

## Law Compliance Report – February 2023

Welcome to the February 2023 edition of the Law Compliance Report.

In this issue we:

- set out some of the current Bills we are tracking throughout Australia;
- discuss recent legislative changes occurring in each of the States and Territories;
- outline the recent upgrades we have made to our Comply Online® system; and
- provide tips for using Comply Online®.



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## Some of the Legislative Changes being tracked

### Western Australia

Animal Welfare and Trespass Legislation Amendment Bill 2021 (WA)  
 Climate Change and Greenhouse Gas Emissions Reduction Bill 2021 (WA)  
 Criminal Law (Mental Impairment) Bill 2022 (WA)  
 Directors' Liability Reform Bill 2022 (WA)  
 Health Services Amendment Bill 2021 (WA)  
 Land and Public Works Legislation Amendment Bill 2022 (WA)  
 Retail Trading Hours Amendment Bill 2021 (WA)  
 Statutes (Repeals and Minor Amendments) Bill 2021 (WA)  
 Teacher Registration Amendment Bill 2022 (WA)

### Northern Territory

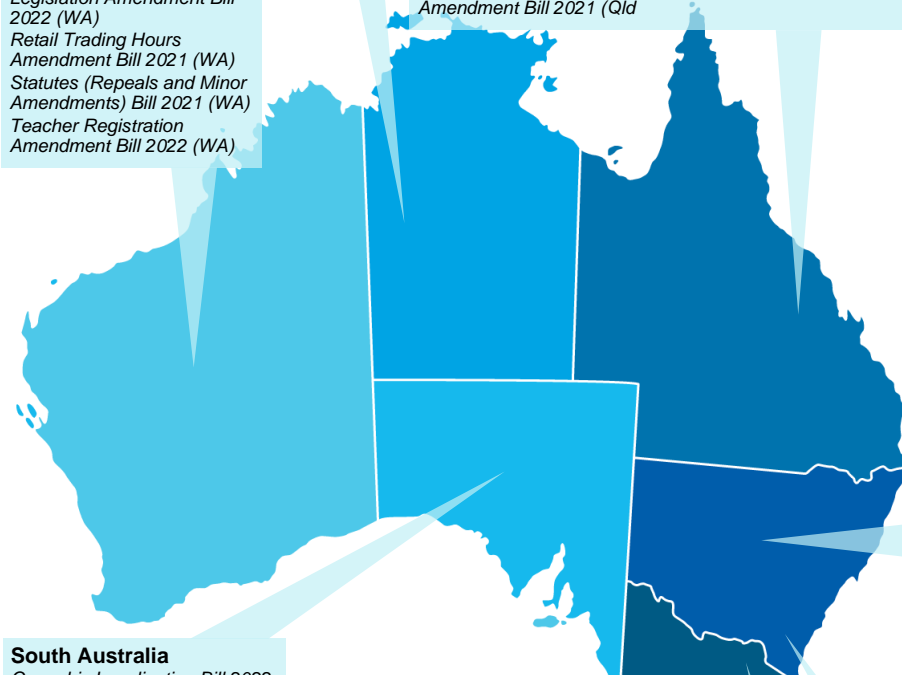
Statute Law Revision Bill 2022 (NT)

### Queensland

Births, Deaths and Marriages Registration Bill 2022 (Qld)  
 Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Bill 2022 (Qld)  
 Health and Other Legislation Amendment Bill 2022 (Qld)  
 Environmental Protection and Other Legislation Amendment Bill 2022 (Qld)  
 Housing Legislation Amendment Bill 2022 (Qld)  
 Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022 (Qld)  
 Residential Tenancies and Rooming Accommodation (Rent Freeze) Amendment Bill 2022 (Qld)  
 Water Legislation Amendment Bill 2022 (Qld)  
 Working with Children (Indigenous Communities) Amendment Bill 2021 (Qld)

### Commonwealth

Commonwealth Electoral Amendment (Stop the Lies) Bill 2022 (Cth)  
 Crimes Legislation Amendment (Ransomware Action Plan) Bill 2022 (Cth)  
 Customs Amendment (Banning Goods Produced By Forced Labour) Bill 2022 (Cth)  
 Customs Amendment Bill 2022 (Cth)  
 Customs Legislation Amendment (Controlled Trials and Other Measures) Bill 2022 No. (Cth)  
 Environment Protection and Biodiversity Conservation Amendment (Climate Trigger) Bill 2022 (Cth)  
 Export Control Amendment (Streamlining Administrative Processes) Bill 2022 No. (Cth)  
 Fair Work Amendment (Prohibiting COVID-19 Vaccine Discrimination) Bill 2023 No. (Cth)  
 Higher Education Support Amendment (2022 Measures No. 1) Bill 2022 (Cth)  
 Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Bill 2022 (Cth)  
 Public Interest Disclosure Amendment (Review) Bill 2022 (Cth)  
 Telecommunications Legislation Amendment (Information Disclosure, National Interest and Other Measures) Bill 2022 No. (Cth)  
 Therapeutic Goods Amendment (2022 Measures No. 1) Bill 2022 (Cth)  
 Treasury Laws Amendment (2022 Measures No. 4) Bill 2022 (Cth)  
 Treasury Laws Amendment (Consumer Data Right) Bill 2022 (Cth)  
 Treasury Laws Amendment (Modernising Business Communications and Other Measures) Bill 2022 (Cth)  
 Treasury Laws Amendment (Modernising Business Communications) Bill 2022 (Cth)  
 Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Bill 2023 (Cth)



### South Australia

Cannabis Legalisation Bill 2022 (SA)  
 Environment Protection (Cigarette Butt Waste) Amendment Bill 2023 (SA)  
 Fair Work (Family and Domestic Violence Leave) Amendment Bill 2022 (SA)  
 Fair Trading (Lifespan of Electrical Products) Amendment Bill 2022 (SA)  
 Food (Restrictions on Advertising of Junk Food) Amendment Bill 2022 (SA)  
 Freedom of Information (Ministerial Diaries) Amendment Bill 2022 No. (SA)  
 Gas (Ban on New Connections) Amendment Bill 2022 (SA)  
 Gender Equality Bill 2022 (SA)  
 National Electricity (South Australia) (Ministerial Reliability Instrument) Amendment Bill 2022 (SA)  
 Residential Tenancies (Rent Control) Amendment Bill 2022 (SA)  
 Statutes Amendment (Animal Welfare Reforms) Bill 2022 (SA)  
 Statutes Amendment (Personal Mobility Devices) Bill 2022 (SA)  
 Work Health and Safety (Industrial Manslaughter) Amendment Bill 2022 (SA)

### Tasmania

Electoral Disclosure and Funding Bill 2022 No. (Tas)  
 Justice Miscellaneous (Royal Commission Amendments) Bill 2022 (Tas)  
 Mental Health Amendment Bill 2022 (Tas)  
 Public Interest Disclosures (Members of Parliament) Bill 2021 (Tas)  
 Residential Building (Miscellaneous Consumer Protection Amendments) Bill 2022 (Tas)  
 Right to Information Amendment (Public Protected Areas) Bill 2021 (Tas)  
 Right to Information Amendment Bill 2021 (Tas)

