Law Compliance Report – April 2023

Welcome to the April 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:
  - Commonwealth
  - Australian Capital Territory
  - New South Wales
  - Northern Territory
  - Queensland
  - South Australia
  - Tasmania
  - Victoria
  - Western Australia;
- provide ComplyOnline® tips for using Compliance Ratings and My Team functions; and
- link you to our 2023 ESG Report.

Click on the blue links above to go directly to the article.

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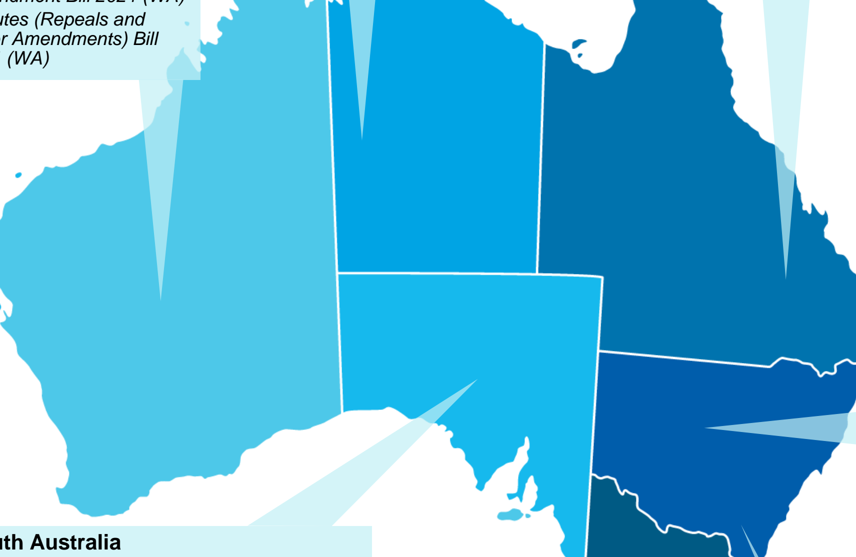
April 2023 Edition

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)
Guardianship and Administration Amendment (Medical Research) Bill 2023 (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)

Northern Territory

Care and Protection of Children Amendment Bill 2023 (NT)
Liquor Legislation Amendment (Offences) Bill 2023 (NT)
Statute Law Amendment (National Cabinet) Bill 2023 (NT)

Queensland

Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Bill 2022 (Qld)
Environmental Protection and Other Legislation Amendment Bill 2022 (Qld)
Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022 (Qld)
Police Powers and Responsibilities and Other Legislation Amendment Bill 2023 (Qld)
Police Service Administration and Other Legislation Amendment Bill (No. 2) 2022 (Qld)
Property Law Bill 2023 (Qld)
Tobacco and Other Smoking Products Amendment Bill 2023 (Qld)
Waste Reduction and Recycling and Other Legislation Amendment Bill 2023 (Qld)
Water Legislation Amendment Bill 2022 (Qld)

Commonwealth

Crimes Legislation Amendment (Ransomware Action Plan) Bill 2022 (Cth)
Customs Amendment (Banning Goods Produced by Forced Labour) Bill 2022 No (Cth)
Customs Amendment Bill 2022 (Cth)
Customs Legislation Amendment (Controlled Trials and Other Measures) Bill 2022 No. (Cth)
Education Legislation Amendment (Startup Year and Other Measures) Bill 2023 (Cth)
Environmental 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)
Financial Accountability Regime (Consequential Amendments) Bill 2023 No. (Cth)
Financial Accountability Regime Bill 2023 (Cth)
Financial Services Compensation Scheme of Last Resort Levy Bill 2023 No. (Cth)
Health Insurance Amendment (Prescribed Dental Patients and Other Measures) Bill 2023 (Cth)
Human Rights (Children Born Alive Protection) Bill 2022 (Cth)
Inspector-General of Aged Care Bill 2023 (Cth)
National Vocational Education and Training Regulator (Data Streamlining) Amendment Bill 2023 (Cth)
Public Interest Disclosure Amendment (Review) Bill 2022 (Cth)
Treasury Laws Amendment (Consumer Data Right) Bill 2022 (Cth)
Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Bill 2023 No. (Cth)

