

**WORK HEALTH AND SAFETY AMENDMENT (PUBLIC AUTHORITIES)  
REGULATIONS 2021**

**EXPLANATORY STATEMENT**

Issued by authority of the Minister for Industrial Relations

**PURPOSE AND OPERATION OF THE INSTRUMENT**

The *Work Health and Safety Amendment (Public Authorities) Regulations 2021* (the Amendment Regulations) amend the *Work Health and Safety Regulations 2011* (Cth) (the Principal Regulations) to maintain coverage for Telstra and its employees under the *Work Health and Safety Act 2011* (Cth) (WHS Act) as the Telstra corporate group undergoes a restructure.

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

The WHS Act provides for a balanced and nationally consistent 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 WHS Act provides that the Governor-General may make regulations in relation to any matter relating to WHS, 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.

Section 12 of the WHS Act provides that the WHS Act applies to the Commonwealth, ‘public authorities’ and ‘non-Commonwealth licensees.’ The definition of ‘non-Commonwealth licensee’ under section 4 of the WHS Act applies to companies that were assigned coverage under the WHS Act because they were non-Commonwealth licensees for the purposes of the *Occupational Health and Safety Act 1991* immediately before 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 Principal Regulations for the purposes of the WHS Act.

Telstra Corporation Limited (ACN 051 775 556) held a licence under Part VIII of the SRC Act on 31 December 2011, being the date immediately before the commencement of the WHS Act. By reason of that licence, Telstra Corporation Limited is a ‘non-Commonwealth licensee’ under the WHS Act and thus subject to the WHS Act.

Telstra is undergoing a restructure of its business which involves the establishment of new corporate entities. As a part of the restructure, employees will transfer from Telstra Corporation Limited to three separate Telstra entities; Telstra Group Limited, Telstra Towerco No. 1 Pty Ltd and Telstra Limited. Without legislative amendment, the new Telstra entities (which are not non-Commonwealth licensees) and their employees will fall out of coverage of the WHS Act.

To maintain coverage for Telstra and its workers, the Amendment Regulations prescribe Telstra Group Limited, Telstra Towerco No. 1 Pty Ltd and Telstra Limited as ‘public authorities’ under the Principal Regulations. This ensures that Telstra workers do not fall out of coverage of the WHS Act and will provide consistency of work health and safety arrangements for the entities across states and territories.

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

Details of the Amendment Regulation are set out in [Attachment A](#).

## **CONSULTATION**

The Attorney-General's Department consulted the Department of the Prime Minister and Cabinet, Department of Infrastructure, Transport, Regional Development and Communications, Comcare and Telstra. Telstra consulted its stakeholders and advised the Attorney-General's Department that it has the support of employees and unions for the proposed amendments.

## **REGULATION IMPACT STATEMENT**

The Office of Best Practice Regulation advised that a Regulation Impact Statement is not required (Reference: 44250).

## **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**

### Section 1 - Name

This section provides that the title of the instrument is the *Work Health and Safety Amendment (Public Authorities) Regulations 2021*.

### Section 2 - Commencement

This section provides for the instrument to commence the day after it is registered.

### 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 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

#### **Item [1] - Regulation 6C (at the end of the table)**

This item adds Telstra Group Limited, Telstra Limited and Telstra Towerco No.1 Pty Ltd to the table of prescribed public authorities.

## **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) Regulations 2021**

The *Work Health and Safety Amendment (Public Authorities) Regulations 2021* (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*.

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

The *Work Health and Safety Act 2011* (WHS Act) and accompanying *Work Health and Safety Regulations 2011* (the Principal Regulations) 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 state and territory jurisdictions have adopted the model WHS laws.

The Amendment Regulations prescribe Telstra Group Limited, Telstra Towerco No. 1 Pty Ltd and Telstra Limited as ‘public authorities’ under the Principal Regulations. This maintains consistency of work health and safety arrangements for Telstra entities and their workers across states and territories.

#### **Human rights implications**

Article 7 of the International Covenant on Economic, Social and Cultural Rights (the 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’.

The right to safe and healthy working conditions in Australia is primarily underpinned by WHS legislation at the Commonwealth, state and territory levels. At the Commonwealth level, this includes the WHS Act and the Principal 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 WHS laws apply to nationwide employers.

The Amendment Regulations positively engage the right to enjoyment of just and favourable work by ensuring that Telstra employees that transfer to new entities as part of the restructure will maintain coverage under the Commonwealth WHS laws. Consistency and continuity of coverage promotes work health and safety outcomes for workers. In the absence of this

regulation, these entities would no longer be covered by the WHS Act and would be covered by multiple state and territory WHS schemes.

### **Conclusion**

The 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 Telstra entities.