### Victoria

Building and Planning Legislation Amendment Bill 2022 (Vic)  
 Building, Planning and Heritage Legislation Amendment (Administration and Other Matters) Bill 2022 (Vic)  
 Children and Health Legislation Amendment (Statement of Recognition and Other Matters) Bill 2022 (Vic)  
 Children, Youth and Families (Raise the Age) Amendment Bill 2021 (Vic)  
 Children, Youth and Families Amendment (Child Protection) Bill 2021 (Vic)  
 Children, Youth and Families Amendment (Out of Home Care Age) Bill 2020 (Vic)  
 Commercial Passenger Vehicle Industry Amendment Bill 2019 (Vic)  
 Crimes (Mental Impairment and Unfitness to be Tried) Amendment Bill 2020 (Vic)

### New South Wales

Aboriginal Cultural Heritage (Culture is Identity) Bill 2022 (NSW)  
 Abortion Law Reform (Sex Selection Prohibition) Amendment Bill 2021 (NSW)  
 Anti-Discrimination Amendment (Sex Workers) Bill 2020 (NSW)  
 Education Legislation Amendment (Parental Rights) Bill 2020 (NSW)  
 Protection of the Environment Operations Amendment (Clean Air) Bill 2021 (NSW)  
 Tax Administration Amendment (Combating Wage Theft) Bill 2021 (NSW)  
 Water Management Amendment (Water Access Licence Register) Bill 2022 (NSW)

### ACT

Discrimination Amendment Bill 2022 (ACT)  
 Financial Management Amendment Bill 2021 (No 2) 2021 (ACT)  
 Freedom of Information Amendment Bill 2022 (ACT)  
 Integrity Commission Amendment Bill 2022 (No 2) (ACT)  
 Period Products and Facilities (Access) Bill 2022 (ACT)  
 Planning Bill 2022 No. (ACT)  
 Professional Engineers Bill 2022 (ACT)  
 Residential Tenancies Legislation Amendment Bill 2022 (ACT)  
 Revenue Legislation Amendment Bill 2022 (ACT)

Disability Amendment Bill 2022 (Vic)  
 Drugs, Poisons and Controlled Substances Amendment (Decriminalisation of Possession and Use of Drugs of Dependence) Bill 2022 (Vic)  
 Drugs, Poisons and Controlled Substances Amendment (Pill Testing Pilot for Drug Harm Reduction) Bill 2019 (Vic)  
 Emergency Powers Safeguards Legislation Amendment Bill 2021 (Vic)  
 Health Legislation Amendment (Information Sharing) Bill 2023 (Vic)  
 Human Rights and Housing Legislation Amendment (Ending Homelessness) Bill 2022 (Vic)  
 Local Government Amendment (Rates and Charges) Bill 2021 (Vic)  
 Racial and Religious Tolerance Amendment Bill 2019 (Vic)  
 Wildlife Rescue Victoria 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)

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### Commonwealth Update

## **Treasury Laws Amendment (More Competition, Better Prices) Act 2022 (Cth)**

On 10 November 2022, the *Treasury Laws Amendment (More Competition, Better Prices) Act 2022 (Cth)* amended the *Competition and Consumer Act 2010 (Cth)* (the **Act**) including the Australian Consumer Law (**ACL**), which is found in Schedule 2 of the Act. As a result, many penalty provisions have been overhauled and now have increased upper limits.

### Significantly increased penalties

In relation to the prohibitions listed under the three distinct sub-headings below, generally, fines cannot exceed the greater value of the following for body corporate entities:

- \$50,000,000;
- if ascertainable, the total value of the benefit gained from the offending x 3;
- if unascertainable, 30% of the body corporate's adjusted turnover during the 12-month period ending at the end of the month in which the act or omission occurred or started to occur.

In other words, the Court will determine the greatest value from the list of options above to ensure they do not exceed this number when issuing a fine.

If the person is not a body corporate, the fine is not to exceed \$2,500,000, which has increased from \$500,000.

Overall, the amendments result in a significant increase when compared to the previous penalty upper limits.

#### Changes to penalties concerning "Anti-Competitive Conduct" found in the *Competition and Consumer Act 2010 (Cth)*

Upper limits to fines concerning the list of prohibitions below have been significantly increased:

- Cartel Conduct
- Exclusive Dealing
- Third Line Forcing
- Resale Price Maintenance
- Contracts, arrangements or understandings that restrict dealings or affect competition
- Misuse of Market Power

- Acquisitions that would result in a substantial lessening of competition.

#### Changes to penalties concerning "Unfair Practices" found in the ACL

Upper limits to fines concerning the list of prohibitions below have been significantly increased:

- False and misleading representations about goods or services
- False or misleading representations about sale of land
- Misleading conduct relating to employment
- Wrongly accepting payment
- Assertion of right to payment for unsolicited goods or services
- Referral selling
- Harassment and coercion.

#### Changes to penalties concerning unfair practices, pricing, safety of consumer goods and product related services and information standards in the ACL

Upper limits to fines concerning the list of prohibitions below have been significantly increased:

- Failing to provide promised rebates, gifts, prizes etc.
- Misleading conduct as to the nature etc. of goods
- Misleading conduct as to the nature etc. of services
- Bait advertising
- Single price to be specified in certain circumstances
- Supplying etc. consumer goods that do not comply with safety standards
- Supplying etc. product related services that do not comply with safety standards

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- Supplying etc. consumer goods covered by a ban
- Supplying etc. product related services covered by a ban
- Non-compliance with recall notices
- Supplying etc. goods that do not comply with information standards
- Supplying etc. services that do not comply with information standards
- Consequences of rejecting goods.

### Conclusion

The increased upper limits to penalties indicate the seriousness with which the Commonwealth Government views consumer rights and disreputable trade practices. In this respect, organisations should ensure their systems, processes and controls are up to date to ensure compliance with all regulated dealings.

### Number of Acts and Regulations passed in 2022

The regulatory burden on organisations is always increasing. On top of all the existing legislative obligations that each organisation must comply with, there are constant changes and new laws that need to be kept up with. Law Compliance does the work for you.

The number of Bills introduced, Acts, Regulations and other Subordinate Legislation passed in 2022 are set out below:

Jurisdiction	Bills introduced in 2022	Acts passed in 2022	Regulations and other Subordinate Legislation passed in 2022
Commonwealth	157	96	321
ACT	44	26	19
New South Wales	103	81	480
Northern Territory	37	33	27
Queensland	43	35	195
South Australia	60	31	118
Tasmania	57	42	110
Victoria	60	45	134
Western Australia	34	47	219

That's **595** Bills, **436** Acts and **1,623** Regulations and Rules that the Law Compliance team reviewed!

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### Australian Capital Territory Update

## ***Work Health and Safety Amendment Regulation 2022 (No 2) (ACT); Work Health and Safety Amendment Regulation 2022 (No 3) (ACT)***

Please be advised that relevant parts of the *Work Health and Safety Amendment Regulation 2022 (No 2) (ACT)* and the *Work Health and Safety Amendment Regulation 2022 (No 3) (ACT)* (the **Amendments**) have commenced, amending the *Work Health and Safety Regulation 2011 (ACT)* (the **Regulation**).

