

EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 261

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

Occupational Health and Safety Act 1991

*Occupational Health and Safety (Safety Standards) Amendment Regulations
2008 (No. 2)*

The *Occupational Health and Safety Act 1991* (the Act) establishes a statutory framework to secure the health and safety of employees of the Commonwealth, of Commonwealth authorities and of non-Commonwealth licensees while at work.

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

Part 4 of the *Occupational Health and Safety (Safety Standards) Regulations 1994* (the Principal Regulations) sets out the responsibilities of employers regarding licensing, design registration or notification, maintenance, use, disposal and other matters in relation to plant.

Employers are generally required to be licensed to operate an item of plant under Subdivision A of Division 8 of Part 4 of the Principal Regulations. However, the Department of Defence and the Australian Defence Force, referred to collectively as the Australian Defence Organisation (ADO), are exempted from this general licence requirement if they are granted a 'special licence' by the Safety, Rehabilitation and Compensation Commission under Subdivision B of Division 8 of Part 4.

The proposed Regulations would update the more workable administrative framework under which the ADO could continue to self-manage its own plant management system (incorporating both design registration and licensing of plant) consistent with the general requirements of design registration and plant licenses. The proposed Regulations would require the ADO to maintain detailed data, and the ADO would be subject to regular quality assurance reviews and investigations.

The proposed Regulations also make some minor technical amendments to the Principal Regulations.

Details of the proposed Regulations are included in the [Attachment](#).

Consultation, on this matter took place with the ADO and Comcare. Wider consultation was not undertaken as these were the only agencies considered to be affected by the amendments. The amendments are not likely to have a direct or substantial indirect, effect on business or restrict competition.

An assessment was made under guidelines issued by the Office of Best Practice Regulation, which indicated that a regulation impact statement (RIS) was not required

for these Regulations because the amendments do not substantially alter existing arrangements or are of a minor or machinery nature and will have a low impact on business.

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

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

ATTACHMENT**Details of the proposed *Occupational Health and Safety (Safety Standards) Amendment Regulations 2008 (No. 2)*****Regulation 1 – Name of Regulations**

Regulation 1 provides that the name of the Regulations is the *Occupational Health and Safety (Safety Standards) Amendment Regulations 2008 (No. 2)*.

Regulation 2 – Commencement

Regulation 2 provides that the proposed Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Regulation 3 – Amendment of *Occupational Health and Safety (Safety Standards) Regulations 1994*

Regulation 3 provides that the *Occupational Health and Safety (Safety Standards) Regulations 1994* is amended by Schedule 1.

Regulation 4- Transitional

Regulation 4 provides that notwithstanding the repeal of regulation 4.62B, which itself is a transitional provision, the Regulations do not have retrospective effect and only apply to a special licence that has been renewed on or after the commencement of the proposed Regulations.

Schedule 1 – Amendments**Item 1- Subregulation 1.06(3), note**

This item replaces reference to the *Occupational Health and Safety (Commonwealth Employment) Act 1991* with the *Occupational Health and Safety Act 1991*. The short title to the Act was amended by the *OHS and SRC Legislation Amendment Act 2006* (No. 98, 2006).

Item 2- after Subregulation 4.02(2)

This item inserts a new subregulation 4.02(2A) enabling Part 4 to apply to alterations to the design of plant after the Regulations commence.

Item 3- Subregulation 4.02(7), at the foot

For the convenience of readers, this item inserts a note after subregulation 4.02(7) advising that regulation 4.02 commenced on 1 July 1996.

Item 4- Subregulation 4.07A(3)

This item is a consequential amendment resulting from the renumbering of regulation 4.40D. See item 13 which omits regulations 4.40A to 4.40C, and item 14 which provides that regulation 4.40D be renumbered as 4.40A.

Item 5- Paragraph 4.10(2)(b), except the penalty and the note

This item inserts the requirement at paragraph (b) that electrical installations associated with plant comply with AS/NZS 3000:2007 'Electrical installations (known as the Australian/New Zealand Wiring Rules)'. Also, new paragraphs (c) and (d) require that the erection and dismantling of scaffolds comply with AS 1576, and temporarily erected structures intended or used to support sheeting, hoardings, guard-railings, means of access or egress or entertainment equipment comply with AS 1576. These new paragraphs bring the Principal Regulations into line with the Australian National Standard for Plant.

Item 6- After subregulation 4.10(2)

This item inserts a description of the standards which comprise AS 1576 for the purposes of the regulation, 4.10.

Item 7- Regulation 4.18, heading

This item omits the note in regulation 4.18 which mentions regulation 4.03 which was repealed in 2006.

