

# **WORK HEALTH AND SAFETY AMENDMENT (INFORMATION SHARING AND OTHER MEASURES) REGULATIONS 2023**

## **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* (Cth)

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

The *Work Health and Safety Amendment (Information Sharing and Other Measures) Regulations 2023* (Amendment Regulations) amend the *Work Health and Safety Regulations 2011* (Cth) (Principal Regulations) to:

- Expressly prohibit the uncontrolled processing of engineered stone products and adopt recent amendments to the model Work Health Safety regulations. A number of other minor model amendments relating to Australian Standards references are also adopted.
- Prescribe for the purposes of the new subsection 271A(3)(b) recently inserted by the *Work Health and Safety Amendment Act 2023*:
  - Acts which are ‘corresponding WHS laws.’ This is a consequential amendment following the repeal of subsection 271(3)(c).
  - Other laws which will permit the Commonwealth WHS regulator (Comcare) to share information with the Office of the National Rail Safety Regulator (ONRSR), National Heavy Vehicle Regulator (NHVR) and the Australian Human Rights Commission (AHRC). New section 271A deals with information sharing between work health and safety regulators, supporting a nationally cooperative and harmonised scheme for work health and safety laws.

Subsection 276(1) of the WHS 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 WHS Act to be prescribed or that is necessary or convenient to be prescribed to give effect to the WHS Act. In addition:

- paragraph 271A(3)(b) provides that Acts may be prescribed to permit disclosure, access or use of information, necessary for the administration or enforcement of those Acts.
- paragraph 276(3)(d) provides the Principal 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.

### **Information Sharing**

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

The model laws have been implemented in all jurisdictions across Australia, except for Victoria which has laws that are very similar. Businesses and workers operate across multiple jurisdictions. Regulators work together to secure the health and safety of workers and workplaces and undertake enforcement action where appropriate.

The purpose of the Amendment Regulations is to enable necessary information sharing between the Commonwealth work health and safety regulator Comcare and other regulators. The nature of the Commonwealth jurisdiction requires Comcare to work closely with state, territory and industry regulators who also have a role in regulating workplaces.

### Engineered Stone

When engineered stone is processed by cutting, grinding, trimming, sanding, polishing or drilling, small particles of silica dust, known as respirable crystalline silica (RCS), are released. Inhaling RCS can cause silicosis and other silica-related diseases. Silicosis can cause permanent disability and death and has no cure except for lung transplantation.

The purpose of the Amendment Regulations is to adopt recent amendments to the model laws which prohibit the uncontrolled processing of engineered stone products and update references to Australian Standards. This would align the Commonwealth laws with the model and emphasise the importance of protecting Australian workers from the risks of working with engineered stone. The primary duty of care in the WHS Act and other obligations already effectively prohibit uncontrolled dry cutting. The Amendment Regulations would expressly prohibit the uncontrolled processing of engineered stone products to ensure clarity and certainty for persons conducting a business or undertaking (PCBUs) and workers in relation to the use of engineered stone.

### *Incorporation of documents (Australian Standards and state and territory laws)*

In accordance with section 14(2) of the *Legislation Act 2003* and section 276(3)(d) of the WHS Act, the relevant Australian Standards are incorporated as at this point in time.

Australian Standards are available for purchase on Standards Australia's webstore or via a Techstreet Enterprise (an online standards-management platform) subscription. Free access is limited due to copyright obligations in the Australian Standards which are published on a profit-making commercial basis. PCBUs have a commercial interest in the relevant Australian Standards and financial capacity to purchase them. In relation to alternative access, Australian Standards are made available, for perusal, in specified government agency premises, during office hours.

Australian Standards referred to are generally technically complex and frequently lengthy documents and their full content is not incorporated into the Regulations.

Item 1 of the Amendment Regulations incorporates Commonwealth, state and territory laws from time to time. These laws are publicly available and duty holders operating in a jurisdiction or industry can be expected to be aware of relevant changes in the law.

The Amendment Regulations commence the day after the registration on the Federal Register of Legislation.