New South Wales

Abortion Law Reform (Sex Selection Prohibition) Amendment Bill 2021 (NSW)
Companion Animals Amendment (Puppy Farms) Bill 2021 2022 No. (NSW)
Education Legislation Amendment (Parental Rights) Bill 2020 (NSW)
Planning Legislation Amendment Bill 2019 (NSW)
Prevention of Cruelty to Animals (Increased Penalties) Bill 2020 (NSW)
Prevention of Cruelty to Animals Amendment (Animal Sentience) Bill 2022 (NSW)
Prevention of Cruelty to Animals Amendment (Aquatic Animal Recognition) Bill 2021 (NSW)
Registered Clubs Amendment Bill 2022 (NSW)
State Insurance and Care Legislation Amendment Bill 2022 (NSW)
Statute Law (Miscellaneous Provisions) Bill 2021 (NSW)
Tax Administration Amendment (Combating Wage Theft) Bill 2021 (NSW)
Waste Avoidance and Resource Recovery Amendment (Plastics Reduction) Bill 2021 (NSW)
Workers Compensation Amendment Bill 2021 (NSW)

South Australia

Advance Care Directives (Review) Amendment Bill 2022 (SA)
Cannabis Legalisation Bill 2022 (SA)
Controlled Substances (Nicotine) Amendment Bill 2022 (SA)
Environment Protection (Cigarette Butt Waste) Amendment Bill 2023 (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)
Heritage Places (Adelaide Park Lands) Amendment Bill 2022 (SA)
National Parks and Wildlife (Wombat Burrows) Amendment Bill 2022 (SA)
Planning, Development and Infrastructure (Gas Infrastructure) Amendment Bill 2022 (SA)
Public Finance and Audit (Auditor-General Access to Cabinet Submissions) Amendment Bill 2022 (SA)
Residential Tenancies (Limit of Amount of Bond) Amendment Regulations 2023 (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)
Mental Health Amendment Bill 2022 (Tas)
Public Interest Disclosures (Members of Parliament) Bill 2021 (Tas)
Residential Building (Miscellaneous Consumer Protection Amendments) Bill 2022 (Tas)
Residential Tenancy (Rental Market Reform) Amendment Bill 2021 (Tas)
Right to Information Amendment Bill 2021 (Tas)

Victoria

Children and Health Legislation Amendment (Statement of Recognition, Aboriginal Self-determination and Other Matters) Bill 2023 (Vic)
Children, Youth and Families (Raise the Age) Amendment Bill 2021 (Vic)
Disability and Social Services Regulation Amendment Bill 2023 (Vic)
Health Legislation Amendment (Information Sharing) Bill 2023 (Vic)
Public Health and Wellbeing Amendment (Health Services Performance Transparency and Accountability) Bill 2023 (Vic)
Water Legislation Amendment Bill 2023 (Vic)

ACT

Corrections Management Amendment Bill 2021 (ACT)
Discrimination Amendment Bill 2022 (ACT)
Financial Management Amendment Bill 2021 (No 2) 2021 (ACT)
Freedom of Information Amendment Bill 2022 No. (ACT)
Integrity Commission Amendment Bill 2022 (No 2) (ACT)
Justice and Community Safety Legislation Amendment Bill 2022 (No 2) 2022 (ACT)
Long Service Leave (Portable Schemes) Amendment Bill 2022 (ACT)
Period Products and Facilities (Access) Bill 2022 No. (ACT)
Planning Bill 2022 No. (ACT)
Transport Canberra and City Services Legislation Amendment Bill 2022 No. (ACT)
Urban Forest Bill 2022 (ACT)
Variation in Sex Characteristics (Restricted Medical Treatment) Bill 2023 (ACT)

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**

Commonwealth Update

Workplace Gender Equality (Gender Equality Standards) Instrument 2023 (Cth)

On 6 February 2023, the *Workplace Gender Equality (Gender Equality Standards) Instrument 2023* (Cth) (the new Instrument) repealed and replaced the *Workplace Gender Equality (Minimum Standards) Instrument 2014* (Cth) (the old Instrument).

Policies or strategies covering the gender equality indicators

By way of background, the *Workplace Gender Equality Act 2012* (Cth) (the **Act**), empowers the Minister for Women and the Government to (by legislative instrument) set minimum standards in relation to specified gender equality indicators for certain types of employers.

The purpose of the new Instrument is to essentially set new requirements for **designated relevant employers** (being relevant employers that employ 500 or more employees in Australia). Organisations will be aware that a *relevant employer* under the Act, is (in short) a non-public sector employer with 100 or more employees as well as registered higher education providers that are employers.

If your organisation is a *designated relevant employer*, your organisation should be aware that your organisation is required to have in place policies *or* strategies that support each gender equality indicator specified in column 1 of the table below, in order to achieve the objective specified in column 2 of the table for each gender equality indicator. It is important to note that the minimum standards set out in the table below apply in relation to a reporting period that commences on **1 April 2023** and each subsequent reporting period.

