

# **WORK HEALTH AND SAFETY AMENDMENT (MANAGING PSYCHOSOCIAL RISK AND OTHER MEASURES) REGULATIONS 2022**

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Employment and Workplace Relations

under section 276 of the *Work Health and Safety Act 2011*

### **PURPOSE AND OPERATION OF THE INSTRUMENT**

The *Work Health and Safety Act 2011* (the Act) and the *Work Health and Safety Regulations 2011* (the principal Regulations) provide the primary work health and safety legislation for the Commonwealth jurisdiction. They are based on the model Work Health and Safety laws (model laws) developed by Safe Work Australia.

The Act provides for a framework to secure the health and safety of workers and workplaces, in part, by protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work.

Subsection 276(1) of the Act provides that the Governor-General may make regulations in relation to any matter relating to work health and safety, and any matter or thing required or permitted by the Act to be prescribed or that is necessary or convenient to be prescribed to give effect to the Act. Specific regulation making powers include:

- Subsection 12(6) provides the transitional period for a non-Commonwealth licensee may be ended by the making of a regulation.
- Section 4 provides additional laws may be prescribed as a ‘corresponding WHS law’.
- Paragraph 276(3)(d) provides the regulations may apply, adopt or incorporate any matter contained in any document formulated, issued or published by a person or body with or without modification, and as in force at a particular time or as in force or remade from time to time.

The purpose of the *Work Health and Safety Amendment (Managing Psychosocial Risk and Other Measures) Regulations 2022* (the Amendment Regulations) is to amend the principal Regulations to adopt amendments to the model Work Health and Safety Regulations (the model Regulations) published by Safe Work Australia and make other minor and clarifying amendments specific to the Commonwealth jurisdiction. These include amendments to:

- identify and control psychosocial risks in the workplace
- strengthen record keeping requirements of amusement device operators to improve visibility of amusement device safety
- clarify that a Standard need only apply if the Act or principal Regulations prescribe it
- clarify that only listed laws are ‘corresponding WHS laws’
- update the list of prescribed public authorities; and

- clarify coverage for certain entities which have exited the Commonwealth workers' compensation scheme.

### Psychosocial regulations

Section 4 of the Act defines 'health' to include psychological health. This means, any duties under the Act that apply to 'health' apply to psychological health. Despite this, the Review of the model Work Health and Safety laws (the Boland Review) found that:

- persons conducting a business or undertaking (PCBUs) have limited understanding of their duties in relation to managing risks to psychological health at work; and
- while the work health and safety laws already deal with psychological health at work, work-related psychological injury data, and the experiences of workers, indicates the existing framework is not operating effectively.

In response to this outcome, the Boland Review recommended the model Regulations be amended to 'deal with how to identify the psychosocial risks associated with psychological injury and the appropriate control measures to manage those risks' (recommendation 2). Recommendation 2 was supported by Ministers responsible for work health and safety. The model Regulations were amended in June 2022 to give effect to recommendation 2. These Amendment Regulations give effect to the model Regulation for psychosocial risks in the Commonwealth.

The Amendment Regulations, while largely mirroring the model Regulations, would also apply the hierarchy of controls (regulation 36 of the principal Regulations) to psychosocial hazards. The hierarchy of controls is a step-by-step approach to eliminating or reducing risks and it ranks risk controls from the highest level of protection and reliability through to the lowest and least reliable protection. The hierarchy of control requires that higher order control measures are implemented first unless it is not reasonably practicable to do so. The hierarchy of controls is a fundamental element of work health and safety risk management and applying it to psychosocial risks will ensure that physical and psychosocial risks are managed using the same framework.

### Other recommendations of the Boland Review

In addition to recommendation 2, the Amendment Regulations amend the principal Regulations to adopt amendments to the model Regulations which implement other recommendations of the Boland Review. These include amending the principal Regulations to:

- Improve recording of statutory notices and operator training in amusement device log books to improve the visibility of amusement device safety (recommendation 28).
  - While this amendment is unlikely to bear impact on the Commonwealth jurisdiction, it is being made to ensure consistency with the model laws.
- Clarify that compliance with an Australian Standard or an Australia/New Zealand Standard is not mandatory unless this is specifically stated (recommendation 31b).
  - This amendment clarifies the intended operation of the existing model laws.

