

EXPLANATORY STATEMENT

Select Legislative Instrument 2007 No. 29

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

Occupational Health and Safety (Commonwealth Employment) Amendment Regulations 2007 (No. 1)

Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 2007 (No. 2)

The *Occupational Health and Safety (Commonwealth Employment) Act 1991* (the Act) establishes a framework for the regulation of employers, employees and practices at Commonwealth workplaces to protect the health and safety of employees 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 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.

The *OHS and SRC Legislation Amendment Act 2006* received Royal Assent on 14 September 2006. That Act makes a number of amendments to the Act and the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act). The amendments include: extending the coverage of the Act so that it applies to those private corporations licensed under the SRC Act; excluding the operation of certain State and Territory laws relating to occupational health and safety; and changing the name of the Act to the *Occupational Health and Safety Act 1991*.

The *Occupational Health and Safety (Commonwealth Employment) Amendment Act 2006* (OHS Amendment Act) received Royal Assent on 23 October 2006. The OHS Amendment Act amends the Act to remove unnecessary prescription and recognise the primacy of direct employer and employee relationships in the workplace by removing mandatory third party intervention.

Occupational Health and Safety (Commonwealth Employment) Amendment Regulations 2007 (No. 1)

The *Occupational Health and Safety (Commonwealth Employment) Regulations 1991* (the Principal Regulations) set requirements in relation to the election of health and safety representatives, incident investigations, and notification of accidents and dangerous occurrences within the Commonwealth sector.

These Regulations make a number of amendments to the Principal Regulations arising from the amendments to the Act. These Regulations:

- set the requirements for the election of health and safety representatives (HSRs) in circumstances where an employer is requested by employees under subsection 25A(5) of the Act to have the election conducted in accordance with the regulations. The OHS Amendment Act inserts a new section 25A

into the Act to set out the process to be followed by the employer if there is a vacancy for a HSR;

- remove references to the reporting of accidents and dangerous occurrences. Previously under the Act, employers were required to both notify and report these events to the Safety, Rehabilitation and Compensation Commission; this has been amended to require only notification and not reporting; and
- change the name of the Principal Regulations to the *Occupational Health and Safety (Safety Arrangements) Regulations 1991*.

These Regulations also make other minor consequential and updating amendments.

Details of these Regulations are set out in Attachment A.

These Regulations commence immediately after the commencement of the *OHS and SRC Legislation Amendment Act 2006* on 14 March 2007.

Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 2007 (No. 2)

The *Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994* (the National Standards Regulations) give legislative force to national standards declared by the Australian Safety and Compensation Council and, previously, the National Occupational Health and Safety Commission (NOHSC).

These Regulations make a number of amendments to the National Standards Regulations arising from the amendments to the Act. These Regulations:

- consistent with the scope and manner in which rights and duties are formulated under the Act, give partial legislative effect to the National Standard for Construction Work declared by the NOHSC in 2005– Part 12. The Standard aims to protect persons from the hazards of construction work. The Regulations assign responsibilities to employers in control of construction projects and to person engaged to undertake construction work.
- impose specific duties on employers, employees and contractors in relation to work where there is a risk of fall from 2 metres or more – Part 13; and
- amend Part 8 of the National Standards Regulations to extend in part its coverage to the storage and handling of explosives in the workplace and provide for the notification of explosives.

These proposed Regulations also make other minor amendments to the National Standards Regulations for clarity.

Details of these Regulations are set out in Attachment B.

The Regulations commenced immediately after the commencement of Schedule 2 to the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 2007 (No. 1)* to coincide with the commencement of the *OHS and SRC Legislation Amendment Act 2006*.

These Regulations are legislative instruments for the purposes of the *Legislative Instruments Act 2003*.

Details of the Occupational Health and Safety (Commonwealth Employment) Amendment Regulations 2007 (No. 1)

Regulation 1 – Name of Regulations

This regulation provides that the title of these regulations is the *Occupational Health and Safety (Commonwealth Employment) Amendment Regulations 2007 (No. 1)*.

Regulation 2 – Commencement

Regulation 2 provides for the commencement of the regulations.

The operative provisions of the Regulations (Regulations 1, 2 and 3) and the main amendments contained in Schedule 1 commence immediately after the *OHS and SRC Legislation Amendment Act 2006*. That Act will commence on 14 March 2007, six months after it received the Royal Assent.

The amendments contained in Schedule 2 – which rename the regulations the Occupational Health and Safety (Safety Arrangements) Regulations 1991 – commence immediately after the main amendments have been made to the regulations.

Regulation 3 – Amendment of Occupational Health and Safety (Commonwealth Employment) Regulations 1991

Regulation 3 provides that the *Occupational Health and Safety (Commonwealth Employment) Regulations 1991* (the Principal Regulations) are amended as set out in Schedule 1.

Regulation 4 – Further amendment of Occupational Health and Safety (Commonwealth Employment) Regulations 1991

Regulation 4 provides that the Principal Regulations are further amended as set out in Schedule 2.

Schedule 1 – Amendments

Item [1] - Subregulation 2(1), after definition of *A.C.T. transitional staff*

This item inserts a new definition of the *Act*, to reflect the change of the name of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (the Act) to the *Occupational Health and Safety Act 1991* effected by the *OHS and SRC Legislation Amendment Act 2006*.