Item	Column 1 - Gender equality indicator	Column 2 – Objective
1	Gender composition of the workforce	Supporting gender equality in the designated relevant employer's workplace
2	Gender composition of governing bodies of relevant employers	Supporting and achieving gender equality in the designated relevant employer's governing body
3	Equal remuneration between women and men	In relation to employees of the designated relevant employer, ensuring equal remuneration between women and men
4	Availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees and to working arrangements supporting employees with family or caring responsibilities	Providing effective flexible working arrangements for employees of the designated relevant employer with family or caring responsibilities
5	Consultation with employees on issues concerning gender equality in the workplace	Ensuring employees are consulted and have input on issues concerning gender equality in the designated relevant employer's workplace
6	Sexual harassment, harassment on the ground of sex or discrimination	Prevention of, and appropriate response to, sexual harassment, harassment on the ground of sex or discrimination in the designated relevant employer's workplace

Transitional arrangements

Organisations should also be aware that despite the repeal of the old Instrument, the old instrument, as in force immediately before 6 February 2023, continues to apply in relation to a reporting period that commenced before the repeal of the old instrument (i.e. before 6 February 2023).

Conclusion

Organisations that are designated relevant employers, (i.e. non-public sector employers and registered higher education providers, with 500 or more employees in Australia), should ensure relevant executive and HR staff are made aware of the new requirements (including the transitional arrangements) in relation to having in place policies or strategies that cover the 6 gender equality indicators, as discussed above.

Australian Capital Territory Update

Aboriginal and Torres Strait Islander Children and Young People Commissioner Act 2022 (ACT)

The *Aboriginal and Torres Strait Islander Children and Young People Commissioner Act 2022* (ACT) (the Act) commenced on 15 December 2022.

Aboriginal and Torres Strait Islander (ATSI) Children and Young People Commissioner

The Act establishes the office of the ATSI Children and Young People Commissioner and provides for the ACT Executive to appoint an Aboriginal or Torres Strait islander person to the role of the ATSI Children and Young People Commissioner (the **Commissioner**). The Commissioner is responsible for being an advocate for ATSI children and young people and to promote and protect their rights. The Commissioner has powers and functions to conduct an inquiry into any matter relating to systemic issues that affect, or may affect, the rights, development, safety and wellbeing of ATSI children and young people, as well as to advise and make recommendations to the government about policy, services and other matters that may affect ATSI children, young people and their families.

Responding to Advocacy and Inquiry by Commissioner

Under section 20 of the Act, the Commissioner may conduct an inquiry into any matter relating to systemic issues that affect, or may affect, the rights, development, safety and wellbeing of ATSI children and young people. As part of the inquiry, the Commissioner may, under section 23 of the Act, give a person in charge of an entity a notice setting out any recommendation in relation to the rights, development and safety of ATSI children and young people, and a reasonable timeframe in which the entity must respond. The person in charge of the entity must respond to the Commissioner within the stated time. Similarly, entities are required to respond to notices from the Commissioner relating to recommendations made in relation to a matter in which the Commissioner is advocating.

Information Gathering and Sharing Offences

If the Commissioner believes on reasonable grounds that a person can give information or produce a document or other thing that the Commissioner considers necessary to exercise their functions, section 27 of the Act provides that the Commissioner may require them to give such information or produce such document or other thing. However, this power does not apply to an ATSI child or young person or a member of their family, nor does it apply to sensitive information.

Sensitive information is defined to include any of the following:

- care and protection report information;
- care and protection appraisal information;
- interstate care and protection information;
- family group conference information;
- contravention report information;
- information prescribed by regulation.

A person commits an offence under section 30 of the Act if they fail to comply with section 27 without a reasonable excuse. The maximum penalty is 50 penalty units (currently **$9,246**).

The Commissioner also has power to require attendance from a relevant person at an entity to provide information relevant to an inquiry. A person commits an offence if they fail to attend before an official or fail to continue to attend or answer specific questions. This offence carries a maximum penalty of 50 penalty units (currently **$9,246**).

Secrecy

Section 35 of the Act contains a secrecy offence. Information holders commit an offence if they make a record of, or disclose, protected information about someone else and are reckless about whether the information is protected information.

An **information holder** is defined in section 35 of the Act and includes a person who is required (under section 27 of the Act) to give the Commissioner information, documents or things, or a person who is required to attend before an official (under section 31 of the Act) to answer questions in relation to an inquiry.