### Control measures for cutting material containing crystalline silica

The Amendments introduce an additional control measure to the existing requirements under Section 418B of the Regulation for cutting into material containing crystalline silica, specifically for when cutting into material that is not engineered stone.

In this case, a person conducting a business or undertaking must not direct or allow a worker to cut a material that is not engineered stone and that contains crystalline silica, unless a wet dust suppression method is used to suppress airborne crystalline silica produced by cutting the material, and at least 1 other crystalline silica control measure is in place.

A **wet dust suppression method** means a method of suppressing airborne contaminants that involves the use of:

- water or other suitable liquid, or a wetting agent; and
- a continuous feed of water or an emulsion, spray, curtain, mist or foam of water or other suitable liquid over the place where airborne contaminants are produced.

A **crystalline silica control measure** includes:

- a water delivery system supplying a continuous feed of water over the cutting area used to suppress airborne crystalline silica produced by the cutting;
- a wet dust suppression method;
- the attachment of a Class H vacuum to the tool used for cutting;
- for other crystalline silica material containing less than 25% crystalline silica—the attachment of a Class M vacuum to the tool used for cutting;
- the use of a local exhaust ventilation system;
- the isolation of the place where the cutting occurs from other workers.

### Conclusion

Organisations should be aware of the change to the control measures that must be in place when cutting into material containing crystalline silica that is not engineered stone.



### Comply Online® Premium Trial

If you have been considering upgrading your organisation's subscription to the Premium version, (which allows you to allocate topics to users and produce compliance Board reports), take a look at the [Key Features fact sheet](#) and [Premium tour video](#).

To commence a free 14 day trial of Comply Online® Premium, please [click here](#).

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### New South Wales Update

## **Children's Guardian Amendment (Child Safe Scheme) Act 2021 (NSW)**

### Background

The purpose of the *Children's Guardian Amendment (Child Safe Scheme) Act 2021 (NSW)* (the **Amending Act**) is to embed the 'Child Safe Standards' into the *Children's Guardian Act 2019 (NSW)* (the **Act**), as recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse. Organisations providing services to or interacting with children (**organisations**) must implement child safety practices according to the Child Safe Standards under the Act.

### Child Safe Standards

The new section 8C of the Act specifies 10 Child Safe Standards that are principle-based.

The **Child Safe Standards** are:

1. Child safety is embedded in organisational leadership, governance and culture.
2. Children participate in decisions affecting them and are taken seriously.
3. Families and communities are informed and involved.
4. Equity is upheld, and diverse needs are taken into account.
5. People working with children are suitable and supported.
6. Processes to respond to complaints of child abuse are child focused.
7. Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training.
8. Physical and online environments minimise the opportunity for abuse to occur.
9. Implementation of the Child Safe Standards is continuously reviewed and improved.
10. Policies and procedures document how the organisation is child safe.

Under section 8D(1) of the Act, an organisation must ensure that the Child Safe Standards are implemented through systems, policies and processes which may include, but are not limited to, a child safe policy, a code of conduct and a complaint management policy and procedure. Importantly, organisations must implement a reportable conduct policy to adhere to the Reportable Conduct Scheme's requirements under section 8D(2) of the Act.

### Enforcement Measures

The new Part 9A of the Act contains two key divisions, each providing different enforcement actions. Division 1 of the Act relates to compliance notices, and Division 2 of the Act relates to enforceable undertakings. Organisations must include details of any compliance notice or enforceable undertaking (whichever applies) in their annual report.

#### Compliance Notice

If the Children's Guardian reasonably believes an organisation's systems, policies or processes do not reflect or implement the Child Safe Standards, the Children's Guardian may issue a compliance notice requiring the organisation to take the action specified in the notice, and provide the Children's Guardian with evidence it has done so. Organisations failing to comply with a compliance notice may incur a maximum penalty of 250 penalty units for a corporation (currently **\$27,500**) or otherwise, 50 penalty units (currently **\$5,500**).

#### Enforceable undertaking

Alternatively, instead of issuing a compliance notice under Division 1, the Children's Guardian may accept an enforceable undertaking from an organisation. An enforceable undertaking is an undertaking from the organisation under which the organisation agrees to take specific action by a specific date. Where the organisation has taken the required action by the specified date, it may apply to amend the undertaking. The Children's Guardian may agree to the amendment of an

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undertaking if they consider that the organisation has taken suitable steps to address the risks to children that led to the undertaking, and the amendment is appropriate in all the circumstances. Organisations failing to comply with an enforceable undertaking may incur a maximum penalty of 500 penalty units for a corporation (currently **\$55,000**) or otherwise, 100 penalty units (currently **\$11,000**).

**Conclusion**

Organisations should familiarise themselves with their new responsibilities under the Children’s Guardian Act 2019 (NSW), as summarised above and update their systems, policies and procedures to comply with the revised Act.

**New features available on Comply Online®**

We have made a number of exciting enhancements to Comply Online® in recent months, with many more planned for this year. A few of the key new features are set out below:

**Risk Rating Information (Premium only):**

Premium clients have the ability to include their internal risk matrix or rating information to their profiles. This can assist users in providing an accurate and uniform risk assessment for their assigned topics. A new blue **i** button has been added next to the Risk Level drop-down which opens a window containing your chosen information or images.

To include this in your profile, please contact your Client Relationship Manager.

		Impact How severe would the outcomes be if the risk occurred?				
		Insignificant 1	Minor 2	Significant 3	Major 4	Severe 5
Probability What is the probability the risk will happen?	5 Almost Certain	Medium 5	High 10	Very high 15	Extreme 20	Extreme 25
	4 Likely	Medium 4	Medium 8	High 12	Very high 16	Extreme 20
	3 Moderate	Low 3	Medium 6	Medium 9	High 12	Very high 15
	2 Unlikely	Very low 2	Low 4	Medium 6	Medium 8	High 10
	1 Rare	Very low 1	Very low 2	Low 3	Medium 4	Medium 5

**IP Restriction (Standard and Premium):**

With the current focus on data security, as well as the increase in flexible working arrangements, we have added the ability for clients to restrict access to their Comply Online profile to listed IP addresses. If you would like to use this functionality, please get in touch with your dedicated Client Relationship Manager to provide your approved list of IP addresses.

**Assigning topics “on behalf of” (Premium only):**

This new functionality allows primary users to assign topics to lower tiers linking in the tiers in between. This is very helpful for subscribers with 3 or more tiers who are having trouble getting the tier 2 users (usually the Executive team) to log in and delegate their topics down. Primary users can still assign topics directly to any tier also.

**Current compliance status in Quarterly Update Table (Premium only):**

There is now an additional column in the Quarterly Update Table which shows the current compliance status for each topic. At the beginning of the quarter, all updated topics revert to review required (except for those where the changes have "No compliance impact"). Primary users can then track the compliance statuses over the quarter and can easily see which assigned users will need to be followed up when updates have not yet been reviewed.

If you have any questions about any of these features, please don’t hesitate to contact your Client Relationship Manager.