Item [2] - Subregulation 2(1), definitions of *nomination date* and *prescribed period*

This item omits the definitions of *nomination date* and *prescribed period* from subregulation 2(1) since the regulations to which they relate have been omitted from the Principal Regulations due to the amendments made to the Act by the *Occupational Health and Safety (Commonwealth Employment) Amendment Act 2006*.

Item [3] - Subregulation 2(1), definition of *the Act*

This item removes the definition of *the Act*, consequential to the insertion of a new definition of *Act* by item [1].

Item [4] - After regulation 4A

Item 4 inserts a new regulation, 4B, which provides that the form of an application by an employee representative to represent employees under subsection 16B(2) of the Act is set out in Form 1A.

The note to regulation 4B explains the effect of subsection 16B(2) of the Act. Under this subsection, if an employee wishes to not have his or her identity revealed, an employee representative may apply to the Chief Executive Officer of Comcare on the employee's behalf for a certificate entitling the employee representative to represent the employee in safety consultations.

Item [5] - Part 2

This item omits Part 2, which deals with elections conducted by unions. Part 2 is no longer relevant due to the amendments to the Act which removed the role of an 'involved union' in the election process for health and safety representatives (HSRs).

Item [6] - Part 3, heading

Item [7] - Regulations 6 and 7

Item 6 inserts a new heading for Part 3, namely 'Election of health and safety representatives'.

Item 7 substitutes regulations 6 and 7 with new regulations 5 and 6. The new regulation 5 defines the scope of Part 3. Part 3 applies if an employer is requested by employees under subsection 25A(5) of the Act to conduct an election for HSRs in accordance with the regulations.

Proposed regulation 6 sets out the process by which the employer is to appoint a returning officer. Subregulation (1) requires the employer and employees to agree on the organisation which will conduct the election. Subregulations (2) and (3) requires the employer to appoint as a returning officer a person who is a member of that agreed organisation.

Item [8] - Part 3, Division 2

Item [9] - Paragraph 17(b)

Item [8] removes Division 2 of Part 3 which deals with the nomination process, as the nomination process for HSRs is now dealt with in the Act.

Item 9 contains an amendment consequential to the deletion of Division 2 by item 8.

Item [10] - Paragraph 19(3)(e)

Item [11] - After paragraph 19(3)(e)

Item 10 contains an amendment consequential to the change in item 11.

Item 11 inserts a new paragraph 19(3)(f) which requires any spoilt ballot papers to be held for six months after the result of a poll is given.

Item [12] - Subregulation 23(4)

The change to subregulation 23(4) made by item [12] requires the returning officer to follow the process prescribed in proposed new regulation 23A for drawing lots when candidates receive the same number of votes.

Item [13] - After regulation 23

This item inserts a new regulation 23A. Regulation 23A details the manner in which lots are to be drawn in the event that two or more candidates receive the same number of votes.

Item [14] - Paragraph 26(b)

Item [15] - After paragraph 26(b)

Item 14 contains an amendment consequential to the change in item 15.

Item 15 inserts a new paragraph 26(c) which allows for the destruction of any spoilt ballot papers retained under new paragraph 19(3)(f).

Item [16] - Subregulation 29(1)

This item removes a reference to Comcare by substituting a new subregulation 29(1). This change is a result of Comcare no longer being involved in the election process for HSRs.

Item [17] - Part 5, heading

Item [18] - Regulation 36A

Item [19] - Regulation 37, heading

Item [20] - Subregulation 37(1)

Item [21] - Subregulation 37(4)

Item [22] - Paragraph 37(4)(a)

Item [24] - Subregulation 37A(1)

Item [25] - Subregulation 37B(1)

Item [30] - Regulations 37D to 37F

Item [31] - Regulation 37G

These items make amendments consequential to the amendments to section 68 of the Act. Previously, employers were required to provide both a notice and a report to the Safety, Rehabilitation and Compensation Commission when an accident or death occurred at the workplace; the requirement now is that in the event of an accident or death employers will only be required to provide a notice and not a report. Each of these items would remove reference to 'reports' and 'reporting'.

Employers are required to give a notice in writing to Comcare and would still be required to give a notice of a death by telephone as specified in regulation 37C.

Item [23] - Subregulation 37(5) (second occurring)

Item 23 corrects a numbering error in regulation 37.

Item [26] - After paragraph 37B(1)(b)

Item [28] - Paragraph 37B(2)(a)

Item 26 inserts a new paragraph, 37B(1)(ba), which requires notification of an accident or dangerous occurrence to include information on whether the workplace is a major hazard facility within the meaning of the *Occupational Health and Safety (Commonwealth Employment) (Safety Standards) Regulations 1994*. The change made by item 28 is consequential to this amendment.

Item [27] - After paragraph 37B(1)(d)

Item 27 inserts a new paragraph that adds a requirement that an employer include information about what action the employer has taken or proposes to take to prevent a recurrence of an accident in its notice to Comcare.

Item [29] - After subsection 37B(3)

Item 29 inserts a new subregulation that requires that any notice of an accident or dangerous occurrence must be given in writing to Comcare. It also adds a note to regulation 37B explaining that in the event of a death employers are still obliged to give notice by telephone as specified in regulation 37C.