Item 8- Subregulation 4.22(4)

This item inserts the words "pedestrian or" into the subregulation to accurately reflect the National Plant Standard, which states at Clause 37(3) that an employer must ensure that appropriate controls are implemented to eliminate or minimise the risk of powered mobile plant colliding with pedestrians or other powered mobile plant.

Item 9- Paragraph 4.25(1)(i)

This item omits the typographical error 'life' and replaces it with 'lift'.

Item 10- Regulation 4.39, including the note

This item omits regulation 4.39 as the regulation is redundant. Regulation 4.39 contained a definition of 'relevant employing authority' which referred, in part, to 'an employer seeking an exemption under regulation 4.40A'. Regulation 4.40A has been deleted (see item 13) and the definitions of 'employer' and 'employing authority' are in the *Occupational Health and Safety Act 1991*.

Item 11- subparagraph 4.40(1)(b)(ii)

This item replaces the reference to 4.40D with 4.40A, (see item 4).

Item 12- Paragraph 4.40(1A)(b)

This item replaces references to regulations 4.40A(4)(a) and 4.40D with regulation 4.40A, (see item 4).

Item 13- Regulations 4.40A, 4.40B and 4.40C

This item omits regulations 4.40A, 4.40B and 4.40C. These regulations provided for the Safety, Rehabilitation and Compensation Commission (the Commission) to give an employer an exemption to operate an item of plant. These regulations are not currently used so it is considered appropriate to repeal them.

Item 14- Regulation 4.40D

This item rennumbers regulation 4.40D as regulation 4.40A.

Item 15- Subregulation 4.43(1), note

This item omits the note in regulation 4.43(1). The note referred to an employer acting through the 'employing authority' which is defined in the *Occupational Health and Safety Act 1991*. However, 'employer' now includes a non-Commonwealth licensee and accordingly the note may be misleading to a reader and does not add anything to the readability of the subregulation. Accordingly, it has been omitted.

Item 16- After subregulation 4.45(4)

This item inserts two new subregulations. Subregulation 4.45(5) requires an employer to return the licence to the Commission no later than 21 days after receipt of the notice, if the Commission cancels or suspends the licence. In turn, subregulation 4.45(6) requires the Commission to return the licence to the employer at the end of the suspension period if the licence is still in effect.

Item 17- Paragraph 4.46(2)(b)

This item substitutes (1)(d) for (1)(e) to amend the cross-reference which was not updated with previous amendments.

Item 18- Paragraph 4.46(3)(b)

If an employer applied to the Commission for a variation of a licence, the Commission was limited to varying the licence, refusing to vary the licence or seeking additional information. This item gives the Commission the additional option of cancelling a licence, if the circumstances demanded it.

Item 19- Paragraph 4.46(4)(b)

Paragraph 4.46(4)(a) provided that if the Commission asked the employer to give it information, the employer must give the information in the time specified. Paragraph 4.46(4)(b) then provided that the Commission must consider that information. Paragraph 4.46(4)(b) provided that the Commission might vary, or refuse to vary, the

licence. Item 18 allows the Commission the option of cancelling a licence, and accordingly, it is appropriate that the Commission have the option of cancelling a licence after considering the employer's additional information.

Item 20- Paragraph 4.46(5)(a)

This item deletes the reference to 'employing authority' as coverage of private corporation licensees by the Act means that not all employers are Commonwealth agencies.

Item 21- After subregulation 4.46(7)

This item inserts subregulation 4.46(8) which requires that a notice relating to a cancellation of a licence must set out the reasons for the cancellation. This item also inserts subregulation 4.46(9) which requires the employer to return the licence to the Commission no later than 21 days after receipt of the notice of cancellation.

Item 22- Paragraph 4.56(3)(b)

This item requires the Australian Defence Organisation (ADO) when applying for a special licence, to include a list of the type of plant it currently operates, or intends to operate, that are mentioned in Part 2 of Schedule 6 and the number of each type of plant.

Item 23- Subregulation 4.57(1)

This item achieves two purposes. It is consequential to the amendment in item 22, and clarifies that the application for renewal of the special licence relates to plant mentioned in Part 2 of Schedule 6 of the Principal Regulations.

Also it replaces 'must' with 'may' as there is no requirement that the ADO must seek a special licence to operate the plant. But if the ADO wants to continue operating plant mentioned in Part 2 of Schedule 6 without a special licence, it must seek an ordinary licence.

Item 24- Paragraph 4.57(2)(c)

This item removes the requirement for the ADO to provide the Commission with a unique indentifying number for each item of plant and replaces it with a requirement that the ADO include a statement to the effect that each item of plant covered by the licence has been maintained in a safe condition and is safe to operate. The requirement to list the types and numbers of each type of plant remains.

Item 25- Subregulation 4.57(3)

This item clarifies that the special licence applies to all the plant mentioned in Part 2 of Schedule 6, which the ADO is operating.