## *Sunsetting*

The *Legislation (Exemptions and Other Matters) Regulation 2015* at regulation 12, item 68, provides that a regulation made under WHS Act is a legislative instrument that is not subject to sunsetting. The Amendment Regulations is a legislative instrument made under the WHS Act and is therefore exempt.

Commonwealth WHS regulations are exempt from sunsetting because they form part of an intergovernmental scheme for a nationally consistent framework to secure the health and safety of workers and workplaces. They are part of a system of nationally harmonised work health and safety laws. The Commonwealth and all states and territories formally committed to the harmonisation of WHS laws by signing the *Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety*.

Details of the Amendment Regulations are set out in Attachment A.

## **CONSULTATION**

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

Comcare was consulted on the amendments to prescribe ‘corresponding WHS laws’ and other essential Acts to allow information sharing with ONRSR, NHVR and AHRC. No other consultation was considered necessary given the nature of the amendment. Comcare supports the proposed amendments.

The amendment prohibiting uncontrolled processing of engineered stone was developed by Safe Work Australia which is a tripartite body. The Australian Council of Trade Unions, Australian Chamber of Commerce and Industry and the Australian Industry Group are represented and were consulted on the amendment. Because the amendment is clarifying in nature, no further consultation was necessary. Similarly, updating references to Australian Standards did not require consultation.

The WHS Act specifies no conditions that need to be satisfied before the power to make the proposed Regulations may be exercised.

## **REGULATION IMPACT STATEMENT**

The Office of Impact Analysis (OIA) advised that a Regulation Impact Statement is not required for information sharing regulation (Reference No: OIA23-05457). OIA also advised that a Regulation Impact Statement is not required for engineered stone and other measures (Reference No: 26432)

## **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 Part 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

<b>Abbreviation</b>	<b>Definition</b>
WHS	Work health and safety
WHS Act	<i>Work Health and Safety Act 2011</i>
WHS Amendment Act	<i>Work Health and Safety Amendment Act 2023</i>
Principal Regulations	<i>Work Health and Safety Regulations 2011</i>
Amendment Regulations	<i>Work Health and Safety Amendments Regulations 2023</i>
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 *Work Health and Safety Amendment (Information Sharing and Other Measures) Regulations 2023*.

### Section 2 – Commencement

2. The table in this section sets out when the provisions of the instrument commence. The instrument commences on the day after registration on the Federal Register of Legislation.

### Section 3 – Authority

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

### Section 4 – Schedules

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

### Schedule 1 – Amendments

#### Part 1 – Information sharing

*Work Health and Safety Regulations 2011*

## Item [1] - Regulation 702

5. Comcare's ability to share information is constrained by section 271 of the WHS Act which prevents disclosure of any information gathered through its operations except in limited circumstances listed in subsection 271(3). The WHS Act provides for confidentiality in section 271 and section 271A.
6. In particular:
  - Section 271 protects information obtained in the course of exercising functions or powers under the WHS Act (for example, inspector powers). A person is prohibited from disclosing, giving access to, or using the information except as permitted in a relevant exception.
  - In addition to the exceptions set out in section 271, section 271A set out additional ways a regulator can use information.
7. Any unauthorised disclosure in circumstances not permitted by existing section 271 or section 271A is punishable.
8. This item repeals the existing regulation 702 and substitutes a new provision which prescribes a list of Acts for the purposes of subsection 271A(3)(b), inserted by the *Work Health and Safety Amendment Act 2023*, which commenced on 21 September 2023. Prescribing these laws will allow Comcare to disclose information gathered in an investigation with counterparts in state and territory WHS regulators. It will also permit Comcare to share information with the Office of the National Rail Safety Regulator (ONRSR), National Heavy Vehicle Regulator (NHVR) and the Australian Human Rights Commission (AHRC).
9. Section 271A sets out the circumstances where a person may share confidential information, including for the administration or enforcement of an Act prescribed by the Principal Regulations. For this purpose, the following laws would be prescribed:
  - New subparagraph 702(a) prescribes state Acts that are a 'corresponding WHS law' (section 4 of the WHS Act and regulation 6A of the Principal Regulations). This maintains Comcare's current practice of sharing information with state WHS regulators.
  - New subparagraph 702(b) prescribes territory Acts that are a corresponding WHS law (section 4 of the WHS Act and regulation 6A of the Principal Regulations). This maintains Comcare's current practice of sharing information with territory WHS regulators.
  - New subparagraph 702(c) prescribes the Rail Safety National Law set out in the Schedule to the *Rail Safety National Law (South Australia) Act 2012* (SA) and applying, with or without modification the listed rail safety legislation and relevant State or Territory Rail Safety National Law Acts.
  - New subparagraph 702(d) prescribes the *Rail Safety National Law (WA) Act 2015* (WA), which is similar to the South Australian legislation. Comcare may need to share information when it undertakes joint investigations with the ONRSR. National rail safety laws operate concurrently with duties under the WHS Act and impose safety duties on persons conducting a business or undertaking. The National rail

