

EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 192

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

Occupational Health and Safety Act 1991

Occupational Health and Safety (Safety Arrangements) Regulations 1991

The *Occupational Health and Safety Act 1991* (the Act) establishes a statutory regime for regulating the health and safety at work of various classes of employee, including Commonwealth employees.

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 or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act. Subsection 23(1) of the Act provides that regulations may make provisions relating to any matter affecting, or likely to affect, the occupational health and safety of employees or contractors or other persons at or near a workplace.

General duties of care are imposed by the Act on an employee's 'employer'. The employer of Commonwealth employees is the Commonwealth. However, section 10 of the OHS Act provides that the Commonwealth, in performing these duties, acts through an 'employing authority'.

In the absence of regulations prescribing a person or body as the 'employing authority', the principal officer of the 'Entity' for which a Commonwealth employee works is the 'employing authority'. An 'Entity' includes an Agency within the meaning of the *Public Service Act 1999*, as well as, a person, body, organisation or group of persons prescribed by regulation.

The purpose of these Regulations is to prescribe the Australian Agency for International Development (AusAID), comprising the Director-General and the employees, as an 'entity', and the Director-General as the principal officer, for the purposes of the Act. The Minister for Foreign Affairs and Trade has requested such an amendment.

AusAID is an administratively autonomous division within the Department of Foreign Affairs and Trade (DFAT). The Director-General of AusAID is responsible for the administration and performance of the group and for its financial and personnel management.

As no regulations have been made prescribing a person or body as the 'employing authority' for employees working in AusAID, their 'employing authority' is the Secretary of DFAT.

Details of the Regulations are included in the Attachment.

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

Consultation was undertaken with DFAT, AusAID and Comcare.

A preliminary assessment regarding the impact of the Regulations and the need for a regulation impact statement has been completed. The Regulations have no compliance cost to business or impact on business and individuals or the economy.

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

ATTACHMENT

Details of the *Occupational Health and Safety (Safety Arrangements) Amendment Regulations 2010 (No. 1)*

Regulation 1 – Name of Regulations

The regulation provides that the name of the Regulations is the *Occupational Health and Safety (Safety Arrangements) Amendment Regulations 2010 (No. 1)*.

Regulation 2 – Commencement

The 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 (Safety Arrangements) Regulations 1991*

Schedule 1 to this regulation amends the *Occupational Health and Safety (Safety Arrangements) Regulations 1991*.

Schedule 1 – Amendments

Item 1 – Regulation 4A, heading

This item substitutes “4A Entities and principal officers” in place of the current heading as the new heading more fully indicates the content of the regulation.

Item 2 – Schedule 1A, heading

This item substitutes “Schedule 1A Entities and principal officers” in place of the current heading as the new heading more fully indicates the content of the Schedule.

Item 3 - Schedule 1A, item 9

The current reference to the “Australian Archives” has been omitted as it is no longer accurate.

Item 4 – Schedule 1A, after item 10

This item prescribes the Australian Agency for International Development, with the Director-General as the principal officer, as an ‘entity’ for the purposes of section 5 of the *Occupational Health and Safety Act 1991*.

‘Employees of AusAID’ covers those persons engaged as Commonwealth employees to perform duties in AusAID, as well as, Commonwealth employees that move to AusAID under section 26 of the *Public Service Act 1999*.