

EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 124

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) (National Standards) Amendment Regulations 2004 (No. 2) Amendment Regulations 2005 (No. 2)

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, in part, 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 23(1) of the Act provides that the regulations may make provision 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.

The purpose of the Regulations is to amend provisions of the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 2004 (No. 2)* SR 2004 No. 378. The Regulations impose express time limits on the Safety, Rehabilitation and Compensation Commission (SRCC) to notify employers of its decisions to grant, renew or vary plant licences.

The National Occupational Health and Safety Commission (NOHSC), established under section 6 of the *National Occupational Health and Safety Commission Act 1985* (the NOHSC Act), develops National Standards and Codes of Practice to promote uniformity in Australian occupational health and safety schemes. These National Standards and Codes of Practice do not have legislative force of themselves; they are given legislative force by relevant State, Territory or Commonwealth occupational health and safety legislation.

The *Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994* (the Principal Regulations) give legislative force to various National Standards declared by NOHSC to the extent that they are capable of relating to Commonwealth employment. Regulations have been made implementing National Standards in relation to occupational noise, plant, manual handling, hazardous substances, safe working in confined spaces and certification standards for users and operators of industrial equipment.

Currently, Part 4 of the Principal Regulations incorporates the NOHSC National Standard titled *National Occupational Health and Safety Commission National Standard for Plant* (National Standard for Plant). Part 4 of the Principal Regulations aims to protect the health and safety of persons from hazards arising from plant (defined in the Act to include any machinery, equipment

or tool) and systems of work associated with plant. The main features of Part 4 are the provisions of licensing, design registration, risk assessment and control and employer, manufacturer, supplier and erector duties.

Following consultation with stakeholders, the SRCC recommended amendments to plant licensing arrangements. The SRCC also recommended a number of other clarification and streamlining amendments – relating to licensing of short-term plant hire and maintenance inspections. These amendments are contained in the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 2004 (No. 2)*, SR 2004 No. 378 (the Regulations). The Regulations were made by the Governor-General on 16 December 2004 and were due to commence on 1 April 2005.

On 10 February 2005, the Chairman of the Standing Committee on Regulations and Ordinances (the Committee) wrote to the Minister for Employment and Workplace Relations seeking his advice as to whether express time limits for notification of decisions should apply to the SRCC in various provisions of SR 2004 No. 378.

The Minister wrote to Senator Tchen indicating that he would be willing to recommend to the Governor-General that amending Regulations be made to address his concerns. To allow sufficient time for consultation between the Department of Employment and Workplace Relations, Comcare and other relevant parties regarding the issues raised by Senator Tchen, the commencement date of SR 2004 No. 378 was deferred from 1 April 2005 to 1 July 2005 by the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 2004 (No. 2) Amendment Regulations 2005 (No. 1)* SLI 2005 No. 48.

The Regulations require the SRCC to notify the employer of a decision as soon as practicable, but no later than 14 days, after making a decision to grant, renew or vary a licence to operate plant. Specifically, these relate to the SRCC notifying employers of the decision to:

- Grant or not grant a licence to operate plant (paragraph 4.43(1)(c));
- Renew or not renew a licence to operate plant (paragraph 4.43(2)(c));
- Vary or not vary a licence to operate plant (paragraph 4.46(3)(c));
- Grant or not grant a special licence to operate plant (paragraph 4.58(1)(c));
- Renew or not renew a special licence to operate plant (paragraph 4.58(2)(c)); and
- Vary or not vary a special licence to operate plant (paragraph 4.62(3)(c)).

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments. The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

***OCCUPATIONAL HEALTH AND SAFETY (COMMONWEALTH EMPLOYMENT)
(NATIONAL STANDARDS) AMENDMENT REGULATIONS 2004 (NO. 2) AMENDMENT
REGULATIONS 2005 (NO. 2)***

Regulation 1 - Name of Regulations

Regulation 1 provides that the name of the Regulations is the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 2004 (No. 2) Amendment Regulations 2005 (No. 2)*.

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) (National Standards) Amendment Regulations (No. 2)*

Regulation 3 provides that the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 2004 (No. 2)* are to be amended as set out in Schedule 1.

Schedule 1 – Amendments

Items 1-6 – Amendments Relating to Plant Licensing Arrangements

These items amend the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 2004 (No. 2)* to require the Safety, Rehabilitation and Compensation Council (SRCC) to notify the employer of a decision as soon as practicable, but no later than 14 days, after making the decision to grant, renew or vary a licence to operate plant. This occurs in the following provisions:

- Paragraph 4.43(1)(c), to grant or not grant a licence to operate plant;
- Paragraph 4.43(2)(c), to renew or not renew a licence to operate plant;
- Paragraph 4.46(3)(c), to vary or not vary a licence to operate plant;
- Paragraph 4.58(1)(c), to grant or not grant a special licence to operate plant;
- Paragraph 4.58(2)(c), to renew or not renew a special licence to operate plant; and
- Paragraph 4.62(3)(c), to vary or not vary a special licence to operate plant.