Conclusion

Organisations that work and interact with Aboriginal and Torres Strait Islander children and young people should be aware of the Commissioner's powers of inquiry and information requests and ensure that they comply with any such requests and obligations under the Act.

Comply Online® Tip #1

Compliance Ratings

Comply Online Premium provides functionality to allow you to assign a compliance status to each topic.

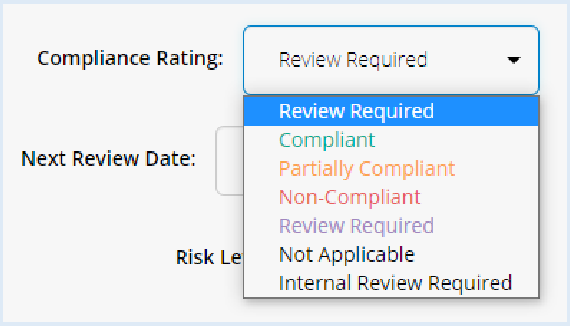
The ratings are:

- Compliant – The organisation is compliant with every obligation under this topic.
- Partially Compliant – The organisation is compliant with most of the obligations, but one or more gaps have been identified that require action.
- Non-Compliant – The organisation is not compliant with the obligations under this topic.
- Internal Review Required – The topic is pending review or action internally. For example, it may have been referred to someone else within the organisation or is awaiting further information regarding its compliance.
- Review Required – This indicates that the topic has had legislative changes made by Law Compliance (as part of the quarterly update) which need to be reviewed.

The descriptions above are general recommendations on how to assign a compliance status, however, a different criteria can be determined internally by your organisation. For example, it may be decided that any topic that has even one gap must be marked as Non-Compliant until it is resolved.

Topics can also be marked **Not Applicable**. It is important to note that once a topic is marked Not Applicable:

- It will be removed from the dash count on the Homepage;
- It will not be included in any Compliance Reports but will be shown in the Topic Spreadsheet; and
- It will still revert to Review Required if the topic has any legislative amendments in subsequent quarterly updates.



Lifting the burden of compliance—The Australian Financial Review

The Australian Financial Review recently interviewed our CEO Natalie Franks, featuring Law Compliance's comprehensive legislative compliance services and how they help organisations across the nation.

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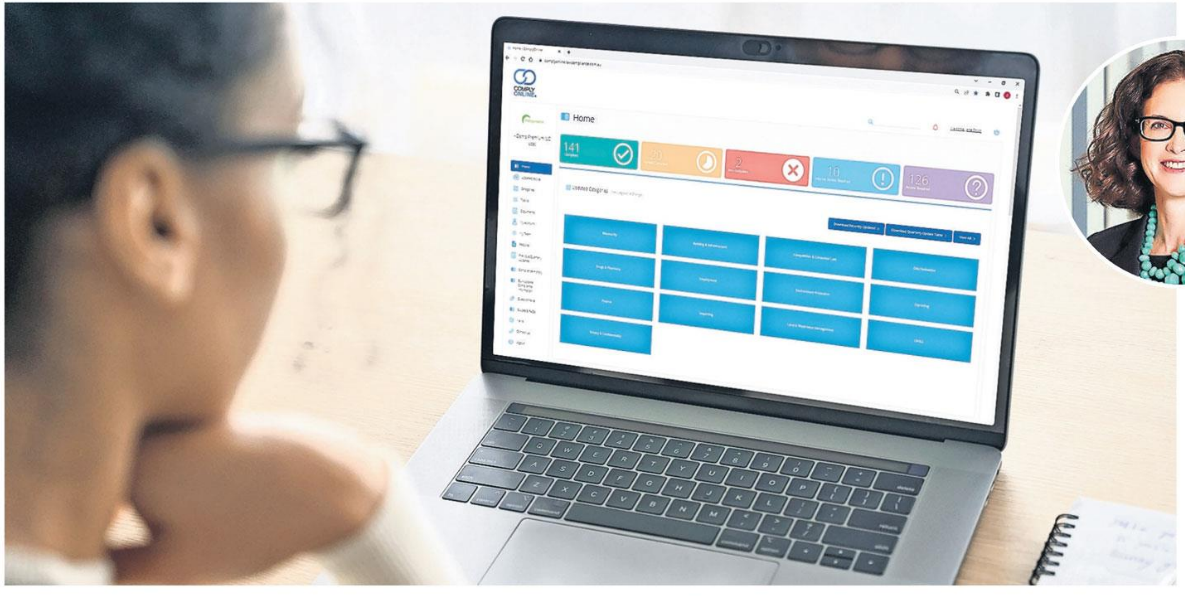
ADVERTISING FEATURE

Legal software and technology



Natalie Franks is the chief executive and legal counsel of legislative compliance service Law Compliance.

