

## Law Compliance Report – February 2021

Welcome to the February 2021 edition of the Law Compliance Report.

In this issue we discuss recent legislative changes occurring throughout Australia and we also set out some of the Bills we are tracking throughout Australia.



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## Some of the Legislative Changes being tracked

### Western Australia

Climate Change and Greenhouse Gas Emissions Reduction Bill 2020 (WA)  
 Commercial Tenancies (COVID-19 Response (Early Termination)) Bill WA 2020  
 Litter Amendment (Balloons) Bill 2018  
 Environmental Protection Amendment (Banning Plastic Bags and Other Things) Bill 2018  
 Industrial Relations (Equal Remuneration) Amendment Bill 2018 (WA)  
 Children and Community Services Amendment Bill 2019 (WA)  
 Industrial Relations Legislation Amendment Bill 2020 (WA)  
 Building and Constructions Industry (Security of Payment) Bill (WA) 2020  
 Public Health Amendment (Safe Access Zones) Bill 2020 (WA)  
 Rights of Nature and Future Generations Bill 2019 (WA)  
 Statutes (Repeals and Minor Amendments) Bill 2020 (WA)  
 Forest Products Amendment Bill 2020 (WA)  
 Animal Welfare and Trespass Legislation Amendment Bill 2020 (WA)  
 Financial Legislation Amendment Bill 2020 (WA)  
 Swan Valley Planning Bill 2020 (WA)  
 Environmental Protection Amendment Bill 2020 (WA)  
 Environmental Protection Amendment Bill (No.2) 2020 (WA)  
 Food Amendment (Shark Fin Prohibition) Bill 2019 (WA)

### Commonwealth

Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020 (Cth)  
 Data Availability and Transparency Bill 2020 (Cth)  
 Security Legislation Amendment (Critical Infrastructure) Bill 2020 (Cth)  
 Therapeutic Goods Amendment (2020 Measures No. 2) Bill 2020 (Cth)  
 Recycling and Waste Reduction Bill 2020 (Cth)  
 Aged Care Legislation Amendment (Serious Incident Response Scheme and Other Measures) Bill 2020 (Cth)  
 Australian Immunisation Register Amendment (Reporting) Bill 2020 (Cth)  
 Crimes Legislation Amendment (Combating Corporate Crime) Bill 2019 (Cth)  
 Education Services for Overseas Students Amendment (Refunds of Charges and Other Measures) Bill 2020 (Cth)  
 Consumer Amendment (Exploitation of Indigenous Culture) Bill 2020 (Cth)  
 Live Animal Export Prohibition (Ending Cruelty) Bill 2020 (Cth)  
 Fair Work Amendment (Ten Days Paid Domestic and Family Violence Leave) Bill 2020 (Cth)  
 Fair Work Amendment (Ten Days Paid Domestic and Family Violence Leave) Bill 2020 [No. 2] 2020 (Cth)  
 Industrial Chemicals Legislation Amendment Bill 2020 (Cth)

### Queensland

Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020  
 Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020 (QLD)  
 Liquor (Artisan Liquor) Amendment Bill 2020

### New South Wales

Mandatory Disease Testing Bill 2020 (NSW)  
 Education Legislation Amendment (Parental Rights) Bill 2020 (NSW)  
 Anti-Discrimination Amendment (Sex Workers) Bill 2020 (NSW)  
 Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill NSW 2020 (NSW)  
 Protection of the Environment Operations Amendment (Clean Air) Bill 2019  
 Summary Offences Amendment (Safe Access to Reproductive Health Clinics) Bill 2017 (NSW)  
 Independent Commission Against Corruption Amendment (Property Developer Commissions to MPs) Bill 2020 (NSW)  
 Prevention of Cruelty to Animals (Increased Penalties) Bill 2020 (NSW)  
 ICAC and Other Independent Commissions Legislation Amendment (Independent Funding) Bill 2020 (NSW)  
 Community Land Management Bill 2020 (NSW)  
 Community Land Development Bill 2020 (NSW)  
 Public Works and Procurement Amendment (Workers Compensation Nominal Insurer) Bill 2020 (NSW)  
 Public Health Amendment (Registered Nurses in Nursing Homes) Bill 2020 (NSW)  
 Privacy and Personal Information Protection Amendment (Service Providers) Bill 2020 (NSW)  
 Planning Legislation Amendment Bill 2019 (NSW)

### South Australia

Children and Young People (Safety) (Miscellaneous) Amendment Bill 2020 (SA)  
 Freedom of Information (Miscellaneous) Amendment Bill 2020 (SA)  
 Statutes Amendment (Animal Welfare Reforms) Bill 2020 (SA)  
 Termination of Pregnancy Bill 2020 (SA)  
 Planning, Development and Infrastructure (Contributory Items in Development Plans) Amendment Bill 2020 (SA)  
 Planning, Development and Infrastructure (Restricted Development) Amendment Bill 2020 (SA)  
 Automated External Defibrillators (Public Access) Bill 2020 (SA)  
 Health Care (Privatisation of Health Services) Amendment Bill 2020 (SA)  
 Assisted Reproductive Treatment (Review Recommendations) Amendment Bill 2020 (SA)  
 Ageing and Adult Safeguarding (Disapplication of Transitional Provision) Amendment Bill 2020 (SA)  
 Statutes Amendment (Fund Selection and Other Superannuation Matters) Bill 2020 (SA)  
 Correctional Services (Accountability and Other Measures) Amendment Bill 2020 (SA)  
 Liquor Licensing (COVID-19 and Other Measures) Amendment Bill 2020 (SA)  
 Motor Vehicles (Motor Bike Driver Licensing) Amendment Bill 2020 (SA)  
 Statutes Amendment and Repeal (Budget Measures) Bill 2020 (SA)  
 Statutes Amendment (Transport Portfolio) Bill 2020 (SA)