Item [32] - Schedule 1, before Form 1

This item inserts a new form into Schedule 1 to the Principal Regulations.

Form 1A is relevant to subsection 16B(2) of the Act and is used in the event that an employee who is in consultations to develop or vary health and safety arrangements wishes to remain anonymous and be represented by the employee representative.

There are sections to be completed by the employee (or employees) and the employee representative in order for the Chief Executive Officer (CEO) of Comcare to determine the legitimacy of the request.

Item [33] - Schedule 1, Form 1, Note 2

This item removes the second note to Schedule 1, Form 1. The note refers to a delegation made by the Commission in relation to subsection 29(8) of the Act. Since requests under this subsection will now be made to the CEO of Comcare, this note is redundant.

Item [34] - Schedule 1, Form 1, Note 7, third and fourth dot points

Item [35] - Schedule 1, Form 2, Note 4, third and fourth dot points

Item [38] - Schedule 1, Form 3, Note 3, third and fourth dot points

Item [41] - Schedule 1, Form 4, Note 5, third and fourth dot points

Item [45] - Schedule 1, Form 5, Note 3, third and fourth dot points

These items delete references to 'involved union' and replace them with 'an employee representative in relation to a designated work group where requested by an employee affected by the decision'. These amendments are necessitated by the removal of the role of an 'involved union' from the Act.

Item [36] - Schedule 1, Form 2, Note 6

Item [37] - Schedule 1, Form 3, Note 2

Item [39] - Schedule 1, Form 3, Note 5

Item [40] - Schedule 1, Form 4, Note 1

Item [42] - Schedule 1, Form 4, Note 7

Item [43] - Schedule 1, Form 5, Note 1

Item [44] - Schedule 1, Form 5, Note 1

Item [46] - Schedule 1, Form 5, Note 5

Item [47] - Schedule 1, Form 5, after Note 5

In 2004 the Act was amended by the *Occupational Health and Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Act 2004*. That Act introduced a new enforcement and compliance regime including civil pecuniary penalties, injunctions, remedial orders and enforceable undertakings, as well as increasing criminal penalties.

These items contain amendments to the *Notes* to the Forms to reflect the dual civil and criminal penalty regime now contained in the Act.

Item [48] - Schedule 5, item 3

This item omits Schedule 5, item 3, which modifies subsection 25(9) of the Act. This subsection was omitted by the *Occupational Health and Safety (Commonwealth Employment) Amendment Act 2006* (the OHS Amendment Act). Therefore Schedule 5, item 3 is now redundant.

Item [49] - Schedule 5, subitem 7.1

The amendment contained in this item is consequential to the substitution by the OHS Amendment Act of a new subsection 31(3) in the Act.

Item [50] - Schedule 5, subitem 7.2

This item omits Schedule 5, subitem 7.2, which modifies subsection 31(4) of the Act. This subsection was removed by the OHS Amendment Act.

Item [51] - Schedule 5, subitem 9.1

This item replaces a reference to paragraph 34(1)(a) with a reference to paragraph 34(2)(a). This change is consequential to the repeal of section 34 and the addition of new subsection 34(1) by the OHS Amendment Act

Item [52] - Schedule 5, item 18, heading

This item substitutes a new heading for Schedule 5, item 18. The old heading refers to reporting of accidents and dangerous goods. As a result of amendments made by items [17] to [25] and items [30] to [31], this reference is redundant.

Item [53] - Schedule 5, subitem 18.1

This item omits Schedule 5, subitem 18.1. The subitem no longer serves any purpose, since subsection 68(1), which it purports to amend, was omitted by the *Industrial Relations and other Legislation Amendment Act 1993*.

Item [54] - Schedule 5, subitem 18.2

This item corrects a minor typographical error.

Item [55] - Schedule 5, subitem 18.3

This item removes a reference to reports concerning accidents or occurrences. As a result of amendments made by items [17] to [25] and items [30] to [31], this reference is redundant.

Item [56] - Further amendments

This item provides a table of minor amendments to be made to the Principal Regulations. These amendments include updating references to Acts that have had their names altered and correcting typographical errors.

This item also makes amendments to replace references to the terms 'contravened' and 'contravention' with 'breached' and 'breach'. These amendments bring the Principal Regulations in line with amendments made to the Act in 2004.

Schedule 2 – Further amendment of *Occupational Health and Safety (Commonwealth Employment) Regulations 1991*

Item [1] - Regulation 1

This item changes the name of the Principal Regulations to the *Occupational Health and Safety (Safety Arrangement) Regulations 1991*. This change is due to the change of name of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* to the *Occupational Health and Safety Act 1991*.

ATTACHMENT B

Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 2007 (No. 2)

Regulation 1 – Name of Regulations

This regulation provides that the title of the regulations is the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 2007 (No. 2)*.

Regulation 2 – Commencement

Regulation 2 provides that the Regulations commence immediately after the commencement of Schedule 2 to the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 2007 (No. 1)*. These regulations commenced on 14 March 2007, immediately after the commencement of the *OHS and SRC Legislation Amendment Act 2006*.

Regulation 3 – Amendment of Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994

Regulation 3 provides that the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994* (the National Standards Regulations) are amended as set out in Schedule 1.