Lifting the burden of compliance

Keeping up to date with legal compliance is a time-consuming and complex job, and for many organisations, it is a burden that is difficult to manage with limited resources.

No organisation is absolved from regulatory obligations. Failure to meet compliance can result in fines, censure, reputational damage and, in some instances, even the prospect of prison time for directors.

Laws change every day, and without a dedicated in-house team or the funds to engage external lawyers, organisations can be unaware of new obligations or changes to existing regulations. For many organisations, a third option has provided an affordable solution to keep them on track.

Natalie Franks, the chief executive and legal counsel of Law Compliance, a legislative compliance service initially developed for the public and private Victorian health sectors, says outsourcing compliance makes sense for a range of organisations, regardless of their size.

"Our cost-effective products are useful to all types of organisations and we assist hundreds of profit and not-for-profit organisations across Australia," she says.

"Our clients range from small rural services to national organisations and ASX listed companies with complex reporting structures.

"For example, we've been providing public hospitals with this tool since 2003 because they've always had an accreditation requirement and need assistance for keeping up to date. We are in over a hundred public hospitals across the country because they can see the value in it."

The products are designed to help organisations meet Australian and international standards which require an up-to-date legal compliance register (such as ISO 45001, ISO 14001 and AS 4801), the governance requirements of the National Safety and Quality Health Service (NSQHS) standards, as well as the aged-care Quality of Care Principles.

Considering the vast number of applicable laws in Australia, it's no mean feat being able to service a range of clients that, among others, covers government departments, aged care, churches, charities, homelessness and housing providers, universities, child, youth and family services, alcohol and drug services, as well as consultancy firms, mining and resource providers, aboriginal health providers, retailers and zoos.

"We can do it efficiently for them because that's all we do," Franks says. "We have a whole team of lawyers and that's all they do – there's just no way that an organisation with limited resources has the ability to do it comprehensively or properly."

Some organisations start in-house, even relying on an intern to prepare a list of relevant legislation while focusing on delivering their core work, she says. That's understandable, but it doesn't address the reality of treating compliance as a living, breathing part of any business operation.

"They often have someone who is getting newsletters and they might hear about things and that's how they keep up to date," Franks says. "But it's not comprehensive. It really relies on people having an interest."

> "We have a whole team of lawyers and that's all they do – there's just no way that an organisation with limited resources has the ability to do it comprehensively or properly."
> Natalie Franks

Specially developed technology and systems allow the compliance solicitors to quickly determine what laws apply to an organisation and keep those organisations up to date on changes to those laws.

"We can provide them with a tool that tells them about all the laws they have to comply with," Franks says. "It monitors those laws and keeps them up to date, and then they can use their resources to implement any changes needed as they happen.

"We are unique because we literally cover absolutely every law they must comply with. It means boards and executives have comfort that there is a comprehensive system in place."

It's a selling point for many, Franks says.

"The system provides compliance reports across the organisation and enables directors to provide signoff on legal compliance. It can provide peace of mind."

Rather than checking on an ad hoc basis for updates that need to be made, Franks says this approach mitigates the risk of financial penalties, legal action, prosecutions and reputational damage.

"Another reason people come to us is because they've missed something and are faced with a legal risk, and often that has financial consequences because they simply did not know about a change in law."

From a cost perspective, it is not comparable to hiring in-house compliance specialists or engaging lawyers, she says.

"It's a massive cost saving," Franks says. "We can spread the cost across hundreds and hundreds of organisations. You just couldn't do it yourself for the same price and for the same level of accuracy."

Read The Australian Financial Review article online here.

New South Wales Update

Animal Research Amendment (Right to Release) Act 2022 (NSW)

The *Animal Research Amendment (Right to Release) Act 2022* (NSW) (the **Amending Act**) commenced on 25 November 2022 amending the *Animal Research Act 1985* (NSW) (the **Act**). The Amending Act introduced Part 6A which provides for the rehoming of dogs and cats used in animal research. The Amending Act also amended the *Animal Research Regulation 2021* (NSW) (the **Regulation**) to provide additional reporting requirements.