### Corresponding WHS laws

The Amendment Regulations clarify what is a ‘corresponding WHS law’ for the purposes of the Act and principal Regulations. This amendment refines the definition of ‘corresponding WHS law’ from extending to ‘any other law relating to occupational health and safety matters’ to a definition that only includes the laws expressly specified in regulation 6A of the principal Regulations.

The amendment ensures that only the primary work health and safety laws in each jurisdiction are ‘corresponding WHS laws’ and that other workplace laws, including industry specific laws that also deal with safety clearly apply to the Commonwealth, public authorities, and non-Commonwealth licensees. This is the intended outcome and consistent with how Comcare and Commonwealth duty holders currently approach industry specific laws.

### Public authorities

The Amendment Regulations update the list of prescribed ‘public authorities’ to ensure entity names are accurate and remove entities which have ceased to exist.

### Exiting non-Commonwealth licensees

The Amendment Regulations clarify coverage for certain non-Commonwealth licensees which have had a licence revoked under the *Safety, Rehabilitation and Compensation Act 1988*. The ‘transitional period’ for three entities is ended, which means that the entity is no longer a ‘non-Commonwealth licensee’ for the purposes of the Act.

The intent of the Amendment Regulations is to provide certainty that these entities have exited the Act and moved into state and territory work health and safety schemes.

Details of the Amendment Regulations are at [Attachment A](#).

The Amendment Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amendment Regulations on managing psychosocial risk would commence on 1 April 2023. The remaining provisions to the proposed Regulations commence the day after registration.

## **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.

Public consultation on the Boland Review recommendations occurred through a Consultation Regulation Impact Assessment conducted by Safe Work Australia. Following this consultation, Safe Work Australia published a Decision Regulation Impact Statement recommending a path forward for each of the 34 recommendations of the Boland Review

based on the outcomes of public consultation and having regard to its analysis of regulatory impact. Following Ministers responsible for work health and safety's decision on a path forward for each of the 34 recommendations, Safe Work Australia settled the policy parameters for amendments to the model Regulations through its consultative tripartite membership body. Safe Work Australia is comprised of representatives from the Commonwealth, each state and territory, the Australian Council of Trade Unions, Australian Industry Group and the Australian Chamber of Commerce and Industry.

Comcare, the Commonwealth work health and safety regulator was consulted on the decision to apply the hierarchy of controls to psychosocial risks in the Commonwealth. Wider consultation on application of the hierarchy of controls was not required due to the extensive consultation undertaken by Safe Work Australia as described above. The hierarchy of controls is a fundamental and well understood concept in the work health and safety framework and was considered in detail by Safe Work Australia Members when developing amendments to the model Regulations to give effect to recommendation 2 of the Boland Review.

Comcare, the National Heavy Vehicle Regulator and the Office of the National Rail Safety Regulator were consulted on the amendment to the definition of 'corresponding WHS law'. These regulators were identified as being most interested in clarification and no other consultation was considered necessary given the nature of the amendment.

The entities affected by the amendments to regulation 6C, which correct the list of prescribed public authorities, will be informed about the change. Because this is a technical amendment which updated company names no further consultation was considered necessary.

Comcare and affected entities were consulted on the amendment to end the transitional period for certain non-Commonwealth licensees.

## **REGULATORY IMPACT STATEMENT**

The Office of Impact Analysis (OIA) has advised that a Regulation Impact Statement is not required. The OIA reference is ID OBPR22-03708.

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

The Amendment Regulations are 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*. A Statement of Compatibility with Human Rights is set out at Attachment B.

## NOTES ON SECTIONS

In these notes on sections, the following abbreviations are used

| Abbreviation          | Definition   |
|-----------------------|--|
| WHS                   | Work health and safety   |
| Act                   | <i>Work Health and Safety Act 2011</i>   |
| principal Regulations | <i>Work Health and Safety Regulations 2011</i>   |
| Amendment Regulations | <i>Work Health and Safety Amendment (Managing Psychosocial Risk and Other Measures) Regulations 2022</i> |
| Boland Review         | Review of the model Work Health and Safety laws  |
| PCBU                  | Person conducting a business or undertaking  |
| AS                    | Australian Standards   |
| AS/NZS                | Australia/New Zealand Standards  |

### Section 1 – Name

1. This section provides that the title of the instrument is the *Work Health and Safety Amendment (Managing Psychosocial Risk and Other Measures) Regulations 2022*.