**We value your input and thank the clients who have provided the feedback which has resulted in the above enhancements. If you have any suggestions on how we can enhance the functionality and usability of Comply Online, please contact our team at any time.**

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### Northern Territory Update

## **Anti-Discrimination Amendment Bill 2022 (NT)**

Please be advised that on 22 November 2022 the *Anti-Discrimination Bill 2022 (NT)* (the **Bill**) passed Northern Territory Parliament. The Bill will commence on a day to be proclaimed or if not proclaimed prior, on 1 October 2024, and will amend the *Anti-Discrimination Act 1992 (NT)* (the **Act**) and the *Anti-Discrimination Regulations 1994* (the **Regulations**).

The Bill makes a range of amendments but most importantly:

- establishes a new general duty to eliminate discrimination, sexual harassment and victimisation;
- creates a new process for representative complaints of systemic discrimination;
- creates a new prohibition of offensive behaviour, to prevent acts done because of an attribute of a group or person that are reasonable likely to offend, insult, humiliate or intimidate;
- removes the exemptions relating to religious educational authorities;
- broadens the prohibition of sexual harassment; and
- adds further protected attributes for the prohibition of discrimination.

### **New duty to eliminate discrimination, sexual harassment and victimisation**

The Bill inserts a new Part 2A into the Act which creates a general duty on persons to take reasonable and proportionate measures to prevent and eliminate discrimination, sexual harassment and victimisation to the greatest extent possible. The following factors determine whether a measure is reasonable and proportionate:

- the size of the person's business or operations;
- the nature and circumstances of the person's business or operations;
- the person's resources;
- the person's business and operational priorities; and
- the practicability and the cost of the measure.

The Commissioner has powers to investigate compliance with this duty and to take any action they consider appropriate following the outcome of an investigation.

### **Representative complaints**

The Bill provides a new process for the making of representative complaints to the Anti-Discrimination Commissioner that allege systemic discrimination resulting from behaviour, practices, policies or programs of an organisation or Agency that have the effect of creating or perpetuating disadvantage for a group that shares a protected attribute.

Amendments to section 60 of the Act provide that an organisation or body may make a representative complaint about systemic discrimination. However, an individual who is affected by systemic discrimination may still make a complaint in circumstances where a representative complaint has been made. A representative complaint will not be required to:

- name the individual members of the group who are affected by the systemic discrimination; or
- identify the number of individuals affected by the systemic discrimination; or
- obtain consent from the individuals it alleges are affected.

The Commissioner may issue guidelines relating to representative complaints.

### **New prohibition to prevent offensive behaviour because of an attribute**

The Bill introduces new section 20A which contains a prohibition against doing an act, which is done because of an attribute of another person or group, that is reasonably likely to offend, insult, humiliate or intimidate another person or group of people, unless it is done in private.

There will be exemptions for anything said or done reasonably:



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- in good faith in the performance, exhibition or distribution of an artistic work;
- in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest; or
- in making or publishing a fair and accurate report of any event or matter of public interest or a fair comment on any event or matter of public interest that is a genuine belief.

Amendments to section 21 of the Act also extend the prohibition to discriminate against a person because the person has a guide dog, to include all assistance animals.

### Removal of religious educational authority exemptions

The Bill removes the following exemptions which previously allowed an educational authority operating an educational institution in accordance with the doctrine of a particular religion to discriminate:

- against applicants who are not of that religion;
- against a person in the area of work in the institution on the grounds of religious belief or activity, or sexuality, if done in good faith to avoid offending the religious sensitivities of people of that religion; and
- in providing accommodation to students wholly or mainly of that religion.

However, amended section 40 of the Act will still allow a person to discriminate against a person on the grounds of religion with respect to accommodation if the accommodation is under the direction or control of a

body established for religious purposes and is within or attached to religious premises, but not where a program is funded by the Territory or Commonwealth government.

### A broader prohibition against sexual harassment

The Bill extends the prohibition against sexual harassment to all aspects of life not just 'an area of activity' as referred to in section 28 of the Act. The circumstances relevant in determining whether a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct will also broaden to include sexual orientation, gender identity, sex characteristics, relationship status, or religious belief or activity of the other person.

### Additional protected attributes under the prohibition against discrimination

The Bill also introduces additional protected attributes by which a person must not be discriminated against, these are: language (including signed language), gender identity, sexual orientation, sex characteristics, relationship status, accommodation status, employment status, employment in sexual services or engaging in sexual services (including past employment in sexual services or engagement in sexual services), carer responsibilities, disability, infectious disease status and if they are subjected to domestic violence.

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



[Law Compliance](#) is on LinkedIn.  
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### Queensland Update

## **Child Protection Reform and Other Legislation Amendment Act 2022 (Qld)**

The *Child Protection Reform and Other Legislation Amendment Act 2022 (Qld)* commenced on **31 October 2022** and amended section 13F of the *Child Protection Act 1999 (Qld)* (the **Act**) (among other provisions).

As a result of the amendments, section 13F of the Act has been expanded to include approved carers within the list of entities/persons who are required to report suspicions of child abuse to the chief executive in circumstances where that person forms a reasonable suspicion that a child in care has suffered, is suffering, or is at an unacceptable risk of suffering, significant harm caused by physical or sexual abuse. The report must be made in accordance with section 13G of the Act, which states:

*The report must:*

- state the basis on which the person has formed the reportable suspicion; and
- include the information prescribed by regulation, to the extent of the person's knowledge.

#### **Approved carer:**

- generally, means:
  - an approved foster carer; or
  - an approved kinship carer; or
  - a provisionally approved carer.

**Reasonably suspects** is defined in Schedule 3 of the Act and means suspects on grounds that are reasonable in the circumstances.

#### **Conclusion**

Relevant organisations should ensure approved carers who care for children under the Act are made aware of the new application of section 13F of the Act to them, as discussed above. It is also recommended that organisations explore and define in their relevant policies, procedures and protocols what it means for an approved carer to have a “reasonable suspicion”.

### Staff news

Law Compliance is growing!

We are delighted to welcome

- **Briony Black**, Head of People and Culture
- **Sue Allen**, Senior Consultant  
Sue has a long association with the firm having been inhouse general counsel at a number of our health clients.
- **Jillian Britton**, Compliance Solicitor
- **Filomena Rosella**, Compliance Solicitor
- **Chris Pearn**, Law Clerk.

### Cybersecurity and IT Management

Law Compliance is aware that everyone is constantly aiming to have the highest possible cybersecurity in place from spam and hackers, as we are too. Sometimes, unfortunately firewalls and spam filters are also preventing us from sending emails to our subscribers.

To ensure you receive all future communications promptly and avoid difficulties with our Law Compliance updates / alerts emails reaching you and/or your team (because of these varied spam filtering services falsely classifying emails as spam or going into junk folders), we ask that you please let your IT team know to whitelist the following Law Compliance addresses:

- [info@mailgun.lawcompliance.com.au](mailto:info@mailgun.lawcompliance.com.au);
- [lawcompliance.com.au](http://lawcompliance.com.au);
- our account system [accountright@apps.myob.com](mailto:accountright@apps.myob.com)

Should you or your IT team have further questions regarding this, please feel free to contact us / your CRM.

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### South Australia Update

## ***Suicide Prevention Act 2021 (SA) and Suicide Prevention Regulations 2022 (SA)***

Please be advised that the *Suicide Prevention Act 2021 (SA)* (the **Act**) and *Suicide Prevention Regulations 2022 (SA)* (the **Regulations**) commenced on 5 September 2022.