Rehoming of dogs and cats

Preparing animals for rehoming

The new section 54B states that an authorised person must take reasonable steps to ensure that a dog or a cat used in animal research is prepared for rehoming, considering the animal's species, breed and age. The authorised person needs to take reasonable steps to provide exercise, environmental enrichment and socialisation, handling and basic training to the animal.

Authorised person means the following:

- an accredited research establishment;
- the holder of an animal research authority.

Rehome means giving an animal to:

- a suitable individual; or
- an animal rescue organisation.

Rehoming animals after research

The new section 54C provides that an authorised person must take all reasonable steps to rehome the animal after the animal is no longer being used for research, or if the animal has been kept by 1 or more authorised persons for animal research for a total of 3 years.

Section 54C(2) further states that an authorised person must provide the following information to a suitable individual or to an animal rescue organisation who may be able to rehome the animal:

- the species, breed, age, weight and gender of the animal;
- the general description of the animal's health, physical condition and temperament;
- whether the animal has been desexed;
- whether the animal is microchipped and if so, the microchip number;
- the date the animal was last vaccinated and wormed;
- the medications the animal is taking;
- other information prescribed by the regulations.

Suitable individual means an individual who:

- agrees to provide an animal with a home and appropriate care;
- agrees to not keep the animal for animal research; and
- meets criteria prescribed by the regulations for the purpose of this definition.

Record keeping

Under the new section 54F, an authorised person must keep the following records for each dog or cat kept for animal research:

- records of reasonable steps taken by the authorised person under sections 54B and 54C of the Act;
- records of all communications with suitable individuals and animal rescue organisations regarding the rehoming of the animal;
- details of the suitable individuals and animal rescue organisations;
- if the animal is unsuitable for rehoming, a certificate issued by a veterinary practitioner under section 54E of the Act stating that fact and the reasons why the animal is unsuitable for rehoming;
- a copy of each application made under section 54C(4)(a) of the Act regarding keeping the animal for research for longer than 3 years by 1 or more authorised persons and the Panel's approval or refusal for each application.

Additional reporting requirements

The existing regulation 24 provides that an authorised person must send a report to the Secretary regarding the authorised person's work and activities during the period of 12 months ending on 31 December in the previous year. The Amending Act inserted subregulation 24(5) to set out the information that is to be included in the report, where relevant:

- the total number of animals rehomed under section 54C of the Act;
- the total number of animals unable to be rehomed and the reasons why the animals were unable to be rehomed;
- the total number of applications made under section 54C(4)(a) of the Act, along with the number of applications that were approved and refused;
- the length of each animal research project for which an application under section 54C(4)(a) was approved;
- the total number of certificates received relating to animals being unsuitable for rehoming under section 54E of the Act and the reasons why the animals were unsuitable to be rehomed;
- for an animal that was euthanased, whether the animal was euthanased because the animal was unable to be rehomed under section 54C(1) or 54E of the Act, or if for another reason, the reason the animal was euthanased.

Obligations on veterinary practitioners

Under the new section 54E, if the animal is unsuitable for rehoming, a veterinary practitioner registered under the *Veterinary Practice Act 2003* (NSW) may produce a certificate certifying that the animal is unsuitable for rehoming and the reasons for it. The veterinary practitioner must have the appropriate expertise in the welfare of animals of the species of the relevant animal when certifying and must be independent of the authorised person to whom the certificate is given.

Conclusion

Organisations should familiarise themselves with their new responsibilities under the *Animal Research Act 1985* (NSW) and the *Animal Research Regulation 2021* (NSW) as summarised. In addition, organisations should identify the changes required to be made by them to ensure they are compliant with their obligations, including updating systems, policies and procedures.

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;**
- **lawcompliance.com.au;**
- our account system **accountright@apps.myob.com**

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

Northern Territory Update

Surrogacy Act 2022 (NT)

The *Surrogacy Act 2022* (NT) (the Act) is a new principal act which commenced on 20 December 2022. The Act establishes a regulatory framework for non-commercial surrogacy arrangements and expressly criminalises commercial surrogacy arrangements.

Background

The Act defines **surrogacy arrangement** to mean an agreement, understanding or other arrangement entered into by a woman and one or more other persons under which:

- a child born as a result of the woman's pregnancy is to be treated as a child of the other person or persons instead of the woman; and
- the other person or persons are to become the parents of and assume custody of the child instead of the woman.