### Section 2 – Commencement

2. The table in this section sets out when the provisions of the instrument commence.
3. Subsection 2(1) provides that each provision of the instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.
4. Part 1 Division 1 of Schedule 1 of the instrument would commence on 1 April 2023 to allow time for Comcare to prepare businesses for the requirement to manage psychosocial risks in accordance with the hierarchy of controls. The remaining amendments in the instrument commence the day after registration on the Federal Register of Legislation.

### Section 3 – Authority

5. This section provides that the instrument is made under the Act.

#### Section 4 – Schedules

6. 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

##### *Work Health and Safety Regulations 2011*

#### Part 1 – Model WHS law amendments

#### Division 1 – Managing psychosocial risks

##### **Item [1] – Subregulation 5(1)**

7. Regulation 5 defines the terms used in the principal Regulations.
8. This item inserts new definitions of ‘psychosocial hazard’ and ‘psychosocial risk’ into regulation 5. These terms are required for the effective operation of new Part 3.2, Division 11 – Psychosocial hazards.

##### **Item [2] – At the end of Part 3.2**

9. This item inserts new Division 11 into Part 3.2 of the principal Regulations.
10. Regulation 55A defines a psychosocial hazard as a hazard that may cause psychological harm and arises from, or relates to:
  - the design or management of work
  - a work environment
  - plant at a workplace; or
  - workplace interactions or behaviours

which may cause psychological harm.

11. Paragraph 55A(b) makes clear that a hazard is a psychosocial hazard if it may cause psychological harm, whether or not it may also cause physical harm. This is consistent with section 4 of the Act which defines health as meaning both physical and psychological health.
12. Regulation 55B defines a psychosocial risk as a risk to the health and safety of a worker or other person arising from a psychosocial hazard, as defined in regulation 55A.

13. Regulation 55C specifies that a PCBU must manage psychosocial risks, as defined in regulation 55B, in accordance with Part 3.1 of the principal Regulations, including the requirement to apply the hierarchy of control measures under regulation 36.
14. Some hazards (e.g. remote or isolated work) may create both physical and psychosocial risks, and other regulations may apply (e.g. regulation 48 of the principal Regulations). Where this occurs, the duty to manage psychosocial risks applies in addition to other requirements to manage hazards under the principal Regulations. In the example of remote and isolated work this means both physical and psychosocial risks must be managed in accordance with Part 3.1 of the principal Regulations, and any safe system of work must include effective communication with the worker as required in regulation 48 of the principal Regulations.
15. The note following regulation 55C means that a person's duty under section 19 of the Act (primary duty of care) is to be performed in accordance with regulation 55C of the principal Regulations. Regulation 9 explains the effect of notes linking a regulation to health and safety duties in the Act.
16. Regulation 55D sets out matters to have regard to when determining control measures for psychosocial risks. These matters would assist PCBUs to ensure they are identifying all appropriate controls and relevant conditions in the context of their individual workplace. Once a PCBU has identified all relevant matters, they will be in a position to effectively apply the requirements for managing risk in accordance with Part 3.1 of the principal Regulations (e.g. the requirement to apply the hierarchy of controls under regulation 36).
17. Subregulation 55D(1) clarifies that the regulation applies to a PCBU who implements control measures to manage psychosocial risks in accordance with Part 3.1 of the principal Regulations.
18. Subregulation 55D(2) provides that in determining the control measures to implement, the person must have regard to all relevant matters including:
  - the duration, frequency and severity of the exposure of workers and other persons to the psychosocial hazards – this recognises the risk of harm, and the potential severity of any subsequent injury or illness, increases with the frequency, duration and severity of exposure to psychosocial hazards
  - how the psychosocial hazards may interact or combine - this recognises the need to holistically consider the interaction of any hazards present, including that they may interact or combine to create new, changed or higher risks
  - the design of work, including job demands and tasks – this recognises the need for PCBUs to consider the design of work as a control measure and implement control measures that eliminate or minimise psychosocial hazards (e.g. high job demands or exposure to traumatic events) at the organisation or systems level

- the systems of work, including how work is managed, organised and supported – this recognises that how work is managed, organised and supported can assist with controlling psychosocial risks such as job demands, low control and poor support
- the design and layout, and environmental conditions, of the workplace, including provision of:
  - safe means of entering and exiting the workplace; and
  - facilities for the welfare of workers.

