

EXPLANATORY STATEMENT

Issued by authority of the
Minister for Employment and Workplace Relations

Occupational Health and Safety Act 1991
Subsection 70(1)

Occupational Health and Safety Code of Practice 2008

The purpose of the instrument to which this explanatory statement relates is to approve the *Occupational Health and Safety Code of Practice 2008* under section 70(1) of the *Occupational Health and Safety Act 1991* (the Act). The instrument also revokes 27 codes of practice previously approved under the Act.

Section 70 of the Act provides that the Minister for Employment and Workplace Relations may approve codes of practice prepared by the Safety, Rehabilitation and Compensation Commission (the Commission) or any other body, and may amend or revoke any code of practice so approved under that section.

A code of practice approved by the Minister under the Act is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and takes effect the day after it is registered in the Federal Register of Legislative Instruments.

An approved code of practice:

- (a) provides practical guidance to persons with a duty of care under the Act and associated regulations;
- (b) must be followed unless there is another means of achieving the same or better standard of health and safety; and
- (c) is admissible as evidence in legal proceedings as proof of a relevant breach of the Act or regulations.

The Occupational Health and Safety Code of Practice 2008 (the OHS Code 2008)

In 2005/06, Comcare undertook a critical review of all codes of practice approved under the Act. The objective of the review was to improve workplace safety outcomes by ensuring that codes efficiently support the Act and comply with the *Legislative Instruments Act 2003* and with the *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies* issued by the Council of Australian Governments.

The conclusion of the review was that, in general, the codes no longer provided adequate support to enable duty holders to meet their obligations under the Act and should be updated and/or replaced. As a result the OHS Code 2008 was prepared to replace all codes of practice previously approved under the Act.

The OHS Code 2008 provides for a holistic approach to health and safety and a clear process of risk management. It assists duty holders to discharge some of their occupational health and safety obligations through comprehensive and uniform guidance. The OHS Code 2008 will support the Commonwealth OHS jurisdiction to achieve better and consistent safety outcomes by:

- (a) giving practical content to provisions of the Act and the regulations;
- (b) providing guidance which is relevant, effective, easy to find and understand;
- (c) reducing legislative burden associated with the need to comply with a number of legislative instruments, without reducing safety standards;
- (d) eliminating duplication; and
- (e) being compliant with Australian Government's regulatory policies.

The OHS Code 2008 is a compilation of codes which have been separated into parts, each part corresponding to one code. The OHS Code 2008 consists of 25 parts. Sixteen parts replace approved codes that have been reviewed and redrafted; five parts are new codes developed to address new hazards introduced as a result of the expansion of the Commonwealth OHS jurisdiction; and four other parts are reserved for codes under development that will be implemented soon.

Eight previously approved codes were determined to be no longer necessary and will be replaced with guidance material. These codes were assessed as either duplicating other legislation or deemed to address low risk issues which can satisfactorily be covered in other guidance material.

A preliminary assessment of the impact of the OHS Code 2008 on business was performed in consultation with the Office of Best Practice Regulation. The preliminary assessment indicated that costs for business will be nil or very low and a Regulation Impact Statement is not required.

Comcare, on behalf of the Commission, consulted with employer and employee representatives through discussion papers; workshops and a public comment period on the draft OHS Code 2008. There is strong support from stakeholders in the jurisdiction for the implementation of this code.