### Tasmania

Electricity Safety Bill 2020 (TAS)  
 End-of-Life Choices (Voluntary Assisted Dying) Bill 2020 (Tas)  
 Consent to Medical Treatment Bill 2020 (Tas)  
 Supply Chain (Modern Slavery) Bill 2020 (Tas)  
 Food Amendment Bill 2020 (TAS)

### ACT

Plastic Reduction Bill 2020 (ACT)  
 Justice and Community Safety Legislation Amendment Bill 2020 (ACT)  
 COVID-19 Emergency Response Legislation Amendment Bill 2020 (No 3) 2020 (ACT)

### Victoria

Change or Suppression (Conversion) Practices Prohibition Bill 2020 (Vic)  
 Workplace Injury Rehabilitation and Compensation Amendment (Provisional Payments) Bill 2020 (Vic)  
 Spent Convictions Bill 2019 (VIC)  
 Consumer and Other Acts Miscellaneous Amendments Bill 2020 (Vic)  
 Spent Convictions Bill 2020 (Vic)  
 Wildlife Rescue Victoria Bill 2020 (Vic)  
 Crimes (Mental Impairment and Unfitness to be Tried) Amendment Bill 2020 (Vic)  
 Drugs, Poisons and Controlled Substances Amendment (Pill Testing Pilot for Drug Harm Reduction) Bill 2019 (VIC)  
 Children, Youth and Families Amendment (Out of Home Care Age) Bill 2020 (Vic)  
 Forests Legislation Amendment (Compliance and Enforcement) Bill 2019 (Vic)  
 Commercial Passenger Vehicle Industry Act 2017 No. 35 (Vic).  
 Public Administration Amendment Bill 2019 (VIC)  
 Racial and Religious Tolerance Amendment Bill 2019 (VIC)  
 Environment Protection Amendment (Refund on Bottles and Cans) Bill 2019 (Vic)  
 Education and Training Reform Amendment (Miscellaneous) Bill 2020 (VIC)

If you would like details of these new Bills please contact our team on **1300 862 667** or visit our website [www.lawcompliance.com.au](http://www.lawcompliance.com.au)

## Commonwealth Update

## ***Family Law Amendment (Risk Screening Protections) Act 2020 No.98 (Cth)***

On 27 November 2020, relevant parts of the *Family Law Amendment (Risk Screening Protections) Act 2020 (Cth)* (the **Amending Act**) amended the *Family Law Act 1975 (Cth)* (the **Act**). The key changes brought about by the Amending Act are discussed below.

### **New protections for family risk screening information**

The Amending Act has introduced new protections for sensitive information generated through family safety risk screening in the Federal family law courts. The Act now ensures that family risk screening information is kept confidential and is inadmissible in court, and that court workers such as family counsellors have immunity when involved in family risk screening procedures.

Organisations involved in the provision of family counselling services should be aware that the Amending Act has inserted section 10U in the Act which prohibits a family safety risk screening person from disclosing family safety risk screening information unless the disclosure is required or authorised under section 10U. By way of example, section 10U permits a family safety risk screening person to disclose family safety risk screening information in order to provide information (other than personal information within the meaning of section 6 of the Privacy Act 1988 (Cth)), for research relevant to families.

A **family safety risk screening person** means:

- an officer or staff member of the Family Court of Australia or the Federal Circuit Court of Australia; or
- a family counsellor; or
- a contractor engaged on behalf of the Family Court of Australia and/or the Federal Circuit Court of Australia; or
- an officer, employee or subcontractor of a contractor engaged on behalf of the Family Court of Australia and/or Federal Circuit Court of Australia.

**Family safety risk screening information** is defined as information obtained (orally or in writing) or generated or a document obtained or created, by a family safety risk screening person in connection with a family safety risk screening process or information about whether or not a

party to proceedings under the Act participated in a family safety risk screening process.

It is also important to note that the newly introduced section 10U requires a family safety risk screening person to disclose family safety risk screening information if that person reasonably believes the disclosure is necessary for the purpose of complying with a law of the Commonwealth, a State or a Territory.

### **Admissibility of family safety risk screening information**

Organisations should also be aware that the Amending Act has introduced section 10V to the Act which provides that family safety risk screening information is not admissible in any court (whether or not exercising federal jurisdiction), or in any proceedings before a person authorised to hear evidence (whether the person is authorised by a law of the Commonwealth, a State or a Territory, or by the consent of the parties). We note that this prohibition does not apply to family safety risk screening information that indicates that a child under 18 has been abused or is at risk of abuse, unless, in the opinion of the court, there is sufficient evidence of the information available to the court from other sources.

Section 10V also requires a family safety risk screening person to inform a person to whom they refer a party for medical or other professional services of the effect of new section 10V. This means that the family safety risk screening person must inform the professional that anything the professional or the party says, or any admission the party makes, is not admissible in any court or legal proceeding.

### **Immunity of family safety risk screening persons**

Finally, we also note that the Act now enables a family safety risk screening person (in performing that person's

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functions as a family safety risk screening person), to have the same protection and immunity as a Judge of the Family Court has in performing the functions of a Judge.

### Conclusion

Organisations involved in the provision of family counselling services should ensure all staff acting in the role of a family safety risk screening person are aware of the new prohibition not to disclose family safety risk screening information unless the disclosure is required or authorised

by section 10U of the Act. In particular, such staff should familiarise themselves with the exceptions allowing disclosure under section 10U of the Act.

Organisations should also ensure staff acting in the role of a family safety risk screening person are made aware of the new requirement to inform a person to whom they refer a party for medical or other professional services of the effect of new section 10V of the Act (i.e., that anything the professional or the party says, or any admission the party makes, is not admissible in any court or legal proceeding).