This requires PCBUs to consider controlling risks that may arise from the design, layout and environmental conditions of the workplace, and controlling risks through good design. For example, designing the workplace to ensure good visibility and provide safe access to welfare facilities

- the design and layout, and environmental conditions, of workers’ accommodation – this recognises that the above considerations for the workplace also apply to workers’ accommodation. The term ‘workers’ accommodation’ is defined in subsection 19(4) of the Act
  - the plant, substances and structures at the workplace – this recognises that plant, substances and structures may create psychosocial risks but can also be used to control psychosocial risks. For example, the provision of plant to enable a job to be performed properly
  - workplace interactions or behaviours – this requires PCBUs to identify harmful behaviours (e.g. violence, aggression, bullying, harassment, sexual harassment, conflict and poor workplace relationships) in the workplace and implement control measures to manage the related risks, and
  - the information training, instruction and supervision provided to workers - this recognises that training can support the implementation of controls for psychosocial hazards and be used as a control measure itself (e.g. training in conflict management). It is intended to ensure PCBUs provide the training, instruction and supervision necessary to support the implementation of control measures such as bullying policies.
19. Consideration of which control measures to implement is not to be limited to matters as they currently exist and the PCBU must also have regard to what changes, if any, should be made. For example, a PCBU must consider existing plant, substances, and structures in the workplace, but also consider whether different or additional plant, substances or structures should be in use in the workplace to manage psychosocial risks.

## Division 2 – Other amendments

### **Item [3] – At the end of regulation 15**



20. This item inserts a note in regulation 15.
21. Regulation 15 describes how the terms AS and AS/NZS are used in the principal Regulations.
22. The note to regulation 15 clarifies that compliance with an AS or AS/NZS is only required where a regulation, expressly or by necessary implication provides that this is the case.
23. The note gives an example where a regulation refers to an AS but where the regulation does not require compliance with the terms of the AS. The reference to an AS in the definition of the term 'boiler' is used to describe a type of equipment that is excluded from the requirement for the operator to hold a high risk work licence under the principal Regulations. Therefore, the relevant regulation on high risk work licences does not require compliance with the Standard but to come within the exclusion, the equipment must be certified in compliance with the Standard.

**Item [4] – Regulation 28 (heading)**

**Item [5] – Regulation 28**

24. Regulation 28 sets out requirements for a notice of entry and requires for example that a WHS entry permit holder include so far as is practicable the particulars of the suspected contravention to which the entry relates.
25. Items 4 and 5 omit references to section 117 in the heading and body of regulation 28 and substitute it with references to 'Division 2 of Part 7' where section 117 is located. This is a technical amendment to improve the readability of the legislation.

**Item [6] – At the end of regulation 238**

26. This item inserts new subregulation 238(3) into the principal Regulations.
27. Regulation 238 requires the person with management or control of an amusement device or passenger ropeway at a workplace to ensure that the amusement device or ropeway is operated only by a person who has been provided with instruction and training in the proper operation of the device.
28. Item 6 clarifies this must include instruction and training in how to carry out the daily checks required by paragraph 238(2)(a) and in how to operate the device without passengers as required by paragraph 238(2)(b). The term 'daily checks' refers to the checks required to be carried out on the device on each day on which the device is to be operated noting that the device may not in fact be operated every day of the week.

