

# **Work Health and Safety Amendment (Public Authority) Regulations 2024**

## **EXPLANATORY STATEMENT**

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

The *Work Health and Safety Amendment (Public Authority) Regulations 2024* (Amendment Regulations) amend the *Work Health and Safety Regulations 2011* (Cth) (Principal Regulations) to provide coverage for Inland Rail Pty Ltd and its workers under the *Work Health and Safety Act 2011* (Cth) (WHS Act).

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 WHS Act to be prescribed or that is necessary or convenient to be prescribed to give 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.’ ‘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.

Inland Rail Pty Ltd (IRPL) (ACN 094 819 520) is a newly formed subsidiary of the Australian Rail Track Corporation Limited (ARTC) (ACN 081 455 754), a wholly owned Commonwealth company subject to the WHS Act. IRPL was legally formed on 23 October 2000 as ‘Standard Gauge Company Pty Ltd’ and renamed on 1 July 2023 and has been tasked with delivering the Inland Rail Project which will be transferred back to ARTC upon completion of that project.

A significant number of ARTC employees will transfer to IRPL to deliver the project. To maintain WHS coverage of those workers IRPL will be prescribed as a public authority under regulation 6C of the Principal Regulations.

Maintaining Commonwealth work health and safety coverage for IRPL workers is particularly important given the cross jurisdictional nature of the Inland Rail Project. The Inland Rail Project will create a 1600-kilometre freight rail line connecting Melbourne and Brisbane via regional Victoria, New South Wales, and Queensland. Coverage under the WHS Act will provide consistent work health and safety arrangements for workers operating across those states.

## *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 are a legislative instrument made under the WHS Act and is therefore exempt from sunsetting.

Regulations made under the WHS Act 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 WHS laws. The Commonwealth and all states and territories formally committed to the harmonisation of WHS laws by signing the Intergovernmental Agreement.

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

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**

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.

The Department of Finance, the Department of Infrastructure, Transport, Regional Development, Communications and the Arts, Comcare and IRPL were consulted regarding the proposed amendment regulation. Those stakeholders are in favour of prescribing IRPL as a public authority.

The Department of Finance consulted affected staff, the Rail Tram and Bus Union, Australian Services Union and Professionals Australia on IRPL's coverage issues.

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 considers that no impact analysis is required (OIA24-07122).

## **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

1. This section provides that the title of the instrument is *Work Health and Safety Amendment (Public Authority) Regulations 2024*.

### Section 2 – Commencement

2. This section provides that the Regulations commence 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

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

5. This item adds Inland Rail Pty Ltd to the table of prescribed public authorities under regulation 6C of the *Work Health and Safety Regulations 2011* (Cth).

## **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 (Public Authority) Regulations 2024***

The *Work Health and Safety Amendment (Public Authority) Regulations 2024* (the Amendment Regulations) are 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 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 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.

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## **Human rights implications**

The Amendment Regulations engage the following human rights:

- The right to safe and healthy working conditions under Article 7 of the International Covenant on Economic Social and Cultural Rights (ICESCR).

### Right 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 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’ (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 continuity of coverage for Inland Rail Pty Ltd workers.

## **Conclusion**

This Legislative Instrument is compatible with human rights because it seeks to promote the right to safe and healthy working conditions of workers by ensuring continuity of coverage for Inland Rail Pty Ltd workers.