### New Comply Online<sup>®</sup> automated Questionnaire!

Law Compliance's new and simpler online automated questionnaire is now available within Comply Online<sup>®</sup>. The highly sophisticated questionnaire design and functionality allows subscribers to effortlessly tell us what they do.

Based on your questionnaire responses, your organisation's legislative compliance profile within Comply Online<sup>®</sup> will automatically be allocated all applicable topics (on top of the allocated core dataset of topics subscribers receive). It will also ensure any non-applicable topics are removed from your profile, reducing the number of obligations your team is required to review and report on.

#### Key features include:

- Saves time. Only be required to answer questions relevant to the sectors in which your organisation operates.
- Collaborate your responses with colleagues via a shareable link able to be used in any Internet browser. This can include those who do not have a login to Comply Online<sup>®</sup>.
- Responses are retained within your Comply Online<sup>®</sup> profile and can be reviewed at any time and updated with any changes to your organisation's activities.
- Questionnaire can be completed in stages and by more than one person, and you can easily save your responses as you go and submit once all complete.
- Download a PDF version of the questionnaire if you would prefer to complete it offline. Then submit by email to your Client Relationship Manager.
- Automatic prompt on an annual basis to review your previous responses and also to answer any new questions we have included, ensuring your organisation's profile always remains up to date.

If you would like us to pre-fill your organisation's questionnaire, please do not hesitate to contact your Client Relationship Manager who will be more than happy to assist.

We are always looking for new ways to assist our clients and try and make legal compliance simple and easy. If you have any feedback or suggestions, feel free to contact us at any time.

*For more information please contact our team on **1300 862 667**  
or visit our website [www.lawcompliance.com.au](http://www.lawcompliance.com.au)*

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### Australian Capital Territory Update

## **Working With Vulnerable People (Background Checking) Amendment Act 2019 (ACT)**

The *Working with Vulnerable People (Background Checking) Amendment Act 2019 (ACT)* (the **Amending Act**) commenced on 1 February 2021 and amended the *Working with Vulnerable People (Background Checking) Act 2011 (ACT)* (the **Act**) to align it with the National Disability Insurance Scheme Worker Screening Rules and to allow the ACT to meet certain recommendations made in the Review of the Working with Vulnerable People (**WWVP**) legislation.

### Expansion of definition of Regulated Activity to include NDIS activity

As subscribers will be aware, the Act requires people working or volunteering in regulated activities or services to have WWVP registration.

The Amending Act has modified the definition of regulated activity to include an activity or service that is an 'NDIS activity', or any activity that is prescribed by regulation. Under new section 8A, an activity is an NDIS activity, if it supports or is a service provided to people with a disability by a registered NDIS provider under the *National Disability Insurance Scheme Act 2013 (Cth)* (the **NDIS Act**).

This is significant because the term 'NDIS activity' has been inserted into obligations such as section 15 of the Act, which means that now, in addition to individuals who engage in any regulated activities, the key personnel of a registered NDIS provider for an NDIS activity must also be registered.

Relevant organisations should note that the term **key personnel** is defined in section 11A of the NDIS Act, to mean a person or entity, who:

- is a member of the group of persons who is responsible for the executive decisions of the person or entity;
- any other person who has authority or responsibility for (or significant influence over) planning, directing or controlling the activities of the person or entity.

### Registration for an NDIS Activity

In addition to the typical requirements for WWVP registration outlined in section 18 of the Act, the Amending Act has inserted new section 18A, which

outlines additional requirements that must be met to apply for registration for an NDIS activity. These additional requirements include:

- providing consent for information to be shared about the status of the application; and
- providing written statements detailing, for instance, if an applicant has previously had negative notices or orders made against them (i.e. family violence orders, negative notices, care and protection orders, etc.).

### Offences

Under section 21A, it is now an offence for an individual, who has applied for registration, to not inform the Commissioner if there has been a change in their relevant information (i.e. information about an allegation or investigation) within 10 working days after the information changes.

Similarly, under section 55A, an individual commits an offence if, once they are registered, they do not inform the Commissioner about any change to their relevant information, in writing, within 10 working days after the day the information changes.

Finally, under section 54B, if an individual's registration is subject to an interim condition, it is now an offence for an individual to contravene that condition.

These new offences carry a fine of 50 penalty units (currently \$8,150).

### Conclusion

Organisations that are responsible for the care of vulnerable people must ensure that they have appropriate systems in place to ensure they comply with the new offences inserted by the Amending Act.

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### New South Wales Update

## **Gas and Electricity (Consumer Safety) Amendment (Medical Gas Work) Regulation (No 2) 2020 (NSW)**

The *Gas and Electricity (Consumer Safety) Amendment (Medical Gas Work) Regulation (No 2) 2020 (NSW)* (the **Amending Regulation**) commenced on 1 November 2020 and has amended the *Gas and Electricity (Consumer Safety) Regulation 2018 (NSW)* (the **Regulation**) in connection with the enactment of the *Gas Legislation Amendment (Medical Gas Systems) Act 2020 (NSW)*.

### New and amended definitions

The Amending Regulation has amended the Regulation to expand the definition of “authority number”. Previously, a reference to an authority number in the Regulation related to the licence number or certificate number for a contractor licence or certificate issued under the *Home Building Act 1989 (NSW)* that authorises the person to contract to do or to carry out, or supervise the carrying out of, electrical installation work. The amended definition now provides that an “authority number” is the licence number or certificate number for a contractor licence or certificate that authorises the person to contract to do or to carry out, or supervise the carrying out of:

- electrical installation work;
- medical gasfitting work;
- medical gas technician work; or
- mechanical services and medical gas work.

