

2019-2020-2021

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

WORK HEALTH AND SAFETY AMENDMENT (NORFOLK ISLAND) BILL 2021

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Industrial Relations,
the Hon Christian Porter MP)

WORK HEALTH AND SAFETY AMENDMENT (NORFOLK ISLAND) BILL 2021

OUTLINE

The Work Health and Safety Amendment (Norfolk Island) Bill 2021 (the Bill) clarifies the operation of the *Work Health and Safety Act 2011* (the WHS Act) in relation to the Commonwealth's undertakings on Norfolk Island.

Subsection 12(2) of the WHS Act provides that, for the purposes of the Act, the administration of the Australian Capital Territory, the Northern Territory or Norfolk Island is not a business or undertaking conducted by the Commonwealth.

When the WHS Act was enacted in 2011, the Australian Capital Territory, the Northern Territory and Norfolk Island were self-governing territories. In May 2015, the *Norfolk Island Legislation Amendment Act 2015* and related Acts came into effect. These Acts removed self-government on Norfolk Island and provided for the Commonwealth Government to assume responsibility for funding and delivering services to Norfolk Island.

The Commonwealth conducts a number of activities on Norfolk Island and the intention is that the WHS Act should apply to the Commonwealth's work on Norfolk Island. The Bill therefore removes references to Norfolk Island in subsection 12(2) and sections 4 and 7 of the Act.

FINANCIAL IMPACT STATEMENT

Nil

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Work Health and Safety Amendment (Norfolk Island) Bill 2021

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

Overview of the Bill

The *Work Health and Safety Act 2011* (the WHS Act) and accompanying *Work Health and Safety Regulations 2011* provide the primary work health and safety (WHS) legislation for the Commonwealth jurisdiction. They are based on model WHS laws developed by Safe Work Australia under the Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety. Most jurisdictions have adopted the model WHS laws.

Human rights implications

Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides that everyone has the right to the ‘enjoyment of just and favourable conditions of work, which ensure, in particular... safe and healthy working conditions’. Australia relevantly complies with its obligation under Article 7 of the ICESCR through a system of Commonwealth, State and Territory WHS laws (including the WHS Act).

To the extent that the Bill clarifies the application of the Act to the Commonwealth’s work on Norfolk Island, the Bill promotes the right to safe and healthy working conditions.

Conclusion

This Bill is compatible with human rights because it promotes the right to safe and healthy work.

NOTES ON CLAUSES

Clause 1 – Short title

1. This is a formal provision specifying the short title.

Clause 2 – Commencement

2. The table in this clause sets out when the provisions of the Bill commence. The whole of the Act commences the day the Act receives the Royal Assent.

Clause 3 – Schedules

3. Clause 3 provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule, and any other item in a Schedule to the Bill has effect according to its terms.

SCHEDULE 1 – AMENDMENTS

Amendments to the *Work Health and Safety Act 2011*

Item 1 – section 4

4. Item 1 removes the reference to ‘Norfolk Island’ from paragraph (a) of the definition of ‘public authority’ in section 4 of the WHS Act.
5. Current section 4 provides a definition of ‘public authority’ under the WHS Act. The definition of ‘public authority’ provides that a body corporate established for a public purpose by or under a law of the Australian Capital Territory, the Northern Territory or Norfolk Island is not a public authority for the purposes of the Act.

Item 2 – subsection 7(2B)

6. Item 2 removes the reference to ‘Norfolk Island’ from subsection 7(2B) of the WHS Act.
7. Section 7 specifies the meaning of the term ‘worker’ under the WHS Act. Current subsection 7(2B) provides that a person who holds office under a law of the Australian Capital Territory, the Northern Territory or Norfolk Island is not a worker for the purposes of the Act.

Item 3 – subparagraph 7(2G)(a)(iii)

8. Item 3 removes the reference to ‘Norfolk Island’ from subparagraph 7(2G)(a)(iii) of the WHS Act.
9. Section 7 specifies the meaning of the term ‘worker’ under the WHS Act. Subsection 7(2F) provides that the Minister may, by instrument in writing, declare that a person of a specified class is a worker for the purposes of the Act. Current subsection 7(2G)(a)(iii) of the Act qualifies this power and provides that it may not be used in relation to a class of persons who engage in activities or perform acts by or under a law of the Australian Capital Territory, the Northern Territory or Norfolk Island.

Item 4 – subsection 12(2)

10. Item 4 removes the reference to ‘Norfolk Island’ from subsection 12(2) of the WHS Act.
11. Current subsection 12(2) provides that, for the purposes of the WHS Act, the administration of the Australian Capital Territory, the Northern Territory or Norfolk Island is not a business or undertaking conducted by the Commonwealth.