### Background

The Act establishes a legislative framework designed to reduce the incidence of death by suicide in South Australia through key measures such as establishing a Suicide Prevention Council and creating obligations for both the Minister for Health and State authorities to have processes and procedures in place to reduce the risk of death by suicide.

#### Suicide Prevention Council

Section 9 of the Act establishes the Suicide Prevention Council (the **Council**) with their primary functions being:

- to prepare and maintain the State Suicide Prevention Plan; and
- to make recommendations on policies and programs intended to reduce deaths by suicide and attempted suicides and enhance postvention responses.

Further, the Act provides for numerous obligations relating to the Council and its functions.

#### Suicide Prevention Plans

##### State Suicide Prevention Plan

The State Suicide Prevention Plan (the **State Plan**), as prescribed by section 20 of the Act, must be prepared by the Council. A consultation process with the persons or bodies prescribed by the regulations and the community is to take place prior to the State Plans publication.

The State Plan must include:

- policies and measures to be implemented in line with the objects of the Act;
- performance indicators against which the progress in relation to the prevention of suicide can be measured;
- provisions specifically addressing the prevention of suicide among priority population groups;

- provisions relating to the education and training of people in relation to suicide prevention; and
- any other matter prescribed by the Regulations.

These policies and procedures must also include how they make specific provisions in relation to suicide prevention as it impacts Aboriginal and Torres Strait Islander people.

#### Duties of State Authorities

Pursuant to section 22 of the Act, every State authority must have regard to and seek to give effect to the State Plan when exercising its functions as a State authority.

A prescribed State authority under the Regulations must also have a Suicide Prevention Action Plan (the **Prevention Plan**) in place that sets out strategies that the State authority intends to put in place to prevent suicide by officers, employees and members of the community that engage with the State authority.

The Prevention Plan, as prescribed by the Act, must:

- explain how the State authority proposes to further the objects of the Act; and
- explain how the State authority proposes to give effect to the State Plan; and
- explain how the State authority proposes to give effect to the Part of the State Plan relating to suicide prevention for Aboriginal and Torres Strait Islander people; and
- set out the State authority's policies in relation to supporting officers and employees, or members of the community that engage with them, following the death by suicide of a person; and
- explain how suicide prevention strategies will be incorporated into their primary functions and programs and how they will be adapted to suit service level delivery; and

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- any other provisions as may be required by the Regulations and guidelines published by the Minister for Health (yet to be published).

Further the State authority must consult with persons who are within a priority population group, persons who identify as Aboriginal or Torres Strait Islander and persons who have a lived experience of suicide. The State authority must call for submissions from members of the public in accordance with the scheme set out in the Regulations (and must have regard to the submissions made in response to the call).

The Prevention Plan must be published as soon as possible after it is prepared or varied and must be reviewed every four years after its first publication.

Each prescribed State authority must, on or before 31 October in each year (commencing **1 February 2023**), report to the Council on the operation of its Prevention Plan during the preceding financial year.

A **State authority** is defined as a person who holds an office established by an Act, a public sector agency, South Australia Police or any other person prescribed by regulation.

### Conclusion

State authorities should be aware of their obligations and ensure that they have a Suicide Prevention Action Plan in place to prevent suicide by people who engage with them.

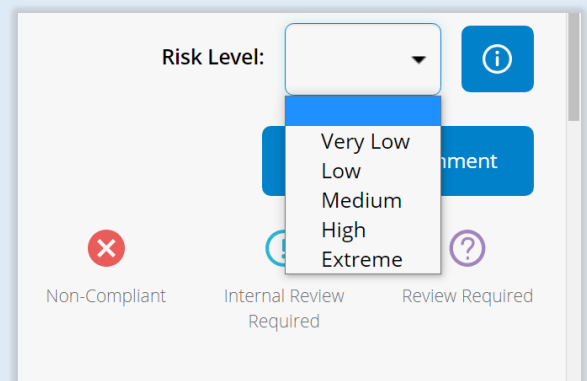
## Comply Online® Tip

### Tailor your Premium profile

Premium profiles have the additional ability to tailor the title of the Tiers. For example, instead of Primary and Secondary users, you can customise the language to match your internal organisational structure (i.e. Tier 1 = Risk and Compliance, Tier 2 = Executives, Tier 3 = Compliance Managers etc). This will then be reflected in all of the Reports.

Similarly, Premium subscribers can edit the Risk Level information to amend the language and colour and also add more levels in (for example “Very Low” or “Extreme”). This also ties in with the new Risk Information functionality explained in **New Features** on page 7.

If you would like to make any changes to your Comply Online® profile, please contact your Client Relationship Manager.



## February 2023 Edition

### Tasmania Update

## **End-of-Life Choices (Voluntary Assisted Dying) Act 2021 (Tas)**

The *End-of-Life Choices (Voluntary Assisted Dying) Act 2021 (Tas)* (the **Act**) creates a new topic for our subscribers – TAS - Voluntary Assisted Dying.

### Key Elements of the Voluntary Assisted Dying Scheme

#### Relevant Medical Condition

For the purposes of the Act, a **relevant medical condition** has been defined as meaning a disease, illness, injury or medical condition that must be advanced, incurable and irreversible, and must be expected to cause the death of the person within 6 months, or 12 months if it is a neurodegenerative disorder.

#### Who is eligible to access the voluntary assisted dying (VAD) scheme?

Under section 7 of the Act, individuals are eligible to access voluntary assisted dying if they have a relevant medical condition and:

- are aged 18 years or older;
- meet residency requirements (see below);
- have decision-making capacity;
- are acting voluntarily;
- are suffering intolerably in relation to the relevant medical condition;
- have relevant information about the prognosis and treatment of all relevant medical conditions and are aware of any possible complications that have arisen or can arise from the treatment of any relevant medical condition; and
- have relevant information about the reasonably available treatment that may relieve the mental or physical suffering of the person that is related to the relevant medical condition.

For a person to meet the residency requirements, pursuant to section 11 of the Act, they must:

- be an Australian citizen;
- be a permanent resident; or

- have been a resident in Australia for at least 3 continuous years immediately before making the first request; and
- have been ordinarily resident in Tasmania for at least 12 continuous months immediately before the person makes their first request.

#### Registered Health Practitioners

Registered health practitioners are **prohibited from initiating discussions** about the option of VAD. A medical practitioner does not have to participate in VAD and is able to conscientiously object, however, they are still obliged under the Act to provide the person with the contact details of the Voluntary Assisted Dying Commission (the **Commission**).

#### First Request

Pursuant to Part 5 of the Act, after receiving the relevant facts from the medical practitioner about accessing VAD, either orally or in writing, the person may request whether they are eligible to access VAD. The medical practitioner must inform the person of the facts relating to VAD - this must be done in person, and not via an audio-visual link. If the person seeking VAD makes the request orally in person, they must clearly indicate that they wish to access VAD. If the request is made by the person in writing, then it needs to be either signed by the person seeking VAD, or by an adult who is designated by the person to sign on their behalf. Any person who complies with the above in making a request to a medical practitioner, will be deemed to have made a first request for the purposes of the Act.