In addition, the Amending Regulation has repealed the definition of “person responsible” and inserted the definition of “responsible contractor” to account for changes in terminology effected by the Amending Regulation. A responsible contractor means the person who supervises the carrying out of any of the following work, under the authority of an appropriately endorsed contractor licence or appropriate supervisor certificate:

- autogas work;
- electrical installation work;
- gasfitting work;
- mechanical services and medical gas work;
- medical gas technician work;
- medical gasfitting work.

The Amending Regulation also prescribes that certain substances are medical gases, specifically oxygen, nitrous oxide, helium, nitrogen, carbon dioxide, medical air, surgical tool gas, common mixtures of the previously mentioned substances, air at a negative pressure, and waste anaesthetic gas.

### New Provisions

The Amending Regulation has also introduced general provisions relating to the carrying out of medical gasfitting work, medical gas technician work or mechanical services and medical gas work, and the maintenance of relevant medical gas installations. Under new regulation 69A, a person must carry out such work and maintain an installation in accordance with the following:

- AS 2896—2011, Medical gas systems—Installation and testing of non-flammable medical gas pipeline systems after the completion of the work; and
- AS 4774.2:2019, Work in compressed air and hyperbaric facilities—Hyperbaric oxygen facilities.

In addition, the Amending Regulation has also inserted new regulation 69E, which provides that a person must not carry out medical gas technician work in relation to a medical gas installation, or part of a medical gas installation, if the person has also carried out medical gasfitting work on the installation or the part of the installation. Contravention of this provision attracts a penalty of 200 penalty units (currently \$22,000).

### Safety and compliance tests

The Amending Regulation has amended the Regulation to introduce new requirements in relation to safety and compliance testing. Under regulation 69B, a safety and compliance test on medical gasfitting work and

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mechanical services and medical gas work on a medical gas installation or part of a medical gas installation must be carried out by a qualified person in accordance with the requirements of:

- AS 2896—2011, Medical gas systems—Installation and testing of non-flammable medical gas pipeline systems after the completion of the work; and
- AS 4774.2:2019, Work in compressed air and hyperbaric facilities— Hyperbaric oxygen facilities.

For the purposes of these new provisions and in relation to medical gasfitting work, medical gas technician work or mechanical services and medical gas work, a **qualified person** means a person authorised under the *Home Building Act 1989* (NSW) to do that work without supervision.

Regulation 69C provides for several new requirements relating to the notification of results of safety and compliance tests. Firstly, the results of a safety and compliance test must be notified to both the person for whom the work is carried out and the Secretary as soon as practicable, but no later than 7 days, after the completion of the test. If the person for whom the work is carried out is not the owner, or the owner's agent, of the medical gas installation, regulation 69C provides that the person for whom the work is carried out must notify the owner by giving them a copy of the results no later than 7 days after receiving them.

The notice must be in the form approved by the Secretary, describe the work done and identify the medical gas installation concerned, be signed by the tester and the work provider (if any), and specify:

- the name and authority number of each person who carried out or supervised the carrying out of, the work concerned; and
- if applicable, the name and authority number of any person engaged by the owner or occupier of the medical gas installation (whether or not for fee or reward) to provide, or arrange for the provision of, the work concerned (the **work provider**);
- the name and authority number of the tested and the date on which the test was carried out.

Subscribers should note that failure to give notice in accordance with the requirements of regulation 69C is an offence and attracts a penalty of 40 penalty units in the case of a corporation (currently \$4,400) and 20 penalty units in the case of an individual (currently \$2,200).

In addition, the tester must keep a copy of the notice for at least 5 years from when it was given, and must produce a copy of the notice on the written request of the Secretary or an authorised officer at any time during that 5-year period. Failure to do so will incur a penalty of 40 penalty units in the case of a corporation (currently \$4,400) and 20 penalty units in the case of an individual (currently \$2,200).

Finally, new regulation 69D provides that a person must be a qualified person in order to carry out a safety and compliance test on medical gasfitting work, medical gas technician work or mechanical services and medical gas work on a medical gas installation, or part of a medical gas installation. Failure to comply with this provision attracts a penalty of 200 penalty units (currently \$22,000). In addition, a work provider must not cause or permit an employee, agent or contractor of the provider to carry out a safety and compliance test on the work concerned unless the employee, agent or contractor is a qualified person. This offence attracts a penalty of 500 penalty units in the case of a corporation (currently \$55,000), and 200 penalty units in the case of an individual (currently \$22,000).

Subscribers should note that, although the Amending Regulation commenced on 1 November 2020, regulations 69B, 69C and 69D relating to safety and compliance testing do not have effect until 1 May 2021.

### Conclusion

Subscribers should familiarise themselves with the new provisions discussed above. Moreover, organisations should update their policies and procedures in relation to safety and compliance testing in anticipation of the relevant provisions coming into effect on 1 May 2021.

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## Queensland Update

***Disability Services and Other Legislation (Worker Screening) Amendment Act 2020 No. 39 (Qld)***

On the 1 February 2021, relevant parts of the **Disability Services and Other Legislation (Worker Screening) Amendment Act 2020 No. 39 (Qld)** (the **Amending Act**) commenced.

The Amending Act has made significant changes to both the *Disability Services Act 2006* (Qld) (the **Disability Services Act**) and the *Working With Children (Risk Management and Screening) Act 2000* (Qld) (the **WWC Act**). The relevant changes have been made in part to adopt a nationally consistent worker screening system for the National Disability Insurance Scheme (NDIS).

**Disability Services Act**

Relevant organisations that are NDIS or funded service providers should be aware that the Amending Act has repealed and replaced Part 5 of the Disability Services Act.

Previously, the aim of Part 5 of the Act was to enable the chief executive to obtain the criminal history and other related information about persons engaged or to be engaged at a service outlet by the department, a funded non-government service provider or an NDIS non-government service provider.