Sections 11 and 12 of the Act provide that surrogacy arrangements are not legally enforceable, except for the recovery of reasonable costs of the surrogate mother. A surrogacy arrangement, other than a commercial surrogacy arrangement, may provide for the payment or reimbursement of the reasonable costs associated with the following:

- the surrogate mother trying to become pregnant, being pregnant and giving birth;
- the surrogate mother and her partner, if any, entering into or being a party to the surrogacy arrangement; and
- the surrogate mother and her partner, if any, being a party to proceedings under the Act.

Reasonable costs include medical expenses, counselling costs, legal costs, child costs (including medical costs), other out of pocket expenses incurred by the surrogate mother or the child, income lost by the surrogate mother, insurance premiums for health, life or disability insurance for the surrogate mother (including for increasing the cover of an existing policy) which are incurred by the surrogate mother as a result of the surrogacy arrangement and which are not recoverable under Medicare, health insurance or any other scheme.

Requirements for surrogacy arrangements

The Act contains requirements that need to be met to establish a valid surrogacy arrangement. These include, but are not limited to:

- the surrogacy arrangement must be in writing (section 14);
- the surrogacy arrangement must be entered into prior to the surrogate mother becoming pregnant (section 15);
- the surrogacy arrangement must not include any party other than the surrogate mother, the partner (if any) of the surrogate mother and one or two intended parents (section 16);
- the reason for entering the surrogacy arrangement is due to the intended parents being unlikely to become pregnant due to a medical reason or other circumstances (gender identity, sexuality, etc) (section 19); and
- prior to entering into the surrogacy arrangement, each party must receive counselling from a registered counsellor regarding the implications of entering into a surrogacy arrangement. This counselling must be undertaken prior to entering the surrogacy arrangement and also following the birth of the child (section 22).

Obligations on counsellors

Section 25 of the Act requires that counsellors who provide counselling under the Act must be:

- a member, or a person eligible for full membership, of the Australian and New Zealand Infertility Counsellors Association; or
- a person with other qualifications prescribed by regulation; and
- independent of any business providing fertility services.

In addition, the counselling provided must be consistent with any guidelines relevant to surrogacy in effect as of the time of the counselling, issued by:

- the Australian and New Zealand Infertility Counsellors Association; and
- the National Health and Medical Research Council.

Section 22 of the Act requires counsellors who provide counselling to any party prior to entering a surrogacy arrangement to prepare a certificate that certifies the following matters:

- the qualifications of the counsellor;
- that the counsellor is independent of any business providing fertility services;
- the names of the persons who were counselled;
- the dates of the counselling;
- that counselling on the required matters was provided;
- in the case of a surrogate mother under 25 years of age – that exceptional circumstances exist to justify her entering into the surrogacy arrangement; and
- in the case of an intended parent under 25 years of age – that the intended parent is sufficiently mature to understand the implications of the surrogacy arrangement.

Section 24 of the Act requires each party and any birth parent of the child who is not a party to the surrogacy arrangement to submit to an interview by a counsellor for the purpose of a report for the Local Court. The interviews must take place after the birth of the child but before any application for a parentage order is made.

The counsellor who undertakes the interview must not have provided any previous counselling to the parties. The counsellor must prepare a report on the interviews setting out the following matters:

- the qualifications of the counsellor;
- that the counsellor is independent of any business providing fertility services;
- the names of the persons who were counselled;
- the dates of the counselling; and
- the counsellor's opinion on the best interests of the child born under the surrogacy arrangement and the grounds for that opinion.

The counsellor's report may provide their opinion on the following matters:

- each person's understanding of the social and psychological implications of a parentage order on themselves and the child;
- each person's level of acceptance that openness and honesty about the child's birth parentage is in the best interests of the child;
- the arrangements that the intended parent or intended parents propose for the care and nurture of the child; and
- any other matter relevant to the wellbeing of the child.

A copy of the counsellor's report must be given to each person interviewed before an application for a parentage order is made.

Offences in relation to surrogacy arrangements

Part 4 of the Act introduces a series of offences relating to surrogacy arrangements, including offences for persons who intentionally:

- enter into, or offer, a commercial surrogacy arrangement (section 48);
- provide, or offer, a service to assist with the arrangement in exchange for a payment, reward or other material benefit (section 49);
- publish information that encourages a person to enter a commercial surrogacy arrangement or states/implies that a person is willing to do so (section 50);
- provide, or offer, fertility services to assist a woman to become pregnant that is party to a commercial surrogacy arrangement (section 51);
- publish information relating to the identification of the parties of a surrogacy arrangement, including the child itself (section 52); and/or
- disclose confidential information obtained in the course of performing a power or function connected with the administration of the Act for an improper purpose (section 53).