**Item [7] – Paragraph 242(1)(a)**

**Item [8] – After subregulation 242(1)**

**Item [9] – Paragraph 242(2)(a)**

**Item [10] – At the end of regulation 242**

29. Items 7 to 10 amend regulation 242 to require specific information, including details of statutory notices issued by any work health and safety regulator and evidence of operator training and instruction, are included in the log book for an amusement device.
30. Regulation 242 requires that the person with management or control of an amusement device at a workplace keep a log book for the amusement device and ensure the log book and operating and maintenance manuals are kept with the amusement device.
31. Item 8 inserts a requirement for the log book to contain specified information to ensure it has sufficient information to show if the ride is safe and if the operator is competent to operate it. This includes details of the maintenance of the device, details about each operator of the device (including their training) and details of any statutory notices issued in relation to the device.
32. Paragraph 242(1A)(h) includes a requirement for the log book to include details of any statutory notices issued in relation to the device. ‘Statutory notice’ is defined in new subregulation 242(1B). Statutory notices include improvement notices (sections 191-194 of the Act), prohibition notices (sections 195-197 of the Act) and infringement notices (section 243 of the Act), as well as such notices issued in another jurisdiction under a corresponding WHS law. It does not include other notices under the Act or the principal Regulations.
33. Section 243 of the Act provides scope for infringement notices to be utilised in the Commonwealth where a provision has been prescribed by the principal Regulations as enforceable under Part 13, Division 3 of the Act. There are currently no provisions prescribed by the principal Regulations as enforceable under Part 13, Division 3 of the Act meaning that infringement notices are not currently utilised in the Commonwealth. The reference to infringement notices in the definition of statutory notice paragraph 242(1B)(a) will be inoperative to the extent that no provisions remain prescribed as enforceable by the principal Regulations.
34. Items 7 and 9 are consequential to Item 8.
35. The note to regulation 242(1A) refers to existing paragraph 238(2)(c) which requires that the log book must also include records of the daily checks and operation of the amusement device without passengers.
36. Item 10 inserts a requirement for the person with management or control of an amusement device to provide the log book to any person to whom they relinquish control of the device.
37. The maximum penalty for contravening regulation 242 of the principal Regulations is \$1 250 for an individual and \$6 000 for a body corporate.

## Part 2– Other amendments

### **Item [11] – Regulation 6A**

### **Item [12] – Regulation 6A (table item 4)**

### **Item [13] – Regulation 6A (table items 5 and 10)**

**Item [14] – Regulation 6A (table item 14)**

**Item [15] – Regulation 6A (table item 15)**

**Item [16] – Regulation 6A (table item 20)**

**Item [17] – Regulation 6A (table item 21)**

**Item [18] – Regulation 6A (table item 24)**

**Item [19] – Regulation 6A (table item 25)**

**Item [20] – Regulation 6A (table item 28)**

**Item [21] – Regulation 6A (table item 32)**

**Item [22] – Regulation 6A (table item 36)**

38. Section 4 of the Act provides that each primary work health and safety act in a jurisdiction (e.g. the NSW *Work Health and Safety Act 2011*) is a ‘corresponding WHS law’ for the purposes of the Act and principal Regulations. Additional laws are prescribed to be ‘corresponding WHS laws’ in regulation 6A of the principal Regulations.
39. Several provisions of the Act refer to ‘corresponding WHS law’ to determine the scope of the Act so that duplicate obligations do not apply to the Commonwealth, public authorities and non-Commonwealth licensees under state and territory work health and safety legislation. The ‘corresponding WHS law’ definition also applies throughout the principal Regulations, for example:
- The definition of ‘emergency services organisation’ in regulation 5 is defined as an organisation that is an emergency service organisation in accordance with regulations made under a corresponding WHS law.
  - Regulation 83 provides for the recognition of a high risk work licence issued under a corresponding WHS law.
  - An application for a major hazard facility licence must include a declaration as to whether or not the operator has ever been convicted or found guilty of any offence under any corresponding WHS law (regulation 578).
40. Because of the way the definition is used in some instances in the Act and principal Regulations, Item 11 clarifies for the avoidance of doubt that each of the ‘corresponding WHS laws’ listed are incorporated in force from time to time. This means for example that where a jurisdiction changes its definition of emergency services organisation the change would flow through to the regulations, and mutual recognition of licences is unaffected by updates to state laws. This ensures that the harmonised approach to work health and safety regulation remains effective, particularly in relation to mutual recognition of authorisations. It also assists duty holders and workers in understanding the laws because they don’t need to find a version of the state or territory legislation at a particular point in time.