The purpose of the new Part 5 (Disability worker screening and related requirements), has been expanded to include the following:

- to establish a scheme for screening persons by obtaining and considering their criminal history and other relevant information. The purpose is to assess whether the persons pose an unacceptable risk of harm;
- to require those who carry out, or propose to carry out, particular work with those that have a disability, to be screened under the scheme before carrying out the work; and
- to prohibit a person from carrying out particular work with people with disability if the chief executive decides they pose an unacceptable risk.

In order to meet the expanded aims, additional obligations and offences have now been included, in particular sections 53 and 54.

**Section 53 (Registered NDIS provider engaging person to carry out risk-assessed NDIS work)**

New section 53 of the Disability Services Act has established an offence for a registered NDIS provider to engage a person to carry out risk-assessed NDIS work without either an NDIS clearance or interstate NDIS clearance.

Under the Disability Services Act, 'risk-assessed NDIS work' is defined as NDIS disability work carried out in a role for which the normal duties include the direct delivery of specified NDIS supports or services or is likely to require more than incidental contact with a person with disability. The normal duties of a person's role are likely to require more than incidental contact with a person with disability if the duties include:

- physically touching a person with disability; or unpaid hours or underpayment of hours;
- building a rapport with a person with disability as an integral and ordinary part of the performance of normal duties.

Should a person's check return with no relevant information, then clearance will automatically be granted. However, a person with a conviction for a disqualifying offence will automatically be denied clearance, and an applicant with pending charges for a serious or disqualifying offence will also be denied clearance unless exceptional circumstances can be proven. This new offence is consistent with the national approach.



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A breach of section 53 also incurs a significant penalty, being a fine of 200 penalty units (currently \$26,690) or 2 years imprisonment for aggravated circumstances or otherwise 100 penalty units (currently \$13,345).

Aggravating circumstances include for example, when the registered NDIS provider was previously given notice that a person's NDIS clearance was cancelled. Sharing of information

### Section 54 (Carrying out risk-assessed NDIS work without NDIS clearance or interstate NDIS clearance prohibited)

Under new section 54, a person cannot carry out risk-assessed work for a registered NDIS Provider unless the person holds either an NDIS clearance or interstate NDIS clearance. Failure to comply with this section can result in a fine of 500 penalty units (currently \$66,725) or 5 years imprisonment; or if no aggravating circumstances exist, a fine of 100 penalty units (currently \$13,345).

### National NDIS Scheme

In addition to creating new offences and obligations, the Amending Act has also streamlined the current worker screening process. New section 50 provides that a 'clearance' is a declaration, issued by the chief executive, to a person that has been screened and is permitted to carry out both NDIS disability work and State disability work. This means that those with NDIS clearance's fall under the definition of 'clearance' in general, and therefore, will not be required to obtain a State disability clearance and will not have to worry about offences imposed by provisions, such as section 61 of the Act, which makes it an offence to carry out State disability work without clearance (the maximum penalty for a

breach being a fine of 500 penalty units (currently \$66,725) or 5 years imprisonment where aggravated circumstances apply to the offence; or otherwise, a fine of 100 penalty units (currently \$13,345)).

### Changes to the WWC Act

Relevant organisations should also be aware that the Amending Act has made some significant changes to the WWC Act. Importantly, it has expanded on the types of activities classified as 'regulated employment' under Schedule 1 to include certain disability work, specifically, work involving carrying out risk-assessed NDIS work for an NDIS service provider in relation to a child or children with disability, that are carried out either by an employee of an NDIS service provider or at a place where an NDIS service provider provides NDIS supports or services.

As such, organisations that provide services that fall within this newly expanded scope should be aware that they will now have to comply with provisions such as section 171 of the WWC Act. Under section 117, a person who employs someone else in employment that is regulated employment must, for each year, develop and implement a written strategy that, for example, implements employment practices and procedures to promote the wellbeing of a child affected by the regulated employment and to protect the child from harm.

### Conclusion

Organisations should ensure that relevant staff are aware of the changes that the Amending Act has made to the Disability Services Act and the WWC Act, as discussed above.

### Compliance Base Line Audits

One of the most important steps when setting up an effective legislative compliance system is undertaking the initial base line audit of your organisation's compliance with the applicable legislative obligations. Once you have completed this audit, your organisation can just focus on new legislative changes.

Although this step is important, we understand that it can be challenging for an organisation to complete.

Law Compliance can undertake the base line audit of your organisation's compliance against its legislative obligations. Typically, this audit can be completed in only 2 days.

Please contact Law Compliance for further information about our Compliance Audit service.

## Client in the spotlight: Sacred Heart Mission



*Sacred Heart Mission (SHM) has been delivering services and programs for people experiencing long-term disadvantage and exclusion for over 37 years. SHM is committed to programs that build people's strengths, capabilities, and confidence to participate fully in community life. Today they are one of Victoria's leading agencies working with people who are experiencing chronic homelessness, disadvantage and social exclusion. The organisation works across a variety of Victorian and*

*Commonwealth funded areas, including (but not limited to): residential aged care, home care, the NDIS, mental health, supported residential services, health care, wellbeing program, case management, crisis accommodation, fundraising and op shops.*

This wide range of service activities means SHM needs to be compliant with 120 pieces of legislation and keep on top of amendments and new legislation. We spoke to Angela Palmer, SHM's Coordinator of Quality, Risk and Compliance, to discuss their approach to legislative compliance and what has made it so successful.

