

## **EXPLANATORY STATEMENT**

*Work Health and Safety Act 2011*

Issued by the Minister for Employment

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

#### **Work Health and Safety (Managing Risks in Stevedoring) Code of Practice 2017**

The purpose of the instrument to which this Explanatory Statement relates is to approve the Work Health and Safety (Managing Risks in Stevedoring) Code of Practice 2017 (the Stevedoring Code). The Stevedoring Code provides 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).

The WHS Act and accompanying WHS Regulations provide the primary work health and safety legislation for the Commonwealth jurisdiction. They are based on model laws developed by Safe Work Australia (SWA) under the *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety*.

Section 274 of the WHS Act provides that the Minister may approve codes of practice for the purposes 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 of practice 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.

The Code of Practice approved by this instrument is a model code of practice developed by SWA.

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

#### **Incorporated Documents**

Subsection 274(3) of the WHS Act provides that approved codes of practice made under the WHS Act may apply, adopt or incorporate material from other documents in force at a particular time or from time to time. The Stevedoring Code references a number of other documents to provide guidance to readers about where to find additional information on particular hazards and risks. These include Marine Orders, codes of practice published by the International Labour Organization (ILO), and other model codes of practice and guidance material developed by SWA.

All incorporated documents in the Stevedoring Code are incorporated from time to time. This is because the documents are subject to revision as risk management processes evolve over time.

All incorporated documents may be accessed free of charge on various websites (see below). Most of the documents are specific to the stevedoring industry and should be well known by duty holders. Subsection 274(6) of the WHS Act also requires Comcare to ensure that a copy of each approved Code of Practice and each document applied, adopted or incorporated (to any extent) by an approved Code of Practice is available for inspection by members of the public without charge.

### *Marine Orders*

Marine Orders are a form of delegated legislation that apply to certain Australian and foreign vessels. Marine Orders are available on the Australian Maritime Safety Authority website <https://www.amsa.gov.au/> and are also registered on the Federal Register of Legislation <https://www.legislation.gov.au/>

### *Codes of Practice*

The Stevedoring Code references a number of model codes of practice which are available on the SWA website <http://www.safeworkaustralia.gov.au/sites/swa/model-whs-laws/model-cop/pages/model-cop>

### *SWA guidance material*

The Stevedoring Code also refers to a number of guides published by SWA. These documents are similar to codes of practice and provide detailed practical guidance to duty holders about how to manage specific hazards and risks. These materials are also available on the SWA website <http://www.safeworkaustralia.gov.au/sites/swa/model-whs-laws/guidance/pages/guidance-material>

### *ILO codes of practice*

The Stevedoring Code refers readers to the ILO code of practice ‘Health and Safety in Ports’. This document was developed by the ILO to assist ILO constituents and all those responsible for or involved in the management, operation, maintenance and development of ports. ILO Codes can be accessed on the ILO website <http://www.ilo.org/safework/info/standards-and-instruments/codes/lang--en/index.htm>

### **Consultation**

The Stevedoring Code has been the subject of extensive consultation with stakeholders over a number of years. Consultation has been undertaken with governments, industry, unions and the community through mechanisms including SWA’s Members, a Stevedoring Temporary Advisory Group and public consultations periods.

### **Regulation Impact Statement**

The *Decision- Regulation Impact Statement Model Code of Practice: Managing Risks in Stevedoring* prepared by SWA addresses the regulatory impact of the Stevedoring Code approved by this instrument. The Decision Regulation Impact Statement may be accessed on the SWA website <https://www.safeworkaustralia.gov.au/doc/decision-regulation-impact-statement-model-code-practice-managing-risks-stevedoring>

### **Statement of Compatibility with Human Rights**

A Statement of Compatibility with Human Rights has been completed for this Legislative Instrument, in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Statement’s assessment is that the instrument is compatible with human rights. A copy of the Statement is attached.

### **Ministerial Notification and Availability**

In accordance with the WHS Act, the Minister has notified the approval of the Stevedoring Code 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)

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.*

**Work Health and Safety (Managing Risks in Stevedoring) Code of Practice 2017**

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

**Overview**

The Legislative Instrument to which this Human Rights Compatibility Statement relates approves a Code of Practice for Managing Risks in Stevedoring (the Stevedoring Code). The Stevedoring Code provides 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).

The WHS Act and accompanying WHS Regulations provide the primary work health and safety legislation for the Commonwealth jurisdiction. They are based on model laws developed by Safe Work Australia under the *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety*.

Section 274 of the WHS Act provides that the Minister may approve codes of practice for the purposes 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 a code of practice 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 a code in determining what is reasonably practicable in the circumstances to which the code relates.

**Human rights implications**

Article 7 of the International Covenant on Economic, Social and Cultural Rights provides that everyone has the right to the ‘enjoyment of just and favourable conditions of work, which ensure, in particular...[s]afe and healthy working conditions’. The instrument promotes the right to safe and healthy working conditions by providing duty holders with industry specific practical guidance. The guidance will assist them to meet their obligations under the WHS Act and WHS regulations.

**Conclusion**

The instrument is compatible with human rights because it promotes the protection of human rights.

**Minister for Employment, Senator the Hon Michaelia Cash**