41. The laws are freely available to the public on each state and territories' respective register of legislation:
- <https://legislation.nsw.gov.au/>
  - <https://www.legislation.vic.gov.au/>
  - <https://www.legislation.qld.gov.au/>
  - <https://legislation.nt.gov.au/>
  - <https://www.legislation.act.gov.au/>
  - <https://www.legislation.tas.gov.au/>
  - <https://www.legislation.sa.gov.au/>
  - <https://www.legislation.wa.gov.au/>
42. Paragraph 276(3)(d) of the Act provides that the principal Regulations may apply, adopt or incorporate any matter contained in any document formulated, issued or published by a person or body whether with or without modification, or as in force at a particular time or as in force or remade from time to time. This displaces the presumption under subsection 14(2) of the *Legislation Act 2003* in relation to documents incorporated from time-to-time.

***Items [12], [13], [14], [16], [18], [20], [21] and [22] - (table items 4, 10, 14, 20, 24, 28, 32 and 36)***

43. Items 12, 13, 14, 16, 18, 20, 21 and 22 amend the list of prescribed 'corresponding WHS laws' to remove table items 4, 10, 14, 20, 24, 28, 32 and 36. These items refer to 'any other law relating to occupational health and safety matters' in relation to each jurisdiction.
44. The purpose of these amendments is to clarify that only laws expressly listed in regulation 6A are 'corresponding WHS laws' for the purposes of the Act and principal Regulations. The prescription of 'any other law relating to occupational health and safety matters' is no longer necessary now that most jurisdictions have passed laws aligning to the model Work Health and Safety laws and the titles of acts are known. It is important that duty holders and regulators have certainty that industry work health and safety laws apply to the Commonwealth, public authorities and non-Commonwealth licensees.

***Item [14] – (table item 5)***

45. Item 14 removes a reference to the "*Work Health and Safety Act 2011*" in Victoria. This item was drafted on the basis that all jurisdictions would adopt the model Work Health and Safety laws and have a 'work health and safety act' in place. Since 2011, Victoria has not adopted the model work health and safety laws and have communicated no intention to do so in the future. Therefore this table item is no longer necessary.

***Item [15] – (table item 15)***

46. Item 15 replaces references to the "*Work Health and Safety Act 2011*" with a reference to the *Work Health and Safety Act 2020*. This updates the list for Western Australia,

reflecting that there never was a 2011 act and Western Australia aligned with the model in 2020. A similar amendment is included in the *Work Health and Safety Amendment Bill 2022* however the commencement of that legislation and the Amendment Regulations is not aligned. It is important that all relevant laws are listed because Item 15 clarifies that only the Western Australian laws listed are ‘corresponding WHS laws’.

**Item [17] – (table item 21)**

**Item [19] – (table item 25)**

47. Items 17 and 19 correct the references to the South Australian and Tasmanian work health and safety acts. The Acts commenced in 2012 and not 2011 as currently listed.

**Item [23] – Regulation 6C (table items 7 and 8)**

**Item [24] – Regulation 6C (table items 11 to 13)**

**Item [25] – Regulation 6C (table items 15 and 16)**

**Item [26] – Regulation 6C (table items 21 and 22)**

**Item [27] – Regulation 6C (table item 25)**

48. Items 23 to 27 update the list of prescribed public authorities in regulation 6C to reflect the current name of entities and remove entities which have been wound up and no longer exist.

49. Section 4 of the Act provides the definition of ‘public authority’. Relevantly, paragraph (c) of that definition provides that a body corporate prescribed by the regulation to be a public authority for the purposes of the Act is a public authority. Regulation 6C prescribes a number of entities to be public authorities for the purposes of the Act. These bodies have been prescribed, for example, to maintain coverage under the Act for affected workers when a Commonwealth company is sold and would no longer otherwise meet the definition of ‘public authority’ in the Act.