safety laws are also supported by an Intergovernmental Agreement on Rail Safety Regulation and Investigation Reform, which contemplate cooperation between jurisdictions to achieve the objectives of harmonised legislation and regulation schemes.

- New subparagraph 702(e) prescribes the Heavy Vehicle National Law set out in the Schedule to the *Heavy Vehicle National Law Act 2012* (Qld) and applying, with or without modification the relevant State or Territory Heavy Vehicle National Law Acts. Comcare may need to share information when it undertakes joint investigations with the NHVR. National heavy vehicle laws operate concurrently with duties under the WHS Act. National heavy vehicle laws apply criminal law enforcement. They are also supported by an Intergovernmental Agreement on Heavy Vehicle Regulatory Reform, which contemplates cooperation between jurisdictions to achieve the objectives of harmonised schemes of legislation and regulation. Therefore, Comcare may need to share information when it undertakes joint investigations with the Office of the National Rail Safety Regulator.
- New subparagraph 702(f) prescribes the *Sex Discrimination Act 1984* (Cth). Comcare may need to disclose details of a sex discrimination investigation to AHRC. From 12 December 2023 the AHRC will have new powers to monitor and enforce compliance with the positive duty to prevent sexual harassment in the workplace that interact with Comcare's jurisdiction.

#### Privacy: collection, use and disclosure of personal information

10. New regulation 702 permits Comcare to share information with state and territory WHS regulators, the ONRSR, NHVR and AHRC for the purposes of administering or enforcing harmonised WHS, rail safety or heavy vehicle laws, or Commonwealth sex discrimination laws. This means that a non-disclosure provision in the WHS Act that would otherwise prevent information being disclosed to those third parties, does not prevent its disclosure.
11. This amendment engages the right to privacy because information that may be disclosed could include personal and sensitive information, such as identifying information and information about a person's health and non-disclosure provisions that otherwise may apply is overridden. For example, Comcare may need to disclose details about an incident which occurred in its jurisdiction when a joint investigation with a corresponding WHS regulator, ONRSR or NHVR is underway. Further, the AHRC will have new powers to monitor and enforce compliance with the positive duty which interacts with Comcare's jurisdiction.
12. To the extent that these provisions may limit the right to privacy, that limitation is permissible. Disclosure of information is only permitted to the extent necessary and appropriate for the purposes of the regulators or AHRC performing legislative functions and administering or enforcing harmonised WHS, rail safety or heavy vehicle laws, or Commonwealth sex discrimination laws.

13. The limited circumstances in which information can be shared may be further confined by the relevant state and territory privacy laws that require state and territory WHS regulators to comply with privacy and other obligations.

**Item [2] - After Part 9 of Chapter 12**

14. This item inserts a new Division 11.3 - Miscellaneous and sets out new regulation 758 which provides that new regulation 702 applies to using or sharing information or a document on or after the commencement of the Amendment Regulations, whether the information was obtained or document was accessed *before*, on or after that commencement. This permits Comcare to share information or documents already in its possession and not simply information or documents that will come into its possession on or after commencement of the Amendment Regulations.