Schedule 1 – Amendments

Items [1]-[7] – Plant Licensing Amendments

Item [1] – Subregulation 4.43(5)

This item substitutes a new subregulation 4.43(5) to make the information required to renew a licence to operate a plant consistent with the information required to initially apply for the licence.

Requiring this level of detail for renewals will ensure that employers remain fully informed as to licence conditions and the items of plant that they are licensed to operate.

Item [2] – Subregulation 4.46(1)

This item contains a clarifying amendment that replaces subregulation 4.46(1). New subregulation 4.46(1) makes it clear that a variation is needed when the name of the employing authority that is licensed to operate plant is changed, and when relocation of mobile plant occurs.

**Item [3] – Subregulation 4.54(1);
Item [4] – Paragraph 4.54(1)(a); and
Item [5] – Subregulation 4.54(2)**

These items amend subregulation 4.54(1) and remove subregulation 4.54(2).

These amendments require employers who have registered a plant design alteration with the relevant State or Territory authority to notify the Commission of this change. The ongoing registration requirements of these employers would then mirror those of employers who have registered design alterations with the Commission.

Comcare expects that these amendments will avoid confusion amongst employers as to what steps are required to satisfy Part 4 when plant design is altered and ensure that the Commission would have up-to-date information about all registered plants' design alterations.

Item [6] – Subregulation 4.56(2)

This item substitutes a new subregulation 4.56(2) to remove a reference to 'involved union'. This substitution is made necessary by the repeal of the definition of 'involved union' from the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (the Act).

New subregulation 4.56(2) requires the Australian Defence Organisation to consult with its employees and - if an employee requests it - with an employee representative before making an application for a special licence to operate plant under subregulation 4.56(1).

Item [7] – After regulation 4.62A

This item inserts transitional arrangements relating to a special licence to operate plant that was granted to the Australian Defence Organisation for the period from 1 January 2005 to 31 December 2008.

There has been some uncertainty about whether the licence was subject to the conditions that existed when it was granted or to conditions contained in amendment regulations that commenced on 1 July 2005. The transitional arrangements provide that the licence will be subject to its original conditions.

Items [8]-[29] – Dangerous Goods/Explosives Amendments

**Item [8] – Paragraph 8.01(d)
Item [9] – Regulation 8.02, heading
Item [10] – Subregulation 8.02 (1)**

Part 8 of the National Standards Regulations deals with the storage and handling of dangerous goods at a workplace. The Part imposes obligations on employers to identify and eliminate, or if that is not possible reduce to the lowest practicable level, all hazards associated with the storage and handling of dangerous goods. Currently, employers must notify Comcare if a certain volume of dangerous goods is stored at a workplace or if dangerous goods are transferred via a pipeline.

The amendments to the National Standards Regulations extend the coverage of Part 8 to the storage and handling of explosives in the workplace and provide for the notification of explosives.

The amendments contained in items 8, 9 and 10 are consequential to the principal changes to Part 8 to extend its coverage to include explosives.

Item [11] – After regulation 8.02

Item 11 inserts new regulation 8.02A which details the provisions of Part 8 that apply specifically to the storage and handling of explosives at the workplace.

Regulation 8.02A also specifies instances when Part 8 does not apply for instance: when explosives are under the control of the Australian Federal Police; to the defence employing authority; to explosives that are part of, or necessary for the operation of a vehicle, ship or other mobile plant, appliance or device; or to explosives that are being transported in accordance with one of four listed Codes or Regulations.

Item [12] – Subregulation 8.04(1), definition of *capacity*

This item substitutes a new definition of *capacity*. Under the new definition, the capacity of class 2 cylinders for dangerous goods means the water capacity stamped on the cylinder.

Capacity for the purposes of other containers for dangerous goods is the total internal volume of the container at 15°C, expressed in litres or cubic metres.

Item [13] - Subregulation 8.04(1), after definition of *dangerous occurrence*

Item 13 inserts a definition of *explosives* into Part 8 which is any material or mixture of materials which is listed in the *Australian Code for the Transport of Explosives by Road and Rail*, Second Edition, published in March 2000 by the Department of Transport and Regional Services or meets the criteria for Class 1 dangerous goods in Chapter 2 of the ADG Code.

Item [14] – Subregulation 8.04(1), definition of *near miss*

This item removes the definition for *near miss* since the phrase is subsumed within the definition of *dangerous occurrence*.

Item [15] – Paragraph 8.04(3)(f)

Item 14 inserts new paragraph 8.04(3)(f) to reflect that explosives are also dangerous goods.

Item [16] – Paragraph 8.04(5)(c)

The amendment in item 16 extends the definition of *dangerous goods in transit* to include explosives supplied to a workplace in a container that is not opened at the workplace and remains at the workplace for no longer than 24 hours (as compared to no longer than 5 days in the case of other dangerous goods).

Item [17] – Subregulation 8.27(1)

The amendment in item 17 is consequential to the principal changes to Part 8 to extend its coverage to include explosives.

Item [18] – After paragraph 8.27(4)(b)

This item amends subregulation 8.27(4) of the National Standards Regulations to include a note explaining that examples of when an emergency plan requires review can be found in the Approved Code of Practice for the Storage and Handling of Dangerous Goods.