Pursuant to section 19 of the Act, the **medical practitioner** must either accept or refuse the first request within 48 hours of receiving the first request. The medical practitioner must refuse the request if they are not an authorised medical practitioner in relation to the person making the request. Under the Act, a medical practitioner is an authorised medical practitioner if:

- the person is a medical practitioner;

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- the person has practised as a medical practitioner for at least 5 years after vocational registration as a general practitioner or after completing a fellowship with a specialist medical college;
- the person has relevant experience in treating or managing the disease, illness, injury or medical condition expected to cause the death of the person;
- the medical practitioner has successfully completed an approved voluntary assisted dying training course within the 5-year period immediately before the person makes a first request to the medical practitioner, or is referred to the medical practitioner under section 37(1) of the Act;
- the medical practitioner is not a member of the family of the person; and
- the medical practitioner does not know or believe that he or she is likely to, either directly or indirectly, benefit from, or directly or indirectly receive a financial benefit as a result of the death of the person, other than by receiving reasonable fees for the provision of services as the Primary Medical Practitioner (**PMP**), Consultant Medical Practitioner (**CMP**) or Administering Health Practitioner (**AHP**) of the person.

If the medical practitioner refuses a first request, they must as soon as practicable after refusing the first request, but in any case within 7 days:

- notify the person of the refusal of the first request; and
- make a note in the medical practitioner's medical records in relation to the person, stating that they made a first request and that the request was refused; and
- notify the Commission in the approved form that the medical practitioner has refused the first request.

If the medical practitioner accepts the first request, pursuant to section 19(a), they become the person's PMP. A person's PMP must as soon as reasonably practicable after accepting the first request, but in any case within 7 days:

- notify the person of the acceptance of their request; and
- make a note in the medical practitioner's medical records in relation to the person, stating that the

person made a first request and that the request was accepted; and

- notify the Commission in the approved form that the medical practitioner has accepted the request.

The PMP must give the person all relevant information relating to the person's first request. This includes the following information:

- the person's medical condition;
- the medical treatment of the person's medical condition;
- any complications that have arisen or may arise in relation to any treatment;
- the prognosis of the medical condition, including complications; and
- information as to reasonably available treatment that may relieve the suffering of the person that is related to the person's medical condition, or to anticipation of suffering, or expectation, based on medical advice, of suffering, that may arise from the person's medical condition.

The PMP must determine a first request of the person by determining whether the person is eligible or not eligible to access VAD. The determination of the first request must be in writing and contain the relevant information about the eligibility of the person.

A person's PMP may, for the purpose of enabling the PMP to determine the first request from the person, do any one or more of the following:

- refer the person to another medical practitioner for examination;
- request the person to provide to the PMP all information that the PMP reasonably requires in order to make the determination;
- request a medical practitioner to provide to the PMP copies of the medical records of the person that are in the possession of the medical practitioner and that the PMP reasonably requires in order for the PMP to make the determination;
- request a medical record holder to provide to the PMP copies of medical records in relation to the person that the PMP requires in order to make the determination;

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- request a psychiatrist, psychologist, registered health practitioner, or any other person whom the PMP thinks fit, to provide to the PMP the information (which may include any medical records) that the PMP reasonably requires in order to make the determination.

### Second Request

If a person's first request has been determined and they are eligible to access VAD, they can, under section 30 of the Act, make a second request to the PMP to determine if they are eligible to access VAD. A person cannot make a second request within 48 hours of the first request, unless:

- the person is likely to die within 7 days; or
- the person is likely to cease having decision-making capacity in the next 48 hours.

The second request must be provided to the PMP in writing in the approved form and signed by the person, or if the person is unable to do so, an adult designated by the person to complete and sign on the person's behalf. The PMP cannot be the designated person. The signing must be in the presence of two adults or a commissioner for declarations (within the meaning of the Oaths Act 2001 (Tas)). The two adults who witness the signing, must not be:

- a member of the family;
- a person who, at the time of witnessing the request, knows or believes that he or she is likely to, either directly or indirectly benefit from, or receive benefit, directly or indirectly, as a result of, the death of the person, other than by receiving reasonable fees for the provision of services to the person to whom the request relates;
- a person who is a residential care provider in relation to the person or an employee or agent of a residential care provider in relation to the person;
- a person who is a resident in the facility, owned or operated by a residential care provider in relation to the person, in which the person making the request resides;
- the person's PMP or CMP; or

- another person who completes or signs, or completes and signs, the second request for and on behalf of the person making the second request.

A PMP may do any of the referrals or requests outlined above in the first request, in order to make a determination of the second request.

The PMP must determine the second request of the person by determining whether the person is eligible or not eligible to access VAD. The determination must be given to the person in writing and contain the relevant information about the eligibility of the person.

If the PMP determines that the person is eligible, they must refer the person to an independent medical practitioner for a second opinion as to whether that person is eligible for VAD. If the medical practitioner accepts the referral, they become the person's consultant medical practitioner (**CMP**). The CMP can request all the documents referred to above in relation to the PMP's original decision.

The CMP must, by notice to the person's PMP, make a determination that the person is either eligible or not, pursuant to section 47 of the Act. Upon reaching a determination, the CMP must keep a record of the determination and notify the Commission as soon as practicable, but no later than 7 days after the determination is made. If two CMPs determine the person is not eligible to access VAD, then pursuant to section 51 of the Act, the VAD process ends and the PMP cannot accept a first request from that person for 12 months.

### Final Request

If the person's CMP makes a determination that they are eligible for VAD, the person is able to make a final request to their PMP. A person cannot make a final request within 48 hours of having made a second request, unless, in the opinion of the PMP, the person is likely to die within 7 days or the person is likely to cease to have decision-making capacity within 48 hours.

The PMP must make a determination as to whether the person is eligible or not for VAD once they are satisfied that the person has all relevant information and met the requirements under section 56 of the Act. The PMP must give the Commission a copy of the final determination as soon as practicable, but no later than 7 days after the determination is made.

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### Administering Health Practitioner

After the final request has been made and a determination made that the person is eligible to access VAD, the PMP must advise the person as soon as practicable, but in any case within 48 hours, whether the PMP is to be the person's AHP. An AHP in relation to the person, is the person's administering health practitioner. If the PMP does not intend to be the AHP, the PMP must as soon as reasonably practicable, but in any case within 2 days, request the Commission in writing to appoint an AHP for that person. If the Commission receives such a request, the Commission must, by an instrument in writing signed by the Commission, appoint a medical practitioner or a registered nurse, to be the person's AHP. Any such practitioner appointed by the Commission may refuse to be a person's AHP for any reason and do not need to give any reason for refusing.

If the PMP determines that the person is eligible for VAD after the final request, the PMP must request the Commission (either orally or in writing) to issue a VAD substance authorisation. The Commission may refuse this request if they do not believe all the requirements of the Act have been met or if the Commission has not received all notices required under the Act.

Once a PMP receives substance authorisation from the Commission, they can issue a prescription to the person containing relevant prescription details in respect of the person. The PMP may request and receive from a pharmacist the substance specified in the VAD substance prescription. A VAD substance prescription may not be issued if any of the following arises:

- the VAD substance authorisation is amended or revoked by the Commission under section 69 of the Act;
- the person has informed the PMP that the person no longer wishes to access VAD; or
- the PMP has been notified by the AHP that the person no longer wishes to access VAD.