### 1. How did you manage your legislative compliance before using Law Compliance (LC) products and services?

*Prior to using the Law Compliance portal, we managed our legislative compliance using a spreadsheet. It was manually managed and a clunky process.*

### 2. What problem(s) were you trying to solve with LC products and services?

*We struggled with understanding key aspects of legislation, how each aspect of the legislation pertained to Sacred Heart Mission and the task of engaging with the right people to assess our compliance, and noting/managing/resolving gaps. In 2018, we migrated to the portal which helped to streamline and group our existing legislative obligations that we needed to comply with.*

### 3. What are the most valuable features of LC products and services?

*The most valuable aspects of our Law Compliance package are the Self-Assessment Questions (SAQs) and the associated alerts. This allows us to request targeted assistance from managers particularly when each quarter there are legislative updates, including amendments and new legislation.*

### 4. What have you been able to achieve since using LC products and services?

*As a result of our contract with Law Compliance and the ease at which we can get phone or email support, we have been able to achieve high levels of compliance which remain current, in spite of the numerous and rapid changes in 2020 for instance.*

### 5. What tips or advice do you have for any organisation who need a hand with their legislative compliance?

*A tip: We have also found the Alert Service and Training Brochures on updated legislation extremely useful in requesting assistance from managers, as they clearly articulate why the update is important and what it means in their context. By providing these documents with the SAQs, we have found we get better comprehension of the changes and better quality responses from managers, and they better understand what is required of them to maintain compliance where a change has been made to the legislation.*

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## Tasmania Update

***On-Demand Passenger Transport Services Industry (Miscellaneous Amendments) Act 2020 (TAS)***

Please be advised that the *On-Demand Passenger Transport Services Industry (Miscellaneous Amendments) Bill 2020 (Tas)* (the **Amending Act**) commenced on 30 December 2020, however, the relevant provisions discussed below are yet to be proclaimed.

**Background**

The Amending Act amends the *Passenger Transport Services Act 2011* (Tas) (the **PTS Act**) to implement a modernised regulatory framework for taxis, hire vehicles and ride-sourcing. Under the new amendments, rideshare companies will have to be accredited and pay annual fees, which is designed to create equal regulation between taxis and rideshare services. Importantly, the Amending Act also introduces two new sections (being 33M and 61A), into the PTS Act as outlined below. These new sections apply to accredited operators (including accredited on-demand passengers transport services and bus operators).

**New obligations to report accidents, incidents and notifiable findings**

The Amending Act inserts new section 33M into the PTS Act, which creates an obligation on accredited operators to notify the Transport Commission (**Commission**) of accidents, incidents and findings that are prescribed in the regulations. Operators should also notify the Commission of the preventative steps it has taken to stop the recurrence of that accident, incident or, in the case of a notifiable finding, the failure that lead to that

finding. Subscribers should note that it is not yet clear as to what type of incidents will be prescribed by the regulations for accredited operators to report on. We expect new regulations to be published shortly.

A failure to notify the Commission will result in a fine not exceeding 50 penalty units (currently \$8,600) for a body corporate or body politic or 25 penalty units (currently \$4,300) for an individual.

**Improvement notices**

The Amending Act inserts new section 61A into the PTS Act, which empowers the Commission to issue improvement notices to persons who have or are likely to contravene a provision of the PTS Act or regulations.

A failure to comply with a notice is an offence and will result in a fine not exceeding 100 penalty units (currently \$17,200) for a body corporate or body politic or 50 penalty units (currently \$8,600) for an individual.

**Conclusion**

Organisations should ensure that all relevant persons are made aware of the amendments to the PTS Act.

**NHMRC Approved Standards and Guidelines**

Recipients of NHMRC grant funding (Administering Institutions) are required under the terms of the NHMRC Funding Agreement to comply with a range of Approved Standards and Guidelines.

In response to client demand, Law Compliance has expanded its product range to include Registers, Self-Assessment Questions, Training Brochures and Alerts for each of the Approved Standards and Guidelines.

*For more information about NHMRC products, please contact our team on **1300 862 667** or visit our website [www.lawcompliance.com.au](http://www.lawcompliance.com.au)*

## South Australia Update

## ***Controlled Substances (Poisons) (Real Time Prescription Monitoring) Variation Regulations 2020 No. 287 (SA)***

The *Controlled Substances (Poisons) (Real Time Prescription Monitoring) Variation Regulations 2020 (SA)* (the **Amending Regulations**) commenced on 1 November 2020 and have amended the *Controlled Substances (Poisons) Regulations 2011 (SA)* (the **Regulations**).

Following the recent introduction of an electronic prescriptions framework in South Australia, the Amending Regulations have amended the Regulations in order to further align South Australian prescription requirements with the national electronic prescribing framework.

### Prescriptions for monitored drugs

The Amending Regulations have extended the requirements for electronic prescriptions and written prescriptions to now include ‘monitored drugs’. A monitored drug means any of the following:

- any S8 poison;
- any S4 poison that is a benzodiazepine;
- any S4 poison that contains Codeine;
- any of the following S4 poisons:
  - Gabapentin;
  - Pregabalin;
  - Quetiapine;
  - Tramadol;
  - Zolpidem;
  - Zopiclone.

New regulation 33(6) provides that, where a prescription for a monitored drug for human use is prepared in an approved electronic form, a prescriber must:

- keep a record of:
  - the existing details required by the Regulations to be included in the prescription (e.g. name, dose, strength of drug etc.); and
  - the date of birth of the person for whom the prescription has been prepared; and

- transmit that record electronically to the Chief Executive so that it is received no later than the 7th day of the month following the month in which the drug was dispensed (or such later day as the Chief Executive may, on the application of the prescriber, authorise).

