare, as an alternative to the full five day training course prescribed in Regulation 21 of the WHS Regulations.
- amends the FW Regulations to enable the President of Fair Work Australia (FWA) to delegate the power to issue a WHS entry permit under section 134 of the WHS Act to senior staff in FWA referred to in subsection 625(3) of the FW Act.
- amends the FW Regulations to update a list of State and Territory OHS laws for the purposes of subsection 494(3) of the FW Act, to reflect those jurisdictions which have passed the model WHS laws i.e. NSW, Queensland, ACT and NT.

#### **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 Legislation Amendment Regulation 2012 (No. 1)* because it allows HSRs to continue to exercise all of their powers and functions under the new WHS laws and ultimately enables HSRs to perform their role in promoting and ensuring the health and safety of workers in the workplace.

#### **Conclusion**

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

**William Richard Shorten, Minister for Employment and Workplace Relations**