On 19 June 2006, the Senate Standing Committee on Regulations and Ordinances ('the Committee') gave a notice of motion to disallow the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 2006 (No.2)*. In particular, the Committee expressed concern with the phrase 'change in circumstances' in paragraph 8.27(4)(b), and asked that further guidance regarding this expression be included in the regulations. On 17 July 2006, the Minister for Employment and Workplace Relations undertook to amend the National Standards Regulations to include a legislative note, which explicitly refer to a Code of Practice that has been developed by Comcare. As a result of this undertaking, the Senate Committee withdrew its notice of disallowance.

Item [19] – Regulation 8.40, heading

Item [20] – Subregulation 8.40(1)

Item [21] – Subregulations 8.40(2) and (3)

Item [22] – Regulation 8.40, note 2

These items contain technical amendments to correct errors in the National Standards Regulations. The amendments remove the phrase 'near miss' since the phrase is made redundant by virtue of the definition of *dangerous occurrence*. Item 22 inserts a new note guiding the reader to subsection 5(1) of the Act and the *Occupational Health and Safety (Commonwealth Employment) Regulations 1991* for the meaning of dangerous occurrence.

Item [23] – Subdivision 8.3.4, heading

Item 23 contains an amendment consequential to the principal changes to the regulations, in extending the coverage of Part 8 to include explosives, by separating the notification requirements when dealing with dangerous goods other than explosives as compared to only explosives. The amendment changes the heading of subdivision 8.3.4 to read 'Notification of storage and handling of dangerous goods other than explosives'.

Item [24] – Subparagraph 8.41(2)(a)(iv)

Item [25] – Subparagraph 8.41(2)(b)(iv)

Item [27] – Paragraph 8.60(1)(c)

Item [28] – Paragraph 8.60(2)(b)

Item [29] – Subparagraph 8.63(2)(a)(v)

These items remove the references to average quantities of dangerous goods currently found in paragraphs 8.41(2)(a), 8.41(2)(b), 8.60(1)(c), 8.60(2)(b), and 8.63(2)(a).

The requirement to report the maximum *and* the average quantities of dangerous goods has caused some confusion. The amendment makes it clear that employers need only notify the maximum quantities of dangerous goods.

Item [26] - After Subdivision 8.3.4

This item inserts a new subdivision 8.3.4A addressing the requirement to notify the Commission if storing or handling a notifiable quantity of explosives in the workplace.

Subregulation 8.44A(1) defines a *notifiable quantity* of explosives to be a volume of explosives of which the net explosive quantity is greater than 2 kilograms. Subregulation 8.44A(2) specifies that the employer must notify the Commission within 3 months if at the commencement of the National Standards Regulations a notifiable quantity of explosives is stored or handled at the workplace. Notice would also have to be given prior to the storage or handling of a notifiable quantity, if 3 months *after* the commencement of the National Standards Regulations, such a quantity is to be stored or handled.

Regulation 8.44B requires the notice to be in writing and in a form approved by the Commission; the notice is required to contain the information listed in paragraphs 8.44A(2)(a) and (b). Any change to the information contained in the notice must be notified to the Commission, in addition to the provision of an updated notice every 2 years. Paragraph 8.44A(2)(c) entitles the Commission to request the employer provide any other information relevant to the storage or handling of explosives. Regulation 8.44C requires the Commission to acknowledge a receipt of a notice given under the new Subdivision.

Items [30]-[34] – Driver Fatigue Amendments

Item [30] – Paragraph 11.07(3)(b)

Item [31] – Paragraph 11.08(1)(a)

Item [32] – Subparagraph 11.08(1)(b)(i)

Item [33] – Subregulations 11.08(2) and (3)

Item [34] – Subregulation 11.10(3)

The *Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 2007 (No. 1)* inserted a new Part 11 into the National Standards Regulations dealing with the control of fatigue in drivers of heavy vehicles. After further consultation with stakeholders some further changes to the new Part 11 were identified.

These items make minor amendments to the Part to make the requirements consistent with existing requirements under the *National Transport Commission (Road Transport Legislation – Driving Hours Regulations) Regulations 2006*. The items:

- remove the requirement for a driver to undertake a medical examination at least once every three years;
- clarify that the requirement for an employer to keep records of an employee's driving time, work time and rest time including the final destination each day of a driver is restricted to records related to driving in a non-local area work; and
- remove the requirement for an employer to keep a record of odometer readings for each heavy truck, bus and commercial bus.

These amendments commence immediately after the commencement of the amending regulations that inserted the new Part.

Item [35] – Insertion of New Parts 12 and 13 – Construction and Falls from Heights

Item 35 inserts two new Parts into the National Standards Regulations dealing with:

- construction work [Part 12]; and
- falls from heights [Part 13].

Part 12 Construction work

Construction is one of Australia's highest risk industries. On 27 April 2005 the National Occupational Health and Safety Commission declared the National Standard for Construction Work [NOHSC:1016 (2005)] (the Standard).

The Standard aims to protect persons from the hazards of construction work. It also requires individuals to identify hazards associated with construction work and eliminate them or, where this is not reasonably practicable, minimise the risks they pose.

The Standard applies to a broad range of construction activities and individuals including clients of construction projects, designers of construction projects and persons with control of construction work.

Part 12 gives legislative expression to the Standard in so far as it deals with the responsibilities of employers in control of construction projects and persons engaged to undertake construction work. The provisions are consistent both with the scope and manner in which rights and duties are formulated under the Act.

