EXPLANATORY STATEMENT

Work Health and Safety Regulations 2011

Amendment Notice

Work Health and Safety Exemptions (Diving by members of the Australian Defence Force) (July 2014) Amendment Notice

Introduction
The purpose of the instrument to which this Explanatory Statement relates, is to amend the exemptions granted under the legislative instrument, Work Health and Safety Exemptions (Diving by members of the Australian Defence Force) (July 2014) (the original exemption instrument), which came into force on 23 July 2014.

Regulation 697 of the Work Health and Safety Regulations 2011 (WHS Regulations) provides that the regulator may at any time amend or cancel an exemption.

Sub-regulation 698(2) provides that a notice of amendment that affects a class of persons is a legislative instrument within the meaning of the Legislative Instruments Act 2003.

The amendment will affect Australian Defence Force (ADF) SCUBA Air Supervisors, being a class of ADF dive supervisors.

Details of the amendment
Clause 7(b) of the original exemption instrument provides that the exemptions in that instrument apply to ADF dive supervisors on condition that they have successfully undertaken training specified in that clause. Clause 7(b)(v) provides that the specified training includes the supervision of on-site chamber operations but excepts ADF Special Forces dive supervisors and ADF Army Work dive supervisors from this requirement.

ADF SCUBA Air Supervisors were inadvertently omitted from the exceptions in clause 7(b)(v) with the result that they must undertake training in the supervision of on-site chamber operations. This training is not relevant to the diving work supervised by ADF SCUBA Air Supervisors.

Clause 7(b)(v) has consequently been amended to reflect this.

Comcare has consulted with the Department of Defence (Defence), the ADF and the Defence dive school about the proposed amendment.

As the amendment will only apply to ADF SCUBA Air Supervisors (and indirectly to Defence and the ADF), a Regulation Impact Statement is not required.

The amendment will apply from 23 July 2014 which is the date on which the original exemption instrument came into force. As Defence’s and the ADF’s expectation had been that the original exemption would except ADF SCUBA Air Supervisors from the training requirement specified in clause 7(b)(v), training by the Defence dive school has proceeded on this basis. To ensure that ADF SCUBA Air Supervisors are not technically in breach of training requirements, the amendment is to apply retrospectively.
The retrospective operation of the instrument does not affect the rights of any person as at the date of registration so as to disadvantage any person, nor does it impose liabilities on a person in respect of anything done or omitted to be done before the date of registration. Accordingly, the retrospective operation of the instrument does not breach subsection 12(2) of the *Legislative Instruments Act 2003*. Further, the retrospective operation of the instrument is not prohibited by either the *Work Health and Safety Act 2011* or the *Work Health and Safety Regulations 2011*.

A Statement of Compatibility with Human Rights has been completed for the Amendment, in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Statement’s assessment is that the amendment is compatible with human rights. A copy of the Statement is attached.
Statement of Compatibility with Human Rights

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

Work Health and Safety Exemptions (Diving by members of the
Australian Defence Force)
(July 2014) Amendment Notice

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

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Human rights implications
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 just and favourable conditions of work contained in article 7 of the International Covenant on Economic, Social and Cultural Rights. The right to enjoy just and favourable working conditions has various components that require states to establish a minimum standard for working conditions for all workers and develop appropriate enforcement measures.

One of the components of article 17 is the right to safe and healthy working conditions. In relation to this right, the Committee on Economic, Social and Cultural Rights has stated that ‘people must be afforded minimum conditions of occupational health and safety, and States parties are responsible for adopting policies and laws to that end’.¹

The right to safe and healthy working conditions is primarily underpinned in Australia by work health and safety legislation at the Commonwealth, state and territory levels. At the Commonwealth level, this includes the Work Health and Safety Act 2011 (the WHS Act) and the WHS Regulations. The WHS Act places high-level duties on a range of entities that are designed to ensure safe and healthy working conditions. It is supported by the WHS Regulations which provide more specific obligations, including those applying to general diving work.

This Legislative Instrument provides for an amendment to training requirements for ADF SCUBA Air Supervisors to except them from the requirement in clause 7(b)(v) to train in the supervision of on-site chamber operations.

ADF SCUBA Air Supervisors do not supervise diving that requires on-site recompression chambers. Training in this area is consequently unnecessary.

The amended exemption will not affect the health or safety of ADF divers, ADF SCUBA Air Supervisors or other ADF dive supervisors carrying out or supervising general diving work activities.

Conclusion
This Legislative Instrument is compatible with human rights because it will not affect the rights of ADF divers, ADF SCUBA Air Supervisors or other ADF dive supervisors to healthy and safe workplaces.

Comcare