

## **EXPLANATORY STATEMENT**

### *Work Health and Safety Act 2011*

Issued by the Minister for Employment and Workplace Relations

### **Notice of a Disallowable Instrument**

### **Work Health and Safety Codes of Practice 2012**

The purpose of the instrument to which this Explanatory Statement relates is to approve codes of practice providing practical guidance to duty holders on meeting their obligations under the *Work Health and Safety Act 2011* (the WHS Act) and the *Work Health and Safety Regulations 2011* (the WHS Regulations).

Section 274 of the WHS Act provides that the Minister may approve codes of practice for the purpose of the WHS Act. Section 275 of the WHS Act provides that an approved code of practice is admissible in proceedings under the WHS Act as evidence of whether or not a duty or obligation under the WHS Act has been complied with. A court may have regard to the code as evidence of what is known about a hazard or risk, risk assessment or risk control to which the code relates and may rely on the code in determining what is reasonably practicable in the circumstances to which the code relates.

This instrument approves the following 12 codes of practice, namely:

- First aid in the workplace
- Construction work
- Preventing falls in housing construction
- Managing electrical risks in the workplace
- Managing risks of hazardous chemicals in the workplace
- Managing the risks of plant in the workplace
- Welding processes
- Excavation work
- Demolition work
- Safe design of structures
- Spray painting and powder coating
- Abrasive blasting

These represent the second set of codes of practice Safe Work Australia and the Workplace Relations Ministers Council have approved since the implementation of the WHS Act.

Safe Work Australia has developed model codes of practice for adoption by the Commonwealth, State and Territory governments in accordance with the Council of Australian Governments' *Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety* (the IGA). Consistent with the IGA and subsection 274(2) of the WHS Act, those model codes were developed in consultation with the Commonwealth, State and Territory governments, unions and employer organisations. The second set of model codes were released for public consultation in September 2011. The Chair of the Select Council on Workplace Relations advised jurisdictions to adopt and implement the second set of model codes in July 2012 (October 2012 for Spray painting and powder coating and Abrasive blasting).

The codes of practice approved by this instrument are the model codes of practice as so developed by Safe Work Australia and modified by Comcare to

ensure consistency with the WHS Act and the WHS Regulations and compliance with requirements of the *Legislative Instruments Act 2003*.

In accordance with paragraph 273B(1)(d) of the WHS Act, this instrument is a legislative instrument within the meaning of the *Legislative Instruments Act 2003*.

Further codes of practice are still under development and certain parts of the *Occupational Health and Safety Code of Practice 2008* approved under the *Occupational Health and Safety Act 1992* have been temporarily preserved by the *Work Health and Safety (Transitional and Consequential Provisions) Regulations 2011* to provide interim guidance to duty holders pending approval of new codes of practice.

The *Decision Regulation Impact Statement for National Harmonisation of Work Health and Safety Regulations and Codes of Practice* prepared by Safe Work Australia addresses the regulatory impact of the codes of practice approved by this instrument (and further codes of practice under development to be approved by subsequent instruments).

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

In accordance with the WHS Act, the Minister has notified the approval of the codes of practice in newspapers and copies of the codes of practice (and applied, adopted and incorporated documents) are available for inspection, without charge, at Comcare offices during normal business hours. Copies are also published on the Comcare website [www.comcare.gov.au](http://www.comcare.gov.au).