The application of the Standard in respect of persons and activities outside the immediate reach of the Act is undiminished by the regulations contained in the Part 12.

Further measures are to address those aspects of the Standard not reflected in the Part.

Division 12.1 Introduction

Regulation 12.01 – Object of Part 12

Regulation 12.01 sets out the objects of the Part.

Regulation 12.02 – Definitions for Part 12

Regulation 12.02 provides definitions specific to Part 12, including the following terms of note:

- *construction project* means a project involving construction work including design, preparation and planning.
- *plant* is defined non-exhaustively. It would include scaffolding, appliances, implements and their components. It would also incorporate the definition of ‘plant’ found in section 5 of the Act. Section 5 defines ‘plant’ to include machinery, equipment, tools and their components.
- *structure* includes buildings, steel or reinforced concrete constructions, ships, submarines, railway lines, docks, harbours, towers, pipelines, roads, airfields, drainage works, earthworks, and underground tanks.

The term ‘high-risk construction work’ is also be defined in regulation 12.02. Information about this definition can be found in the description of regulation 12.23 below.

Other terms relevant to Part 12 are defined in regulation 20.01 (formerly regulation 10.01) of the National Standards Regulations. These terms are:

- hazard – meaning the potential to cause injury or illness
- risk – meaning the probability and consequences of occurrence of injury or illness
- relevant person – meaning an employee, a contractor or any other person at or near a workplace under an employer’s control.

Regulation 12.03 – Meaning of *construction work*

Regulation 12.03 contains a detailed definition of ‘construction work’ for the purposes of Part 12. It is to encompass work on or in the vicinity of a construction site that is carried out in connection with the construction, alteration, conversion, fitting out, commissioning, renovation, repair, maintenance, decommissioning, demolition or dismantling of any structure.

It is not to include minerals exploration or extraction, preparatory work relating to minerals extraction or minor maintenance work (subregulation (4)).

Regulation 12.04 – Meaning of *construction site*

Regulation 12.04 is to define ‘construction site’ for Part 12. This is to be a place where construction work is undertaken or an area in the vicinity of such a place where plant or material is located during construction work.

It is not to include places where parts of a structure are manufactured off-site or where construction material is stored as stock for sale or hire.

Division 12.2 General duties of employers in control of a construction project

Regulation 12.05 – Duty to identify hazards

Regulation 12.05 requires an employer in control of a construction project to identify reasonably foreseeable hazards to the health and safety of persons who undertake construction work on the project and those affected by construction work on the project.

A non-exhaustive list of the hazards that must be identified is provided in subregulation (2).

Regulation 12.06 – Duty to establish procedures to identify and record hazards

Regulation 12.06 obliges an employer who controls a construction project to establish procedures to identify and record hazards that constitute potential health and safety risks.

A non-exhaustive list of when hazards must be identified and recorded is set out in subregulation (2). For example, hazards must be identified and recorded before construction work commences and before and during the installation of plant.

Regulation 12.07 – Duty to assess risks

Regulation 12.07 requires the employer who controls a construction project to:

- arrange for an assessment of each health and safety risk that arises from a hazard identified under regulation 12.05; and
- make a record of each assessment.

Subregulation (2) requires the risk assessment to include an evaluation of the likelihood of injury, illness or disease occurring; a review of relevant health and safety information; and an identification of risk control measures.

Regulation 12.08 – Duty to control risks

Where a risk is identified and assessed under regulation 12.07, regulation 12.08 imposes a duty on the employer who controls a construction project to either eliminate the risk or, if this is not reasonably practicable, to minimise the risk as far as is reasonably practicable.

Regulation 12.09 – Measures to control risks

Regulation 12.09 requires the employer who controls a construction project to:

- record what risk control measures have been implemented; and
- ensure that measures to control health and safety risks are properly used and maintained.

Regulation 12.10 – Duty to review procedures for hazard identification, and measures for assessment and control of risks

Regulation 12.10 imposes two duties on the employer who controls a construction project:

- a duty to ensure that there is a procedure in place to review hazard identification procedures, risk assessment procedures, and risk control measures; and
- a duty to ensure that these procedures and measures are reviewed in specified circumstances.

Regulation 12.11 – Duty to keep records

Regulation 12.11 requires the employer who controls a construction project to keep the following records for five years after the project is completed.

Regulation 12.12 – Duty to provide information and training

Regulation 12.12 requires the employer who controls a construction project to provide to persons engaged in construction work on the project information and training about hazards that have been identified; the risks that arise from those hazards; and the measures that have been implemented to eliminate or minimise those risks.

Subregulation (2) prescribes when such information must be provided.

Division 12.3 Particular areas of risk

Regulation 12.13 – Duty to identify existing services and associated risks

Regulation 12.13 requires the employer who controls a construction project, before construction work is commenced, to identify existing services at the construction site, and assess their condition and any risks associated with them.

Subregulation (2) prescribes what must be identified by such an assessment. Subregulation (4) requires that, if contact with an existing service presents a health or safety risk to any person, the employer who controls the construction project must ensure that the service is removed, disconnected or isolated.

For the purposes of regulation 12.13, ‘existing services’ includes services such as electricity, gas, water and sewerage which are supplied to, or adjacent to, a construction site.

