

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2005 No. 268**

#### **Occupational Health and Safety (Commonwealth Employment) Amendment Regulations 2005 (No. 1)**

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

*Occupational Health and Safety (Commonwealth Employment) Act 1991*

#### ***Occupational Health and Safety (Commonwealth Employment) Amendment Regulations 2005 (No. 1)***

The *Occupational Health and Safety (Commonwealth Employment) Act 1991* (the Act) establishes a statutory framework to secure the health and safety of Commonwealth Government employees (including employees of Commonwealth agencies, statutory authorities and Government business enterprises) while at work.

Subsection 82(1) of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 5(1) of the Act provides, in part, that ‘employing authority’ means, in relation to a person who is employed by the Commonwealth, the person or body specified in the regulations to be the employing authority for that person or for a class of persons that includes that person. If the regulations do not specify a person or body, the ‘employing authority’ is the principal officer of the entity for which the person performs work.

Regulation 4 of the *Occupational Health and Safety (Commonwealth Employment) Regulations 1991* (the Principal Regulations) specifies the ‘employing authority’ in relation to persons employed by the Commonwealth.

The purpose of the amending Regulations is to substitute a new regulation 4 in the Principal Regulations to prescribe three new ‘employing authorities’ in relation to Australian Defence Force Cadets. The amendment provides that:

- the Chief of Navy is the ‘employing authority’ for members of the Australian Navy Cadets;
- the Chief of Army is the ‘employing authority’ for members of the Australian Army Cadets; and
- the Chief of Air Force is the ‘employing authority’ for members of the Australian Air Force Cadets.

The amendments were necessary because cadets are not members of the Australian Defence Force and, under the Act, their employing authority was the Secretary of the Department of

Defence. The Department of Defence indicated that the relevant Service Chiefs should be prescribed as the employing authorities for cadets since the Service Chiefs are responsible for the day-to-day administration of cadets. Furthermore, occupational health and safety incidents involving cadets are managed by their respective parent service.

Details of the Regulations are set out in the Attachment.

The Act specifies no conditions that needed to be satisfied before the power to make these Regulations was exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commenced on the day following their registration on the Federal Register of Legislative Instruments.

## ATTACHMENT

### ***OCCUPATIONAL HEALTH AND SAFETY (COMMONWEALTH EMPLOYMENT) AMENDMENT REGULATIONS 2005 (No. 1)***

#### Regulation 1: Name of Regulations

This identifies the Regulations as the *Occupational Health and Safety (Commonwealth Employment) Amendment Regulations 2005 (No. 1)*.

#### Regulation 2: Commencement

This regulation provides that the Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

#### Regulation 3: Amendment of *Occupational Health and Safety (Commonwealth Employment) Regulations 1991*

This regulation provides that the *Occupational Health and Safety (Commonwealth Employment) Regulations 1991* (the Principal Regulations) are amended as set out in Schedule 1.

#### Schedule 1: Amendments

##### **Item [1]: Regulation 4 – Employing authorities**

This updates existing regulation 4 which specifies ‘employing authorities’, by adding three new authorities and recasting the existing specifications to reflect more concise drafting.

Members of the Australian Defence Force Cadets (cadets) have been declared ‘employees’ for the purposes of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (the Act) by Ministerial declaration made under subsection 9(5) of the Act.

However, since cadets are not members of the Australian Defence Force, their employing authority was the Secretary of the Department of Defence.

The Department of Defence indicated that the relevant Service Chiefs should be the employing authorities for cadets since the Service Chiefs are responsible for the day-to-day administration of cadets. Furthermore, occupational health and safety incidents involving cadets are managed by their respective parent service.

New items 2, 3 and 4 of subregulation 4(1) provide that:

- The Chief of Navy is the employing authority for members of the Australian Navy Cadets
- The Chief of Army is the employing authority for members of the Australian Army Cadets
- The Chief of Air Force is the employing authority for members of the Australian Air Force Cadets.

Section 38, *Naval Defence Act 1910*, section 62, *Defence Act 1903* and section 8, *Air Force Act 1923* respectively, specify ‘members’ as including cadets and their instructors.

Items 5 through 9 of subregulation 4(1) reinserts previously prescribed 'employing authorities' but uses more concise language. There has been no change in the relevant policy in relation to them.