50. The listed entities require updating because several entities currently prescribed have wound up, changed names, or names were incorrectly listed. The table below sets out each change.

| <b>Item of regulation 6C</b> | <b>Action</b>   |
|------------------------------|---|
| 7                            | Repeal “The Travel Doctor TVMC Pty Ltd”<br>Substitute current name “Live Better Management Pty Ltd”     |
| 8                            | Repeal “Work Solutions Australia Pty Ltd”<br>Substitute current name “Integrated Care Services Pty Ltd” |
| 11                           | Repeal “Fitness2live Pty Limited”<br>Substitute current name “Medi Financial Services Pty Ltd”          |

|    |   |
|----|---|
| 12 | Repeal “WLAN Services Pty Ltd” because the entity no longer exists                              |
| 13 | Repeal “SBS Subscription TV Ltd” because the entity no longer exists                            |
| 15 | Repeal “Geospend Pty Ltd” because the entity no longer exists                                   |
| 16 | Repeal “Post Fulfilment Online Pty Ltd” because the entity no longer exists                     |
| 21 | Repeal “Medibank Private Ltd”<br>Substitute correct name “Medibank Private Limited”             |
| 22 | Repeal “Star Track Express Pty Ltd”<br>Substitute correct name “Star Track Express Pty Limited” |
| 25 | Repeal “Telstra Towerco No. 1 Pty Ltd”<br>Substitute current name “Amplitel Pty Ltd”            |

#### **Item [28] – After regulation 12**

51. Item 28 inserts a new regulation 12A to end the transitional period for certain non-Commonwealth licensees. These are licensees which have had a license for self-insurance revoked under the *Safety, Rehabilitation and Compensation Act 1988*. The amendments would provide certainty about which entities are subject to the Act.
52. Coverage under the Act is unique amongst jurisdictions. The Act applies to the Commonwealth, public authorities and non-Commonwealth licensees (which are defined as a body corporate that was a non-Commonwealth licensee for the purposes of the *Occupational Health and Safety Act 1991* immediately before the commencement of the Act). The non-Commonwealth licensees are provided with coverage for a “transitional period” which has continued since the Act commenced (subsection 12(4)). Subsection 12(6) of the Act provides that regulations may be made ending the transitional period for a licensee or a class of licensee. Ending this transitional period will mean that they are no longer a “non-Commonwealth licensee” for the purposes of the Act and are subject to relevant state or territory work health and safety laws.
53. New regulation 12A states that the transitional period for the following entities has ended:
  - Hollard Insurance Partners Limited
  - MLC Wealth Limited; and
  - Vicinity Centres PM Pty Ltd.

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

Issued by the Minister for Employment and Workplace Relations

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

### ***Work Health and Safety Amendment (Managing Psychosocial Risk and Other Measures) Regulations 2022***

This Disallowable 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 Act 2011* (the Act) and *Work Health and Safety Regulations 2011* (the principal Regulations) provide the primary work health and safety legislation for the Commonwealth jurisdiction. They are based on model Work Health and Safety laws (model laws) developed by Safe Work Australia.

The purpose of the *Work Health and Safety Amendment (Managing Psychosocial Risk and Other Measures) Regulations 2022* (Amendment Regulations) is to improve work health and safety outcomes by inserting regulations on managing psychosocial risks in the workplace and making other minor and clarifying amendments. The Amendment Regulations implement amendments made to the model Work Health and Safety Regulations (model Regulations) arising from the Review of the model Work Health and Safety laws (Boland Review). Commonwealth specific amendments to clarify aspects of scope and coverage of the Commonwealth work health and safety laws are included. Amendments would:

- Demonstrate how to identify workplace psychosocial risks associated with psychosocial injury and the appropriate control measures to utilise to manage those risks (Boland Review recommendation 2).
- Improve recording of statutory notices and operator training in amusement device log books to improve the visibility of amusement device safety (Boland Review recommendation 28).
- Clarify that compliance with an Australian Standard or an Australia/New Zealand Standard is not mandatory unless this is specifically stated (Boland Review recommendation 31b).
- Refine the definition of ‘corresponding WHS law’ to ensure that only the primary work health and safety laws in each jurisdiction are ‘corresponding WHS laws’ and that other laws, including industry specific occupational health and safety laws apply to the Commonwealth, public authorities, and non-Commonwealth licensees.
- Update the list of prescribed public authorities to ensure entity names are accurate and remove entities which have ceased to exist.
- Clarify coverage for certain non-Commonwealth licensees which have had a licence for self-insurance revoked under the *Safety, Rehabilitation and Compensation Act 1988*.