Regulation 12.14 – Traffic control

Regulation 12.15 – Lighting

Regulation 12.16 – Access and egress

Regulations 12.14, 12.15 and 12.16 impose duties on the employer who controls a construction project to ensure:

- the safety of pedestrians, motor vehicles and plant moving on or near the construction site;
- a safe level of lighting in areas where construction work is performed or in access areas or emergency exits; and
- safe access to and egress from work areas and passageways.

Regulation 12.17 – Public access

Regulation 12.17 requires the employer who controls a construction project to protect, as far as reasonably practicable, the public from health or safety risks arising from construction work.

Subregulation (2) imposes specific duties on such an employer in relation to perimeter fencing and signage.

Regulation 12.18 – Emergency procedures

Regulation 12.18 requires the employer who controls a construction project to ensure that emergency evacuations can be carried out safely; emergency exits, evacuation routes and emergency evacuation plans are appropriately displayed; and that there are arrangements in place for the rescue of injured persons. Where required by a risk assessment, emergency evacuation drills must be practised, assessed and, if necessary, revised.

Regulation 12.19 – Maintaining the site

Regulation 12.19 stipulates the measures that the employer who controls a construction project must take to maintain the site. For example, access ways must be free from obstruction and safety signs must be erected and kept in good condition.

Regulation 12.20 – Exposure to the elements

If weather conditions create a hazard on a construction site, regulation 12.20 requires the employer who controls the construction project to protect the safety of those working on the site.

A *note* advises the reader that while rain is not itself unsafe, it can make scaffolding slippery and thus create a risk of serious injury.

Regulation 12.21 – Duty to provide amenities

Regulation 12.21 requires the employer in control of a construction site to provide welfare and personal hygiene amenities for persons undertaking construction work.

It is intended that the employer in control of a construction site should provide such amenities as is reasonable in the circumstances. The amenities may include toilets, rest rooms, shelter sheds, seating, dining rooms, drinking water, lockers and washing facilities.

Division 12.4 Occupational health and safety management plans

Regulation 12.22 – Occupational health and safety management plans

Where it is likely that five or more persons will be working on a construction site, the employer who controls the construction project is to be required by regulation 12.22 to ensure that a site-specific occupational health and safety management plan is:

- prepared before construction work commences, and
- kept up-to-date.

Information that must be included in the plan is listed in subregulation (2). For example, it must contain the names of those on the site who have occupational health and safety responsibilities, arrangements for managing health and safety incidents, and the site safety rules.

Subregulations (3) and (4) require the employer who controls a construction project to make a copy of the plan available at the site and to provide a copy to 'relevant persons' before they commence work at the site.

Subregulation (5) ensure that 'relevant persons' working at the site are given a copy of any changes made to the plan. 'Relevant person' is defined in the National Standards Regulations as an employee, contractor or any other person at or near a workplace under an employer's control.

Division 12.5 High-risk construction work

Regulation 12.23 – Safe work method statements for high risk construction work

Regulation 12.23 requires the employer who controls a construction project involving 'high-risk construction work' to obtain a 'safe work method statement' in relation to that work from the persons engaged to undertake that work before they commence work at the site.

Subregulation (2) requires the safe work method statement to be reviewed and, if necessary, revised if there is a change to high-risk construction work on a project.

In relation to high-risk construction work, subregulation (3) imposes duties on those who control construction projects to do what is practicable within reason to ensure that arrangements are in place:

- to enable construction work to be carried out in accordance with the safe work method statement; and
- to require a worker to work in accordance with such a statement.

An exhaustive definition of *high-risk construction work* is found in regulation 12.02. Examples of such work are work where there is a risk of a person falling two metres or more; construction work on telecommunications towers, construction work involving tunnels or explosives, and construction work on or near chemical, fuel or refrigerant lines.

Division 12.6 Education and training

Regulation 12.24 – Induction training before commencing work

Regulation 12.24 requires the employer in control of a construction project not to direct or allow a person to undertake construction work on a site unless the person has completed occupational health and safety induction training relating to construction.

Division 12.7 Duties of employees and contractors

Regulation 12.25 – Duty to undertake training

Regulation 12.26 – Duty to work in accordance with training, information and instructions

Regulations 12.25 and 12.26 imposes duties on persons engaged to undertake construction work to:

- complete occupational health and safety training before commencing construction work; and
- work in accordance with their occupational health and safety training and in accordance with occupational health and safety measures.

Part 13 Falls from 2 metres or more

The purpose of Part 13 is to prevent or reduce workplace injury to an individual resulting from a fall of two metres or more.

Part 13 requires an employer to identify any task to be performed in the workplace that involves a fall hazard, that is, if there is any chance at all of a fall of more than 2 metres occurring.

If a fall hazard is identified the employer is to be required to take action to stop a fall happening or if that is not practicable, reduce the risk of a fall.

If eliminating the risk of a fall is not practicable, then a risk control measure has to be used that produces the lowest practicable risk of a fall. The Part sets out what these risk control measures are and the order in which they must be considered.

Division 13.1 Introduction

Regulation 13.01 – Object of Part 13

Regulation 13.01 provides that the object of Part 13 is to prevent or reduce the likelihood of injury to an individual at a workplace resulting from a fall of two metres or more.