For the purposes of issuing a VAD prescription, relevant prescription details include:

- name of person and address of their ordinary residence;

- name of PMP who has issued the VAD substance prescription;
- details of the VAD substance to which the VAD subscription and VAD authorisation relates; and
- the maximum amount of VAD substance that the VAD authorisation allows.

If the VAD substance prescription is not required for any of the reasons sated in section 72 – for example, that the person no longer wishes to access voluntary assisted dying - and the VAD substance prescription has not been given by the PMP to a pharmacist, then the PMP must destroy the prescription and notify the Commission as soon as possible, but in any case within 7 days.

### Duties of PMP and AHP When Supplied with VAD Substance

When a PMP is supplied with the VAD substance, they must ensure that it is contained in a locked receptacle and not readily accessible by any other person, and that the VAD substance is kept at their usual place of employment as a medical practitioner. This does not apply if the VAD substance is in the immediate physical possession of the PMP and is being transported to another place – for administration to the person; for provision of the substance to the person for the person to self-administer; or for the provision of the substance to the AHP.

A person's PMP may supply the VAD substance to the AHP if the AHP has received the final permission under section 82(1) and none of the vitiating circumstances apply under section 74(3). This may include the authorisation being revoked, the person no longer wishes to access VAD or the substance is no longer required because the person has a private self-administration certificate.

Under section 75 of the Act, the same duties exist for the AHP as those stated above for the PMP in relation to securing and storage of the VAD substance. If the VAD substance is no longer required, the AHP must comply with section 76 of the Act. The AHP must, within 7 days after the relevant circumstances, ensure that the VAD substance has been returned to the pharmacist who supplied it and notify the Commission that the remaining substance has been returned. The same duties apply to the PMP and are outlined in section 77 of the Act. Such circumstances can include but are not limited to, if the current or former AHP:



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- is informed by the person that the person no longer wishes to access VAD;
- decides that the person does not have decision making capacity or is not acting voluntarily; or
- is, after the death of the person, in possession of a VAD substance supplied to the person.

### Final Administrative Requirements

A person's AHP must, within 48 hours before the AHP receives final permission from the person, determine if the person has decision-making capacity and is acting voluntarily. An AHP may for this purpose:

- refer the person to another medical practitioner;
- request the person to provide all information that the AHP may reasonably require to make a determination;
- request a medical practitioner to provide copies of medical records or anything in their possession that may reasonably help the AHP make a determination;
- request a medical record holder to provide copies of medical records relating to the person that the AHP requires to make a determination; or
- request a psychologist, psychiatrist, registered health practitioner or any other person that the AHP sees fit to provide information that the AHP reasonably requires to make a determination.

Any person to whom the above requests are made, must not fail without reasonable excuse to comply with the request as soon as reasonably practicable.

If the AHP determines that the person does not have decision-making capacity or is not acting voluntarily, the AHP must, within 24 hours:

- notify the person, guardian or another person who cares for the person, of the determination;
- notify the Commission of the determination; and
- if the AHP is not the PMP, notify the PMP of the determination.
- If the AHP determines that the person does have decision-making capacity and is acting voluntarily then they must do as stated above and, pursuant to section 81 of the Act, as soon as reasonably practicable but in any case within 24 hours, advise the person:
- that the person is entitled to receive assistance to die;

- how the VAD substance that is to be administered, or self-administered, to the person is to be so administered and the consequence of administration of the substance to the person;
- that if the person wishes to receive assistance to die the person must give to the AHP a final permission under section 82(1);
- that the person is not required to give to the AHP a final permission under section 82(1) and may at any time before the final permission is given, advise the AHP that the person does not wish to receive assistance to die; and
- that once the final permission is given, the person will immediately be supplied with a VAD substance, or a VAD substance will immediately be administered to the person by the AHP, in accordance with the final permission.

### Final Permission

A person who has received advice under section 81 and is entitled to receive access to VAD, may give the AHP in writing and in the approved form a final permission, that is signed by either the person or, if they are unable to sign, an adult that is designated by the person. A person may not designate the PMP or AHP as the signatory of the final permission.

A final permission is to include a statement:

- that the person has received the advice outlined in section 81 of Act;
- that the person wishes to access VAD and that they will as soon as is practicable receive the VAD substance to self-administer or the person's AHP will administer the VAD substance.
- as to whether the person wishes to:
  - self-administer the VAD substance;
  - be assisted by the AHP to self-administer the VAD substance; or
  - have the AHP administer the VAD substance.
- as to whether in unexpected circumstances the AHP should either help administer or administer a substance that will enable the person to die more quickly and painlessly or take action that is reasonable to preserve the person's life.

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### Self-Administration and AHP Administration

#### Certificates

If a person gives their AHP a private self-administration request and the person's AHP is satisfied that the person will be able to self-administer, the AHP must complete and sign a private self-administration certificate. The AHP must, within 48 hours after issuing the certificate, inform the person, the person's PMP and the Commission.

A person may also apply to the person's AHP for the issue of an AHP administration certificate. A person's AHP may issue an AHP administration certificate in relation to the person if the AHP is satisfied that it is inappropriate for the person to self-administer a VAD substance, or to self-administer the VAD substance without the AHP being in close proximity to the person or assisting the person to self-administer the VAD substance.

#### AHP Administration Certificate

If an AHP administration certificate has been issued, an AHP may supply a person with a VAD substance whilst in close proximity to the person, assist the person to self-administer or administer the substance to the person. If the person is being administered, or self-administering, a VAD substance in accordance with section 86 of Act, the AHP must be in the same room or place as the person or in a room or place where noise can be heard during the administering process.

#### Private Self-Administration

If there is a private self-administration certificate in relation to the person, the AHP may, if authorised, supply the person with the VAD substance. An AHP is authorised to supply the VAD substance if:

- the AHP has, as the person's PMP, been supplied the substance under section 71(1) of the Act or was supplied the substance under section 74 by the person's PMP;
- they are acting in accordance with the person's statement in the person's final permission; and
- the person has not informed the AHP that they no longer wish to access VAD or the PMP has informed the AHP that the person no longer wishes to access VAD.

The AHP is permitted under section 90 of the Act to show a person how to self-administer the VAD substance that is to be supplied for self-administration.

#### Duty to Notify Coroner

Pursuant to section 93 of the Act, a person's AHP must notify the Coroner once the VAD substance has been administered and the person has died. The AHP must also notify the Commission of the death of the person within 24 hours.

#### When PMP, CMP and AHP Cease to be Acting for the Person

Sections 106, 108 and 109 of the Act specify when each of these medical practitioners cease to act in relation to the person. This includes if the person dies; if the relevant medical practitioner ceases to be able to carry out their functions through loss of capacity; or if the relevant medical practitioner ceases to be an authorised medical practitioner.

#### Offences

It is an offence for any person to offer an inducement to a person to make a request under this Act, or to use dishonesty or undue influence to induce a person to make a request under this Act. This can result in a term of imprisonment of 5 years or a fine of up to \$32,200. Further information on what constitutes an offence under the Act can be found in Part 18 of Act.