Part 2 – Model WHS law amendments

*Work Health and Safety Regulations 2011*

**Item [3] - Subregulation 5(1) (subparagraph (e)(iii) of the definition of boiler)**

15. The Australian Standard AS 2593:2004 (Boilers – Safety management and supervision systems) has been superseded. This item updates the reference in existing subparagraph 5(1)(e)(iii) in the definition of *boiler* to the current Australian Standard AS 2593:2021.

**Item [4] - Regulation 15 (note)**

16. The Australian Standard AS 2593:2004 (Boilers – Safety management and supervision systems) has been superseded. This item updates the references in the note to subregulation 15(2), to the current Australian Standard AS 2593:2021.

**Item [5] - Paragraph 144(1)(d)**

17. The Australian Standard AS 2832.1:2004 (Cathodic protection of metals - Pipes and Cables) has been superseded. This item updates the reference in paragraph 144(1)(d) to the current Australian Standard AS 2832.1:2015.

**Item [6] - Regulation 163**

18. The Australian Standard AS/NZS 3012:2010 (Electrical installations – Construction and demolition sites) has been superseded. This item updates the references in regulation 163 to the current Australian Standard AS/NZS 3012:2019.

**Item [7] - At the end of Chapter 4:**

19. This item inserts a new Part 4.9 - Processing engineered stone containing crystalline silica and sets out new regulation 184A relating to duty to prevent uncontrolled processing of engineered stone.
20. New subregulation 184A(1) provides it is an offence for a PCBU to process, direct or allow a worker to process, engineered stone without specific control measures.

21. The maximum penalty for contravening subregulation 184A(1) is \$6 000 for an individual and \$30 000 for a body corporate.
22. The note following the subregulation 184A states that section 12F of the WHS Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the WHS Act includes the Principal Regulations.
23. New subregulation 184A(2) states that the processing of engineered stone will be controlled if at least one of the following systems is used:
  - A water delivery system that supplies a continuous feed of water over the area being cut to suppress the generation of dust,
  - An on-tool extraction system – this typically includes a shroud, an on-tool hose attachment connected to a vacuum extraction system; or
  - A local exhaust ventilation system. Guidance on local exhaust ventilation is available in the *model Code of Practice: Managing the risks of respirable crystalline silica from engineered stone in the workplace*.
24. All workers processing engineered stone must also be provided with respiratory protective equipment for the processing to be controlled.
25. Respiratory protective equipment is defined as personal protective equipment that:
  - is designed to prevent a person wearing the equipment from inhaling airborne contaminants; and
  - complies with the relevant Australian Standard.
26. New subregulation 184A(3) defines engineered stone as an artificial product that contains crystalline silica, is created by combining natural stone materials with other chemical constituents and undergoes a process to become hardened. However, engineered stone does not include concrete and cement products, bricks, pavers and other similar blocks, ceramic and porcelain wall and floor tiles, roof tiles, grout, mortar and render or plasterboard.
27. Processing in relation to engineered stone is defined as cutting, grinding, trimming, sanding, abrasive polishing and drilling using power tools or another form of mechanical plant.
28. The note to the subregulation 184A(3) sets out that regulations 44 and 46 apply to the use of personal protective equipment, including respiratory protective equipment. These regulations deal with the provision by a PCBU of personal protective equipment to workers (including in relation to its suitability, maintenance and use) and the duties of workers who are provided with personal protective equipment.



