

EXPLANATORY STATEMENT

Select Legislative Instrument No. 173, 2014

Issued by the authority of the Minister for Employment

Subject – *Work Health and Safety Act 2011*

Work Health and Safety Amendment (Public Authorities) Regulation 2014

Section 276 of the *Work Health and Safety Act 2011* (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’ (being companies that were assigned coverage under the WHS Act because they held a self-insurance licence for workers’ compensation and were covered by Commonwealth occupational health and safety laws when the WHS Act commenced).

‘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 purpose of the WHS Act.

The *Work Health and Safety Amendment (Public Authorities) Regulation 2014* (the Amendment Regulation) prescribes two corporations as ‘public authorities’, meaning they are (or will be) covered by the WHS Act:

1. Medibank Private Ltd—is currently a ‘public authority’, operating nationally and covered by the WHS Act. It is intended Medibank Private will be privatised later this year, at which time it will no longer meet the definition of ‘public authority’ in section 4 of the WHS Act unless prescribed by the *Work Health and Safety Regulations 2011*. The Amendment Regulation will enable Medibank Private to retain coverage under the WHS Act after privatisation has occurred, effectively maintaining the ‘status quo’ in terms of the current work health and safety (WHS) arrangements it has in place. The amendments affecting Medibank Private commence on registration on the Federal Legislative Instrument Register.
2. Star Track Express Pty Ltd—became a wholly owned subsidiary of Australia Post in November 2012. Australia Post and five of its subsidiary companies are already covered by the WHS Act. The Amendment Regulation prescribes Star Track Express as a ‘public authority’, with the effect that consistent WHS arrangements will apply across all of the Australia Post Group from commencement of the amendments on 1 February 2015.

The amendments have been requested by Medibank Private and Australia Post (on behalf of its subsidiary Star Track Express). Comcare supports the amendments.

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

The WHS Act does not impose any conditions that need to be satisfied before the power to make the Amendment Regulation may be exercised.

The Amendment Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required (reference 17795).

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 (Public Authorities) Regulation 2014

This Legislative Instrument 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 Legislative Instrument

The *Work Health and Safety Amendment (Public Authorities) Regulation 2014* (the Amendment Regulation) prescribes two corporations as ‘public authorities’, meaning they will be covered by the Commonwealth *Work Health and Safety Act 2011* (the WHS Act).

3. Medibank Private Ltd—is currently a ‘public authority’, operating nationally and covered by the WHS Act. It is intended Medibank Private will be privatised later this year, at which time it will no longer meet the definition of ‘public authority’ in section 4 of the WHS Act unless prescribed by the *Work Health and Safety Regulations 2011* (the WHS Regulations). The Amendment Regulation will enable Medibank Private to retain coverage under the WHS Act after privatisation has occurred, effectively maintaining the ‘status quo’ in terms of the current work health and safety (WHS) arrangements it has in place.
4. Star Track Express Pty Ltd—became a wholly owned subsidiary of Australia Post in November 2012. Australia Post and five of its subsidiary companies are already covered by the WHS Act. The Amendment Regulation prescribes Star Track Express as a ‘public authority’, with the effect that consistent WHS arrangements will apply across all of the Australia Post Group from the commencement of the amendments on 1 February 2015.

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’.¹

The right to safe and healthy working conditions is primarily underpinned in Australia by WHS legislation at the Commonwealth, state and territory levels. At the Commonwealth level, this includes the WHS Act and the WHS Regulations. The WHS Act places high level duties on a range of entities that are designed to ensure safe and healthy working conditions.

The WHS Act applies to the Commonwealth, Commonwealth ‘public authorities’, and ‘non-Commonwealth Licensees’ (being companies that hold a self-insurance licence for workers’ compensation). Businesses that fall outside of the 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. This may mean that multiple laws apply to multi-state employers.

Prescribing Medibank Private Ltd as a ‘public authority’ promotes the right to safe and healthy working conditions for its employees by ensuring continuity of the current WHS arrangements after privatisation occurs. In the absence of this regulation, Medibank Private would be required to transition to multiple state and territory WHS schemes because it would no longer be covered by the WHS Act after privatisation. This would increase the administrative burden on the company and may act as a distraction from the company’s ongoing safety program.

Prescribing Star Track Express Pty Limited as a ‘public authority’ will also mean that multiple state and territory WHS laws will no longer apply to the company and it will be covered by the WHS Act. Consistent WHS arrangements will apply across the whole of the Australia Post Group, improving the efficiency of the Group’s health and safety arrangements.

Conclusion

This Legislative Instrument is compatible with human rights because it seeks to promote the right to safe and healthy working conditions of employees by ensuring that a single set of WHS laws apply nationally to Medibank Private and Star Track Express.

Senator The Hon. Eric Abetz, Minister for Employment

¹ 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].