EXPLANATORY STATEMENT

Work Health and Safety Regulations 2011

Notice of a Disallowable Instrument

Work Health and Safety Exemption to Regulation 217

The purpose of the instrument, to which this Explanatory Statement relates, is to grant an exemption from compliance with regulation 217 of the Work Health and Safety Regulations 2011 (the WHS Regulations) to a broad class of persons.

Regulation 684 provides that the Regulator may exempt a person or class of persons from compliance with any of the regulations in the WHS Regulations.

In accordance with subregulation 692(2) of the WHS Regulations, an exemption is a Legislative Instrument within the meaning of the Legislative Instruments Act 2003.

Regulation 217 of the WHS Regulations requires the person with management or control of earthmoving machinery at a workplace to ensure that the machinery is not used unless it is securely fitted with a protective structure.

This Instrument exempts a class of persons, being all persons with the management and control of earthmoving machinery at a workplace, from complying with the requirements in regulation 217. There are no conditions on the exemption.

The Heads of Workplace Safety Authorities (HWSA), a group comprised of the General Managers (or their representatives) of the peak bodies responsible for the regulation and administration of occupational health and safety in Australia and New Zealand, has recommended the exemption from compliance with regulation 217 contained in this instrument. The recommendation followed stakeholders’ representations to all jurisdictions from the Civil Contractors Association, the Master Builders Association, the Hire and Rental Industry Association, the John Holland Group as well as the Australian Industry Group, regarding the practical difficulties in complying with the requirements of regulation 217 in all circumstances.

A human right engaged by this instrument, included in the section 3 definition of human rights in the Human Rights (Parliamentary Scrutiny) Act 2011, is the right to safe and healthy working conditions contained in article 7 of the International Covenant on Economic, Social and Cultural Rights. HWSA and Comcare consider that the WHS Regulations contain sufficient regulations, exclusive of regulation 217, which apply to the operation of earthmoving machinery, to ensure safe and healthy working conditions (specifically regulations 214 and 215). Consequently, Comcare considers that this instrument is compatible with humans rights as it does not diminish, in any significant way, the safety protections afforded to workers using earthmoving machinery.

The Office of Best Practice Regulation (OBPR) has advised that no Regulation Impact Statement (RIS) is required for this change.

The exemption is taken to have commenced on the day after it is registered on the Federal Register of Legislative Instruments.