## Human Rights Implications

This Disallowable Legislative Instrument engages the following human rights:

- The right to just and favourable conditions of work under Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); and
- The right to privacy under Article 17 of the International Covenant on Civil and Political Rights (ICCPR).

### Right to just and favourable conditions of work

Article 7 of the ICESCR 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 content of the right to just and favourable conditions of work can be informed by specific obligations in treaties of the International Labour Organization (ILO), including:

- the *Occupational Safety and Health Convention 1981* (No. 155) which requires the adoption of a coherent national policy on occupational safety, occupational health and the working environment, and
- the *Violence and Harassment Convention 2019* (No. 190), of which the Australian Government has commenced ratification, which requires the adoption of laws and regulations to require employers to take appropriate steps corresponding to their degree of control to prevent violence and harassment at work. Violence and harassment include behaviours and practices that can result in psychological harm.

The prevention of occupational accidents and diseases is a fundamental aspect of the right to just and favourable conditions of work. Its realisation requires the adoption of a national policy for the prevention of accidents and work-related injury by minimising hazards in the working environment and ensuring broad participation in its formulation, implementation and review, in particular of workers and employers and their representative organisations.

Australia relevantly complies with its obligation under Article 7 of the ICESCR through the harmonised system of Commonwealth, state and territory work health and safety laws (including the principal Regulations).

The Amendment Regulations promote the right to safe and healthy working conditions by clarifying obligations to manage psychosocial risks in the principal Regulations which will assist duty holders to meet their obligations under the Act. The Amendment Regulations make clear that, to manage psychosocial risks in a workplace, a duty holder must:

- identify psychosocial hazards
- implement control measures in accordance with the hierarchy of controls
- have regard to certain matters when determining control measures for psychosocial hazards including consideration of the duration, frequency and severity of exposure to psychosocial hazards and how psychosocial hazards may interact or combine to increase risk; and
- maintain and review control measures.

The Amendment Regulations, in applying the hierarchy of controls, will require higher order control measures to be utilised to manage psychosocial risks. This provides a strong level of protection for workers and ensures psychosocial hazards are considered with the same weight as physical hazards.



Adopting the further amendments to the model laws arising from the Boland Review provides a coherent and consistent approach to work health and safety nationally.

### Right to privacy

Article 17 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with their privacy, family, home and correspondence. This includes the respect for informational privacy, including in respect of storing, using and sharing private information and the right to control dissemination of personal and private information. Privacy guarantees a right to secrecy from the publication of personal information. It also prohibits unlawful attacks on a person's reputation.

Item 8 will require persons with management or control of an amusement device at a workplace to keep and maintain specific information in a log book which will assist in showing whether a ride is safe and if the operator is competent to operate it. Included in the necessary information to keep in the log book is details of each person who operates an amusement device including their name and any instruction or training they have had on the operation of the device.

Item 8 engages the right to privacy because log books will include personal information in the form of names of persons who have operated an amusement device. This means that other persons with access to the log book will have access to information about who has operated the amusement device. It also means an inspector who seeks to review the log book may be able to identify a person responsible for operating an amusement device at the time of an incident.

To the extent these provisions may limit the right to privacy, it would be a permissible limitation. The nature of the personal information required to be recorded is narrow in scope (e.g. by not requiring phone numbers or addresses) which reduces any risk of arbitrary or unlawful interference with privacy. The amendment is also reasonable and proportionate to the extent that it will assist ride operators and regulators to quickly pinpoint issues when an amusement device does not operate effectively, ultimately keeping the workplace, workers and customers safer.

Recording the names of operators of amusement devices in log books would be reasonable, necessary and proportionate to achieving the legitimate object of maintaining safe and healthy working conditions under the harmonised work health and safety scheme, as described in Article 7 of the ICESCR above.

### **Conclusion**

This Legislative Instrument is compatible with human rights because it seeks to promote the right to safe and healthy working conditions by clarifying and improving the Commonwealth work health and safety laws. To the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

**Minister for Employment and Workplace Relations, the Hon Tony Burke MP**