The newly introduced regulation 34(1a) provides that a prescriber who *writes* a prescription for the supply of a monitored drug for human use must:

- keep a record of:
  - the existing details required by the Regulations to be included in the prescription (e.g. name, dose, strength of drug etc.); and
  - the date of birth of the person for whom the prescription has been written; and
- (if the record is kept in electronic form)—transmit that record electronically to the Chief Executive so that it is received no later than the 7th day of the month following the month in which the drug was dispensed (or such later day as the Chief Executive may, on the application of the prescriber, authorise).

It is important to note that a prescriber will be taken to have complied with the above requirements in relation to a record made by the prescriber if the information contained in the record is collected electronically by a data source entity and is transmitted electronically to the monitored drugs database by the data source entity. A data source entity means any of the following:

- eRx Script Exchange Pty Ltd;
- MediSecure Pty Ltd;
- Medication Knowledge Pty Ltd;
- a prescription exchange service operating in an Australian Jurisdiction.

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A **monitored drugs database** means an electronic database kept by the Department that contains information relating to the sale, supply, prescription, administration and use of monitored drugs.

Subscribers should note that the new requirements under both new regulation 33(6) and 34(1a) carry a penalty of \$5,000.

### Conclusion

Subscribers should ensure prescribing staff are made aware of the changes outlined above and should update their policies and procedures accordingly.

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### Comply Online 101

**Wednesday 10 March | 10.00 am**

Introduction to the Comply Online platform. We explain the features and functionality of the Standard Version, and how to make the most of your subscription (30 minutes).

### Comply Online Premium

**Wednesday 17 March | 10.00 am**

Introduction to the Premium version of Comply Online. We take you through the additional reporting features and functionality available and how to produce reports (30 minutes).

### Law Compliance products

**Wednesday 24 March | 10.00 am**

Overview of the Law Compliance product range. We demonstrate our various products, the benefits of each and how to use them to create an effective legislative compliance program for your organisation (30 minutes).

## Law Compliance and COVID... a message from our Director

### We Remain Open for Business

*Our staff at Law Compliance have been working remotely since March last year and continue to be well equipped to accommodate working from home arrangements.*

*Our staff are contactable via telephone, email and videoconferencing and I would like to reassure you that we remain available to support our clients.*

*We like to wish all of our clients and friends of the firm the very best in these enduring troubling times.*

*Kind regards,*

*Natalie Franks*

*Director and Legal Counsel*

## Victoria Update

## ***Change or Suppression (Conversion) Practices Prohibition Bill 2020 (Vic)***

Please be advised that the *Change or Suppression (Conversion) Practices Prohibition Bill 2020 (Vic)* (the **Bill**) passed the Victorian Parliament on 4 February 2021 and is currently awaiting Royal Assent. The Bill is due to commence on a day to be fixed by proclamation, or within 12 months of assent.

### Overview

The Bill denounces and prohibits ‘change or suppression practices’ (also known as conversion practices) that seek to change or suppress a person’s sexual orientation or gender identity in Victoria, allowing all Victorians to live authentically and with pride, eliminating the view that an individual’s sexual orientation and gender identity are “broken” and needing to be “fixed”. The Bill empowers the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) to investigate reports of conversion practices. The Bill aims to protect LGBT Victorians by creating criminal offences relating to conversion practices that cause injury or serious injury.

Notably, under the Bill a change or suppression practice does not include a practice by a health service provider that, in the provider’s reasonable professional judgement:

- is part of the clinically appropriate assessment, diagnosis or treatment of a person, or clinically appropriate support for a person; or
- enables or facilitates the provision of a health service for a person in a manner that is safe and appropriate; or
- is necessary to comply with the provider’s legal or professional obligations.

The following are examples of the types of practices to which conversion therapy does not include:

- assisting a person who is undergoing a gender transition; or
- assisting a person who is considering undergoing a gender transition; or
- assisting a person to express their gender identity; or
- providing acceptance, support and understanding of a person; or
- facilitating a person’s coping skills, social support and identity exploration and development.

### New offence – Change or suppression practices

Organisations need to be aware that the new offences that prohibit change or suppression practices can be applied to persons engaged in conversion practices outside of Victoria, where it can be established that there is a real or substantial link between the prohibited conduct and Victoria. A real or substantial link can be established where the prohibited conduct or its effects, can be found to have partly occurred in Victoria.

In addition, unlike similar legislation recently passed in Queensland and the ACT, the Victorian Bill goes a step further by banning harmful practices not only in healthcare settings but also in religious settings.

Under new sections 10 and 11, those individuals who subject others to change or suppression practices that cause injury will face a maximum fine of up to 600 penalty units (currently \$99,132), 5 years imprisonment or both and organisations face a maximum of 3,000 penalty units (currently \$495,660). For those individuals who cause serious injury, the maximum penalty will increase to 1,200 penalty units (currently \$198,264), 10 years imprisonment, or both and organisations face a maximum fine of 6,000 penalty units (currently \$991,320).

Under new section 12, those individuals who try to take their conversion practices outside of Victoria could face a maximum fine of 240 penalty units (currently \$39,652.80), 2 years imprisonment, or both and organisations face a maximum fine of 1,200 penalty units (currently \$198,264).

Under new section 13, those advertising conversion practices would also incur a fine of up to 60 penalty units (currently \$9,913.2) for an individual and 300 penalty units (currently \$49,566) for an organisation.

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Lastly, a person may be compelled to appear before VEOHRC under new sections 36 and 37, for the purpose of providing information or documentation relevant to an investigation, and a failure to comply with a notice to appear, will result in a fine similar as set out in the above paragraph.

### Vicarious liability

Organisations need to also be aware that new section 47 creates vicarious liability between a person (including volunteers) who engages in conversion practices and their employer/principal. There is an exception to this, if an employer or principal can prove, on the balance of

probabilities, that they took reasonable precautions to prevent the natural person from engaging in the change or suppression practice.

