

**WORK HEALTH AND SAFETY AMENDMENT (PUBLIC AUTHORITIES)  
REGULATIONS 2019**

**EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Industrial Relations

under the *Work Health and Safety Act 2011*

**PURPOSE AND OPERATION OF THE INSTRUMENT**

The main object of the *Work Health and Safety Act 2011* (the WHS Act) is to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces.

Section 276 of the WHS Act provides, in part, that the Governor-General may make regulations prescribing matters required or permitted by the WHS Act, or necessary or convenient to be prescribed for carrying out or giving effect to the WHS Act.

Section 12 of the WHS Act provides that the WHS Act applies to the Commonwealth, ‘public authorities’ and ‘non-Commonwealth licensees’. ‘Public authority’ is defined in section 4 of the WHS Act and includes (among other things) a body corporate prescribed by the regulations for the purposes of the WHS Act. The list of prescribed public authorities is set out in regulation 6C of the *Work Health and Safety Regulations 2011* (WHS Regulations).

The *Work Health and Safety Amendment (Public Authorities) Regulations 2019* (the Amendment Regulations) remove one corporation, ASC Shipbuilding Pty Ltd (ASC Shipbuilding), from the list of prescribed public authorities for the purposes of the WHS Act.

ASC Shipbuilding was formerly a corporation wholly-owned by the Commonwealth, but in December 2018 it was privatised and became a subsidiary of BAE Systems Australia Ltd, which owns all of the ordinary voting shares in ASC Shipbuilding. The Commonwealth no longer has operational control of, or day to day influence over, ASC Shipbuilding.

The Amendment Regulations will result in ASC Shipbuilding ceasing to be covered by the WHS Act as a public authority and instead being subject to the work health and safety laws of the state or territory in which the corporation operates, primarily South Australia.

**CONSULTATION**

Section 17 of the *Legislation Act 2003* requires the Minister to be satisfied that any consultation considered to be appropriate, and that is reasonably practicable to undertake, has been undertaken before making the instrument.

The amendment was requested by ASC Shipbuilding and its parent company, BAE Systems Australia Ltd.

Comcare, the regulator under the WHS Act, was consulted and supports the amendment.

## **REGULATORY IMPACT STATEMENT**

The Office of Best Practice and Regulation (OBPR) has advised that a Regulation Impact Statement is not required. The OBPR reference is ID 25477.

## **OTHER DETAILS**

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Act specifies no conditions that need to be met before the power to make the instrument may be exercised.

The Amendment Regulations commence on the later of 1 December 2019 or the day after the Regulations are registered on the Federal Register of Legislation

Details of the Regulations are at **Attachment A**.

A statement of compatibility under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* is at **Attachment B**.

## **NOTES ON SECTIONS**

### Section 1 – Name

This section provides that the title of the instrument is the *Work Health and Safety Amendment (Public Authorities) Regulations 2019*.

### Section 2 – Commencement

This section provides for the instrument to commence on the later of 1 December 2019 or the day after the instrument is registered on the Federal Register of Legislation.

### Section 3 – Authority

This section provides that the instrument is made under the *Work Health and Safety Act 2011*.

### Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the instrument is amended or repealed according to the terms set out in the Schedule, and any other item in a Schedule to the instrument has effect according to its terms.

### Schedule 1 – Amendments

Schedule 1 specifies that table item 3 in Regulation 6C is repealed. This has the effect of removing ASC Shipbuilding Pty Ltd the list of prescribed public authorities for the purposes of the *Work Health and Safety Act 2011*.

## Statement of Compatibility with Human Rights

Issued by the Minister for Industrial Relations

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

### ***Work Health and Safety Amendment (Public Authorities) Regulations 2019***

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

### **Overview of the Legislative Instrument**

The *Work Health and Safety Amendment (Public Authorities) Regulations 2019* (the Amendment Regulations) remove one corporation, ASC Shipbuilding Pty Ltd (ASC Shipbuilding) from the list of public authorities in the *Work Health and Safety Regulations 2011* (the WHS Regulations) prescribed for the purposes of coverage by the *Work Health and Safety Act 2011* (Cth) (the WHS Act). Removing ASC Shipbuilding from the list of prescribed public authorities means that upon commencement, the corporation would no longer be subject to the WHS Act as a public authority. ASC Shipbuilding will be subject to the work health and safety laws of the state or territory in which it operates, primarily South Australia.

### **Human Rights Implications**

A human right engaged by this instrument, included in the section 3 definition of human rights in the *Human Rights (Parliamentary Scrutiny) Act 2011*, is the right to just and favourable conditions of work contained in article 7 of the International Covenant on Economic, Social and Cultural Rights (the ICESCR). The right to enjoy just and favourable working conditions has various components that require states to establish a minimum standard for working conditions for all workers and develop appropriate enforcement measures. One of the components of article 7 is the right to safe and healthy working conditions. In relation to this right, the Committee on Economic, Social and Cultural Rights has stated that ‘people must be afforded minimum conditions of occupational health and safety, and States parties are responsible for adopting policies and laws to that end’.<sup>1</sup>

The right to safe and healthy working conditions is primarily underpinned in Australia by work health and safety legislation at the Commonwealth, state and territory levels. The WHS Act applies to the Commonwealth, ‘public authorities’ (which include corporations prescribed by the regulations for the purposes of the WHS Act), and ‘non-Commonwealth licensees’ (being certain corporations that hold a licence to self-insure under the Commonwealth’s workers’ compensation scheme). Businesses that fall outside of the

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<sup>1</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), *Fact Sheet No. 16 (Rev.1), The Committee on Economic, Social and Cultural Rights*, May 1996, No. 16 (Rev.1), available at: <http://www.refworld.org/docid/4794773cd.html> [accessed 22 May 2014].

coverage of the WHS Act are covered by the state or territory WHS laws that apply in the state or territory in which they operate.

The Commonwealth WHS Act and the South Australian *Work Health and Safety Act 2012* implement the model work health and safety laws developed by Safe Work Australia. The laws form part of a harmonised approach to work health and safety in Australia.

Because the laws are substantially the same, the rights of affected workers to safe and healthy working conditions will not be compromised.

## **Conclusion**

This legislative instrument is compatible with human rights because it will not adversely affect the right to safe and healthy working conditions of workers of ASC Shipbuilding, since the corporation is moving between WHS regulatory regimes that are substantially the same.