In order to achieve this objective:

- employers are required to identify tasks that involve fall hazards; eliminate or minimise risks; provide relevant information, instruction and training to employees and contractors; and keep records of risk control measures; and
- employees and contractors are required to perform their work in accordance with the information, instruction and training provided to them.

Regulation 13.02 – Application of Part 13

Regulation 13.02 applies Division 13.2 to employers and Division 13.3 to employees and contractors to whom the employer owes a duty of care under the subsection 16(4) Act.

Regulation 13.03 – Definitions for Part 13

Regulation 13.03 contains definitions applicable to Part 13.

Division 13.2 Duties of employers

Regulation 13.04 – Employer’s duty to identify tasks that involve fall hazard

Regulation 13.04 requires an employer to identify, as far as reasonably practicable, any workplace task that involves a fall hazard.

Subregulation (2) provides a non-exhaustive list of activities and circumstances where an employer must identify fall hazards. These include construction and demolition of plant or structures, unprotected edges and holes, shafts, pits or trenches.

Subregulation (3) requires an employer to record each fall hazard that has been identified.

Regulation 13.05 – Employer’s duty to control risk

If a fall hazard is identified under subregulation 13.04(1), then before a task is performed, regulation 13.05 requires the employer to either eliminate or minimise the risk.

Subregulation (2) requires an employer to keep a record of steps taken to eliminate or minimise a risk.

Regulation 13.06 – Risk control measures

If it is not possible to eliminate a risk, then risk control measures must be used that produces the lowest practicable risk of a fall. To this end, regulation 13.06 contains a hierarchy of risk control measures. The regulation also recognises that any one risk control measure may not be sufficient for a task and that a combination of risk control measures may be necessary.

Subregulation (3) requires an employer to review the risk control measure adopted if there is a change in the way a task is being performed.

Subregulation (4) requires an employer to record the risk control measures that have been adopted.

Regulation 13.07 – Employer must maintain control measures and equipment

Regulation 13.07 requires an employer to ensure that equipment or measures used to control risks are properly used and maintained.

Subregulation (2) obliges an employer to record the steps taken to monitor the use and maintenance of equipment or measures.

Regulation 13.08 – Use of fixed or portable ladder

Regulation 13.08 provides that if an employer uses a fixed or portable ladder as a risk control measure, the employer must ensure that the ladder is appropriate for the task and is set up and used correctly.

Regulation 13.09 – Use of administrative control

Regulation 13.09 enables an employer to make a single record if an administrative control is used as a risk control for more than one task.

Regulation 13.10 – Use of plant

Regulation 13.10 provides that if an employer uses plant as a risk control measure, the employer must ensure that the plant is suitable for the task or tasks to be undertaken.

The employer is required to take into the account physical surroundings and physical conditions the plant will be used in to determine if it is safe to use.

Examples of physical surroundings are the type and condition of the supporting surface, and proximity to powerlines or trees. Examples of physical conditions are lighting and weather conditions.

Subregulation (2) requires an employer to ensure that the installation, erection or dismantling of plant is carried out so as to reduce the risk of a fall or any other risk.

Regulation 13.11 – Emergency procedures

Regulation 13.11 requires an employer who has established risk control measures under regulation 13.06 to adopt emergency procedures for rescuing an individual who has fallen and providing them with first aid.

Subregulation (3) requires an employer to ensure that emergency procedures are themselves carried out so as to eliminate or minimise the risk of a fall or any other risk.

Subregulation (4) requires an employer to record emergency procedures and measures taken to adopt emergency procedures.

Regulation 13.12 – Employer’s duty to provide information, instruction and training

Regulation 13.12 requires an employer to provide information, instruction and training to employees and contractors who may be subject to fall hazards so that they can perform their work safely.

Subregulation (2) requires an employer to record the information, instruction and training that is provided.

Regulation 13.13 – Employer’s duty to keep records

Regulation 13.13 requires an employer to keep Part 13 records for at least five years.

Division 13.3 Duties of employees and contractors

Regulation 13.14 – Duty of employee or contractor

Regulation 13.14 requires an employee or contractor who has been provided with information, instruction or training to perform tasks in accordance with that information, instruction or training and to use risk control measures adopted by the employer under regulation 13.06.

Item [36] – Subregulation 20.01(1), after definition of *risk control*

Item 36 inserts a definition of *safe work method statement* into regulation 20.01 of the National Standards Regulations after the definition of ‘risk control’. Such a statement must:

- identify activities that have safety risks and describe the associated safety risks;
- describe how control and safety measures will be applied and implemented;
and
- describe the equipment used in the work, the qualifications of those doing the work, and the training required to do the work safely.

Items [37]-[38] – Miscellaneous amendments

Item [37] – Schedule 7

This item substitutes a new Schedule 7.

Items 21 and 22 of Schedule 7 specified the quantities of mixed class dangerous goods which must be placarded and notified. This item substituted a new Schedule 7 that replaced items 21 and 22 with new items 21A and 21B to add a reference to whether any of the classes, types and packing groups present in a mixed class dangerous good exceed the quantities specified in items 1 to 20 of Schedule 7.

Item [38] – Further amendments

Item 38 contains technical amendments to various provisions within Part 8, changing references from Comcare to the Commission.