### Definitions EO Act amended

The Bill will also amend the definitions of “gender identity” and “sexual orientation” in section 4 of the Equal Opportunity Act 2010 (the EO Act) to bring them more in line with current times. The Bill also makes “sex characteristics” a new protected attribute, which affords intersex Victorians better protection from discrimination under the EO Act.

Please click [here](#) to access the full Bill.



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### Western Australia Update

## ***Dangerous Goods Safety Regulations Amendment Regulations 2020 No.193 (WA)***

Relevant parts of the *Dangerous Goods Safety Regulations Amendment Regulations 2020 (WA)* (the **Amending Regulations**) commenced on 10 October 2020 and have amended the *Dangerous Goods Safety (Road and Rail Transport of Non-explosives) Regulations 2007 (WA)* (the **Regulations**).

The Amending Regulations have made consequential amendments to the Regulations in order to give effect to recent changes to the Model Subordinate Instrument on the Transport of Dangerous Goods by Road or Rail, and to make amendments consequential to the replacement of edition 7.6 of the Australian Code for the Transport of Dangerous Goods by Road and Rail (the **ADG Code**) with new edition 7.7.

### New placarding requirements

The Amending Regulations have amended regulation 110(2) of the Regulations to introduce new placarding requirements for loads that contain dangerous goods. Organisations are now required to placard a load that contains dangerous goods if the load contains specified goods and either:

- the specified goods include an aggregate quantity of 2,000 or more of any one UN number (within the meaning given in section 2.0.2 of the ADG Code) from a single place of consignment; or
- the total gross mass of the specified goods is 8 tonnes or more.

Furthermore, regulation 110(3) prescribes that for a load that contains dangerous goods, and that is not otherwise required to be placarded under regulation 110(2), the organisation is required to placard the load if the load meets the following conditions:

- the load contains a mixture of specified goods and other dangerous goods;
- either of the following applies:
  - if the load contains dangerous goods of UN Division 2.1 (excluding aerosols), dangerous goods of UN Division 2.3, or dangerous goods of Packing Group I – the aggregate quantity of those goods, plus 10% of the total gross mass of the specified goods, is 250 or more;
  - otherwise – the aggregate quantity of dangerous goods that are not specified goods, plus 25% of the

total gross mass of the specified goods is 1,000 or more.

For the purposes of regulations 110(2) and (3) **specified goods** mean dangerous goods that are:

- packed in limited quantities; or
- fireworks that are bon bons, party poppers or sparklers; or
- domestic smoke detectors containing radioactive material; or
- lighters or lighter refills containing flammable gas; or
- fire extinguishers containing compressed or liquefied gas, up to a net mass of 23 kg; or
- a combination of the dangerous goods referred to in the above dot points.

### Nominally empty storage vessels

The Amending Regulations have amended the Regulations to extend the obligations on 'empty dangerous goods packaging' to the broader 'nominally empty storage vessels'. Nominally empty storage vessels are defined as nominally empty tanks or hoppers as specified in section 7.2.7.1 of the ADG Code. Accordingly, organisations should note that the Regulations now provide that:

- a person must not consign nominally empty storage vessels for transport if the person knows, or reasonably ought to know, that the storage vessels are not loaded or stowed, or cannot be transported or unloaded, in accordance with Chapter 7.2 of the ADG Code;



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- a person must not load nominally empty storage vessels for transport by road or rail in a cargo transport unit other than in accordance with Chapter 7.2 of the ADG Code;
- a prime contractor or rail operator must not transport nominally empty storage vessels if the contractor or rail operator knows, or reasonably ought to know, that the transport does not comply with Chapter 7.2 of the ADG Code;
- a person must not drive a road vehicle transporting nominally empty storage vessels if the person knows, or reasonably ought to know, that the storage vessels are not being transported in accordance with Chapter 7.2 of the ADG Code.

### Dangerous goods packed in limited quantities

Under new regulation 162A, organisations must not consign dangerous goods that are packed in limited quantities for transport unless the organisation has provided the prime contractor with the information required by section 3.4.12.1 of the ADG Code. Additionally, new regulation 162B requires a prime contractor to ensure that information received under section 3.4.12.1 of the ADG Code is readily ascertainable during transport of the dangerous goods. Dangerous goods are packed in limited quantities if:

- the goods are packed in accordance with Chapter 3.4 of the ADG Code; and
- the quantity of dangerous goods in each inner packaging or in each article does not exceed the quantity specified, or referred to, in Column 7a of the Dangerous Goods List for those goods.

Importantly, breach of regulation 162A attracts a \$3,000 penalty and breach of regulation 162B attracts a \$5,000 penalty.

### General precautions—prime contractor's duties

The Amending Regulations have also imposed new general obligations on an organisation's prime contractors.

New regulation 174A provides that a prime contractor must not direct or induce the driver of a road vehicle transporting a placard load to park the road vehicle (or leave the road vehicle standing), in a public or private place except in accordance with Part 13 of the ADG Code. Contravention of this new provision attracts a penalty of \$3,000.

Additionally, a prime contractor must not:

- direct or induce the driver of a road vehicle transporting a placard load to permit the dangerous goods to be unloaded from the vehicle; or
- direct or induce the driver of a road vehicle that has attached to it a trailer transporting a placard load to detach the trailer or permit it to be detached from the vehicle; or
- direct or induce the driver of a road vehicle that is transporting a placard load, and that is equipped with a burner to heat the load, to operate the burner or permit it to be operated, except in accordance with Part 13 of the ADG Code. Each of these new offences attracts a penalty of \$10,000.

### Conclusion

Organisations should ensure relevant staff are made aware of the changes introduced by the Amending Regulations as outlined above, and should update their policies and procedures accordingly.







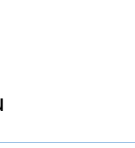


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