## Strict Liability

29. New regulation 184A introduces a strict liability offence for processing engineered stone without specific control measures. The maximum penalty for contravening subregulation 184A(1) is \$6 000 for an individual and \$30 000 for a body corporate.
30. Most offences in the WHS Act include strict liability elements or are strict liability. Strict liability as a feature of WHS Act offences was carefully considered when the WHS Act was first introduced. The presumption of innocence can be seen to be impinged by removing the requirement for the prosecution to prove fault in relation to one or more physical elements of an offence. However, WHS strict liability offences arise in a regulatory context where, for reasons such as public safety, and the public interest in ensuring that regulatory schemes are observed, the sanction of criminal penalties is justified.
31. WHS offences also arise in a context where a defendant can reasonably be expected, because of their professional involvement, to know the requirements of the law, and the mental, or fault, element can justifiably be excluded. The rationale is that people who owe WHS duties such as employers, persons in control of aspects of work, and designers and manufacturers of work structures and products, as opposed to members of the general public can be expected to be aware of their duties and obligations to workers and the wider public. The uncontrolled processing of engineered stone offence would apply to PCBU's.

### **Item [8] - Subregulation 221(2) (definition of *harness*)**

32. The Australian Standard AS 1891.1:2007 (Industrial fall-arrest systems – Harnesses and ancillary equipment) has been superseded. This item updates the reference in subregulation 221(2), to the current Australian Standard AS/NZS 1891.1:2020 (Personal equipment for work at height – Manufacturing requirements for full body combination and lower body harnesses).

### **Item [9] - Subclause 3(3) of Schedule 13 (definition of *red*)**

33. Subclause 3(3) of Schedule 13 references the Australian Standard AS 2700S-1996 (R13) (Colour standards for general purposes – signal red), which has been superseded. This item updates the references in subclause 3(3) to the current Australian Standard AS 2700S-2011.

### **Item [10] - Subclause 5(3) of Schedule 13 (Figure 13.3)**

34. This item repeals the existing image of figure 13.3 and inserts a new image of figure 13.3. The existing figure 13.3 references the Australian Standard AS 2700S-1996 (Colour Standards for general purpose), which has been superseded. This item updates figure 13.3 so it refers to the current Australian Standard AS 2700S-2011.

## **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 Regulations 2023***

This Disallowable 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 of the Legislative Instrument**

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

The purpose of the *Work Health and Safety Amendment (Information Sharing and Other Measures) Regulations 2023* (Amendment Regulations) is to improve work health and safety outcomes by inserting regulations to prohibit the uncontrolled processing of engineered stone products in the workplace and making other minor amendments. The Amendment Regulations also ensure the existing regulatory practice in relation to corresponding WHS laws and prescribe National Rail Safety laws, National Heavy Vehicle laws and the *Sex Discrimination Act 1984* (Cth) to permit information sharing in essential circumstances. The amendments:

- Expressly prohibit the uncontrolled processing of engineered stone products. This adopts a recent amendment the model WHS regulations. A number of other minor model amendments relating to Australian Standards references are also adopted.
- Prescribe for the purposes of the new subsection 271A(3)(b) recently inserted by the *Work Health and Safety Amendment Act 2023* (the WHS Amendment Act):
  - Acts which are ‘corresponding WHS laws’. This is a consequential amendment following the repeal of the subsection 271(3)(c).
  - Other laws which permit Commonwealth WHS regulator Comcare to share information with the Office of the National Rail Safety Regulator (ONRSR), National Heavy Vehicle Regulator (NHVR) and the Australian Human Rights Commission (AHRC). Section 271A deals with information sharing between work health and safety regulators, supporting a nationally cooperative and harmonised scheme for work health and safety laws.

## Human rights implications

This Disallowable Legislative Instrument engages the following human rights:

- The right to the enjoyment of just and favourable conditions of work under Article 7 of the International Covenant on Economic Social and Cultural Rights (ICESCR);
- The right to presumption of innocence and other guarantees in relation to criminal charges under Article 14 and Article 15 of the International Covenant on Civil and Political Rights (ICCPR); and
- The right to privacy under article 17 of the ICCPR.

### Rights to enjoyment of 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, 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.

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, of workers and employers and their representative organisations.

Australia complies with its obligation under Article 7 of the ICESCR through the harmonised system of Commonwealth, state and territory WHS laws (including the Principal Regulations).

The Amendment Regulations promote the right to safe and healthy working conditions by prohibiting the uncontrolled processing of engineered stone products and prioritising the health and safety of workers in industries working with engineered stone.