#### Conclusion

The VAD scheme provides the framework for Voluntary Assisted Dying in Tasmania and transparent access for patients with decision-making capacity to choose when they die. It provides a series of checks and balances to ensure that patients are both certain in their wishes to access VAD as well as ensuring that proper protocols are followed by all relevant medical practitioners. It allows for the individual wishes of medical practitioners regarding participation in the VAD process, who may opt not to participate on any grounds they choose, without an obligation to disclose that reasoning.

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### Victoria Update

## Coroners Amendment Regulations 2022 (Vic)

On 11 October 2022, the *Coroners Amendment Regulations 2022 (Vic)* (the **Amending Regulations**) commenced, amending the *Coroners Regulations 2019 (Vic)* (the **Principal Regulations**) under the *Coroners Act 2008 (Vic)* (the **Act**).

The Amending Regulations include additional definitions and extend the definition of a 'person placed in custody or care' to include an SDA resident who resides in an SDA enrolled dwelling under the Act. The Amending Regulations also prescribe a person, who is funded to provide daily independent living support to the SDA resident, as a responsible person under section 11 of the Act.

### Extended definition of a 'person placed in custody or care'

The Amending Regulations insert the definitions SDA enrolled dwelling and SDA resident into the Principal Regulations, and extend the definition of a 'person placed in custody or care', via regulation 7(1)(d), to now include 'a person in Victoria who is an SDA resident residing in an SDA enrolled dwelling' as a prescribed person or a person belonging to a prescribed class under section 3(1) of the Act.

The result of these additions extends obligations under the Act and Principal Regulations to SDA providers with regards to a person placed in custody or care.

### Obligation to report death of a person placed in custody or care

SDA providers are now required to report the death of a person placed in custody or care as set out in section 11 of the Act.

In addition, the Amending Regulations extend the definition of a 'responsible person' in relation to a person placed in custody or care as a person who is "funded to provide an SDA resident with daily independent living support and has reasonable grounds to believe that the resident's death has not been reported to a coroner or the Institute".

Under section 11 of the Act, a responsible person must report the death of a person placed in custody or care without delay to the coroner or the Victorian Institute of Forensic Medicine. Failure to comply with this obligation will attract a penalty of 20 penalty units (currently \$3,698).

### Conclusion

SDA providers should have systems and controls in place to ensure that relevant staff are aware of the requirement to report the death of a person placed in custody or care.

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### Western Australia Update

## ***Environmental Protection Regulations Amendment (Prohibited Plastics and Balloons) Regulations 2021 (WA)***

The relevant provisions of the *Environmental Protection Regulations Amendment (Prohibited Plastics and Balloons) Regulations 2021 (WA)* (the **Amending Regulations**) commenced on 1 July 2022 and have amended the *Environmental Protection (Plastic Bags) Regulations 2018 (WA)* (the **Regulations**). The Amending Regulations continue the implementation of ‘Western Australia’s Plan for Plastics’, as part of the state government’s commitment to achieving a more sustainable, plastic free state.

### Prescribed Plastic Bag

The Amending Regulations amend the definition of a prescribed plastic bag. Previously defined as “a bag that is made in whole or in part of plastic, has handles and a thickness of 35 microns or less”, a prescribed plastic bag is now defined as “a carry bag with handles that is made wholly or partly from plastic and is designed to convey goods purchased from a retailer”. This includes bags that are:

- made wholly or partly of degradable, oxo-degradable, biodegradable or compostable plastic; or
- made from plastic-laminated paper or plastic-laminated cardboard.

The Amending Regulations (at new regulation 3B(3)) also outline certain items that do not fall under the definition of a prescribed plastic bag, for example, a bag that is, or is an integral part of, the packaging in which goods are sealed for sale.

It remains an offence, carrying a fine of **\$5,000**, for a retailer to supply a prescribed plastic bag to a person for the person to carry goods sold by the retailer.

In addition, a person who supplies or manufactures prescribed plastic bags must not give any information that the person knows is false or misleading to another person about the composition of the prescribed plastic bag or whether or not a plastic bag is a prescribed plastic bag. These offences carry a fine of **\$5,000**.

### Offences

The Amending Regulations have made it an offence for businesses, retailers, wholesalers or distributors in Western Australia to sell, supply or distribute certain prescribed ‘single-use’ disposable plastic items and

prescribed drinking straws. Examples of ‘single-use’ disposable plastic items include:

- a spoon attached to, or sealed inside, a pre-packaged yoghurt container;
- a fork attached to, or sealed inside, a pre-packaged instant noodle packet;
- a bowl that forms part of a pre-packaged instant noodle packet;
- a plate sealed inside a pre-packaged frozen meal.

These offences carry a fine of **\$5,000**.

Additionally, the Amending Regulations make it an offence to give false or misleading information about the composition of a prescribed plastic item or prescribed drinking straw. This offence also carries a fine of **\$5,000**.

### Exemptions

Sub-regulations 7(2), 7(3), 7(4) and regulations 9-15 of the Amending Regulations highlight situations in which there is a permitted supply of a prescribed plastic item or a prescribed drinking straw. These include situations where:

- the supply of a prescribed plastic item is in connection with the service or consumption of food or drink on an aircraft;
- the wholesale supplier believes on reasonable grounds that the person to whom the item is supplied by the wholesale supplier, or another person to whom the item is subsequently to be supplied, will use the item for a prescribed purpose;
- the straw is supplied as part of a pre-packaged food or drink product;
- the straw is supplied by a medical care provider;

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- the straw is supplied on an aircraft;
- the straw is supplied at a care facility;
- the straw is supplied on request with any food or drink;
- a pack of straws is supplied by an authorised business or undertaking;
- the straw is supplied on a wholesale basis.

**Conclusion**

Organisations should be aware of Western Australia’s new framework for the sale, supply or distribution of prescribed plastic items and straws and begin work to implement new policies and procedures to ensure compliance. Organisations should review all obligations in full, as set out in those topics.

**Comply Online® Tip**

**Hiding Topics**

All Comply Online® profiles (Standard and Premium) have the option of hiding topics. This feature can be used where a topic may not be applicable at the moment or it may be a topic that the organisation has chosen not to include/report on. Importantly, only Primary users can hide topics.

**To hide a topic**, click on the “eye” icon found next to the topic title on the topic page.

**To unhide**, go to the “My Account” page where you will see a link called “Show Hidden Topics” (if you don’t have any topics hidden, this link will not appear). Click on the “eye” icon again to restore the topic to your profile.

We recommend that the list of hidden topics is reviewed periodically to ensure it is up to date.

















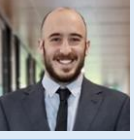


The screenshots illustrate the process of hiding and un hiding topics. The top-left image shows the topic page for 'NATIONAL - Deductible Gift Recipient' with a red circle highlighting the eye icon. The top-right image shows the 'My Account' page with a red circle highlighting the 'Show Hidden Topics' link. The bottom image shows the 'Hidden Topics' page with a table listing hidden topics, including 'NATIONAL - Deductible Gift Recipient', and a red arrow pointing from the 'Show Hidden Topics' link to this table.

Topic Name	Category	Legislation	Location	Date Updated	Hidden
NATIONAL - Deductible Gift Recipient	Finance	Taxation Administration Act 1953 (Cth), Income Tax Assessment Act 1997 (Cth)	NATIONAL	December-February 2019	

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