Item 26- Subregulation 4.57(4), note

This item removes the reference to 4.40D and replaces it with 4.40A, (see item 4).

Item 27- Paragraph 4.58(4)(b)

This item deletes 4.58(4)(b) which removes the requirement for a notice under paragraph 4.58(1)(c) to list each individual item and type of plant and the unique identifying numbers.

Item 28- Subregulation 4.60(1)

This item:

- Inserts a requirement at paragraph 4.60(1)(a) that the ADO must establish and maintain an up-to-date licensing system for each item of plant that the ADO operates consistent with regulations 4.40, 4.40A, 4.41, 4.42, 4.46, 4.47 and 4.48;
- Establishes a requirement for the auditing of specified systems every 12 months;
- Inserts a requirement at paragraph 4.60(1)(d) allowing investigators access to systems upon request by Comcare or the Commission;
- Inserts a requirement at paragraphs 4.60(1)(e) and (f) that the ADO must identify each item of plant with a unique identifying number and this number must be displayed on or near the item;
- Inserts a requirement at paragraph 4.60(1)(g) that the ADO must keep a record of the details of all inspections, checks, tests, maintenance and cleaning that have been carried out for each item of plant operated under the licence.
- Inserts a requirement at paragraph 4.60(1)(h) that the ADO must, upon request, provide an investigator with the maintenance records that relate to an item of plant.
- Inserts a requirement at paragraph 4.60(1)(i) that the ADO must provide contact details of a person to be contacted for any inquiries in relation to plant.
- Maintain the requirements that the ADO must pay the fee set out in a notice under paragraph 4.58(1)(c) or (2)(c) and must comply with a direction given by the Commission for ensuring the safe operation of the plant.

Item 29- Subregulation 4.60(3), note

The note to subregulation 4.60(3) referred to regulation 4.62A. Regulation 4.62A has been deleted (item 31), and accordingly, the note no longer serves a purpose.

Item 30- Regulation 4.60A

This item omits regulation 4.60A as its requirements are dealt with in paragraph 4.60(1)(g).

Item 31- Regulations 4.62, 4.62A and 4.62B

This item omits regulations 4.62, 4.62A and 4.62B. This removes the requirement for the ADO to advise the Commission within 21 days of alterations to plant or the

decommissioning or disposal of plant, to reflect the fact that the ADO's special licence covers types of plant and not specific items.

Item 32-Regulation 4.63, paragraphs (a) to (e)

This item omits paragraphs 4.63(a) to (e). These paragraphs are redundant due to the deletion of regulations 4.40A, 4.40B and 4.40C.

Item 33- Regulation 4.63, paragraph (i)

Item 18 amends paragraph 4.46(3)(b) to allow for the Commission to cancel a licence. In line with that proposal, this item inserts the word 'cancel' into paragraph 4.63(i). This allows the Commission's decision to cancel a licence to be reviewed..

Item 34- Subregulation 8.04(1), definitions of *dangerous occurrence*

This item corrects the reference to regulations by replacing the old title of *Occupational Health and Safety (Commonwealth Employment) Regulations 1991* with *Occupational Health and Safety (Safety Arrangements) Regulations 1991*. The change of name was made by the *Occupational Health and Safety (Commonwealth Employment) Amendment Regulations 2007 (No. 1)*.

Item 35- Subregulation 8.40(3), note 1

This item amends the reference to regulations by replacing *Occupational Health and Safety (Commonwealth Employment) Regulations 1991* with *Occupational Health and Safety (Safety Arrangements) Regulations 1991*.

Item 36- Subregulation 8.40(3), note 2

This item amends the reference to regulations by replacing *Occupational Health and Safety (Commonwealth Employment) Regulations 1991* with *Occupational Health and Safety (Safety Arrangements) Regulations 1991*.

Item 37- Regulation 9.38, note

This item removes an outdated reference to the *Occupational Health and Safety (Commonwealth Employment) Regulations 1991*.

Item 38- Subregulation 20.01, before definition of *ADG Code*

This item updates the reference to the short title of the Act and defines it as 'Act' and not 'the Act'.

Item 39- Subregulation 20.01(1), definition of *the Act*

This item would omit the reference to 'the Act'.

Item 40- Subregulation 20.01(3), note 1

This item amends the reference to regulations by replacing *Occupational Health and Safety (Commonwealth Employment) Regulations 1991* with *Occupational Health and Safety (Safety Arrangements) Regulations 1991*.

Item 41- Subregulation 20.01(3), note 3

This item deletes the note. The note referred to section 10 of the *Occupational Health and Safety Act 1991*, and stated that the employer must act through the employing authority. However, section 10 deals only with the Commonwealth and as coverage under the Act as been extended to private corporation licensees, it means that not all employers are Commonwealth agencies.