New regulation 184A reflects the existing duty on PCBU to take proactive measures to eliminate or minimise risk associated with engineered stone processing, so far as is reasonably practicable. The Amendment Regulations also include updates to references of relevant Australian Standards, ensuring that the regulations remain aligned with current industry practices and standards. This approach will help create safer working environments and reduce silica dust related diseases.

## Criminal Process Rights

Articles 14 and 15 of the ICCPR protect criminal process rights:

- Article 14(1) provides that all persons shall be equal before the courts and tribunals, and that in the determination of any criminal charge against a person, that person is entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law;
- Article 14(2) provides that those charged with a criminal offence are presumed innocent until proven guilty according to the law;
- Article 14(3) sets out a range of guarantees that each person shall be entitled to in the determination of any criminal charge against them. This includes the right not to be compelled to testify against themselves or to confess guilt;
- Article 14(7) protects against the risk of double punishment; and
- Article 15(1) protects against criminal penalties applying retrospectively.

**Strict liability:** The Parliamentary Joint Committee on Human Rights has noted the imposition of strict or absolute liability will not violate Article 14(2) where it pursues a legitimate aim and is reasonable and proportionate to that aim.

New regulation 184A introduces a strict liability offence for processing engineered stone without specific control measures.

Most offences in the WHS Act include strict liability elements or are strict liability. Strict liability as a feature of WHS Act offences was carefully considered when the WHS Act was first introduced. The presumption of innocence can be seen to be impinged by removing the requirement for the prosecution to prove fault in relation to one or more physical elements of an offence. However, WHS strict liability offences arise in a regulatory context where, for reasons such as public safety, and the public interest in ensuring that regulatory schemes are observed, the sanction of criminal penalties is justified.

WHS offences also arise in a context where a defendant can reasonably be expected, because of their professional involvement, to know the requirements of the law, and the mental, or fault, element can justifiably be excluded. The rationale is that people who owe WHS duties such as employers, persons in control of aspects of work, and designers and manufacturers of work structures and products, as opposed to members of the general public can be expected to be aware of their duties and obligations to workers and the wider public. The uncontrolled processing of engineered stone offence would apply to a person conducting a business or undertaking.

The legitimate aim of strict liability for WHS offences is to ensure defendants operating in the WHS regulatory context are held accountable for breaches of their positive duties to ensure a safe and healthy workplace. Any limitation it places on the presumption of innocence is reasonable and proportionate.

## 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 of secrecy from the publication of personal information.

New regulation 702 permits Comcare to share information with state and territory WHS regulators, the ONRSR, NHVR and AHRC for the purposes of administering or enforcing harmonised WHS, rail safety or heavy vehicle laws, or Commonwealth sex discrimination laws. This means that a non-disclosure provision in the WHS Act that would otherwise prevent information being disclosed to those third parties, does not prevent its disclosure.

This amendment engages the right to privacy because information that may be disclosed could include personal and sensitive information, such as identifying information and information about a person's health and non-disclosure provisions that otherwise may apply is overridden. For example, Comcare may need to disclose details about an incident which occurred in its jurisdiction when a joint investigation with a corresponding WHS regulator, ONRSR or NHVR is underway. Further, from 12 December 2023 AHRC will have new powers to monitor and enforce compliance with the positive duty which interacts with Comcare's jurisdiction.

To the extent that these provisions may limit the right to privacy, that limitation is permissible. Disclosure of information is only permitted to the extent necessary and appropriate for the purposes of the regulators or AHRC performing legislative functions and administering or enforcing harmonised WHS, rail safety or heavy vehicle laws, or Commonwealth sex discrimination laws.

The limited circumstances in which information can be shared may be further confined by the relevant state and territory privacy laws that require state and territory WHS regulators to comply with privacy obligations. Therefore, any permitted disclosure of personal information under new regulation 702 is reasonable, necessary and proportionate to achieving the legitimate object of maintaining safe and healthy working conditions, 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 WHS 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**