The maximum penalty for each of these offences is 100 penalty units (currently **$16,200**) or 12 months imprisonment, except for section 53 for which the maximum penalty is 200 penalty units (currently **$32,400**) or 2 years imprisonment.

Conclusion

The Act creates a new regulatory framework for people in the Northern Territory to access surrogacy arrangements. Subscribers should be aware of the requirements for surrogacy arrangements and the related offences.

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ESG Reporting Paper

For some time now, in Australia and across the world, society's expectations of organisations have been shifting as the concept of corporate responsibility gains traction. There is increasing global recognition that it's not sustainable for organisations to operate in a vacuum with little regard to the impact they have on society, the environment, or the economy. Given the increased interest in environmental, social and governance (ESG) reporting, we have prepared a Paper on the requirements of ESG reporting for both public and entities. In this Paper we also discuss the risks associated with "greenwashing".

Download our ESG Reporting Paper *or contact us via* info@awcompliance.com.au *to request an emailed copy.*

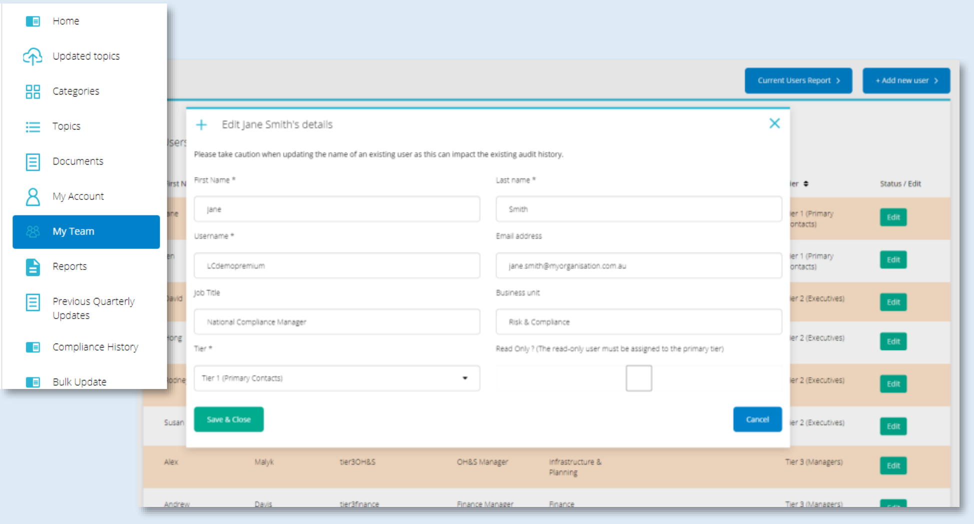
Comply Online® Tip #2

My Team

Primary users on both Standard and Premium accounts have the ability to manage the users on their profile, using the "My Team" tab. New users can be added at any time. For Standard accounts, there is no limit to the number of users that can be added to the profile. Premium accounts will be capped at the number of licences for that profile.

Existing users can also be edited to change any details including name, email, job title, business unit and tier (keeping in mind that any changes to the tier will have implications for assigned and delegated topics).

If you need to remove users from your profile, feel free to contact your Client Relationship Manager who will be able to do this for you.



Queensland Update

Revenue Legislation Amendment Act 2022 (Qld)

Relevant provisions of the *Revenue Legislation Amendment Act 2022* (Qld) (the Amending Act) commenced on 1 January 2023 amending the *Payroll Tax Act 1971* (Qld) (the Act) to implement a mental health levy on organisations with annual taxable wages that exceed $10 million.

Background

In the 2022-23 Queensland Budget, the Queensland Government announced significant spending in their state-funded mental health services, and to ensure these programs are funded, announced a mental health levy. Under section 12A of the Act, as inserted by the Amending Act, amounts attributable to the levy must be used to advance the objectives of the *Mental Health Act 2016* (Qld) or the guiding principles of the *Queensland Mental Health Commission Act 2013* (Qld).

Calculating the mental health levy

The mental health levy has been imposed under section 12A of the Act, and the method of calculation is prescribed under Divisions 5A, 5B and 5C of Part 2 of the Act. The levy is payable on Queensland taxable wages to the extent that the organisation, or if the organisation is a part of a group, the group pays Australian taxable wages greater than $10 million in a financial year. The rate of the levy is 0.25 percent.

Where the organisation or the group pays Australian taxable wages that exceed $100 million, they will be liable to pay the levy at a rate of 0.5 percent on the wages that exceed $100 million.

If the organisation pays interstate wages, they will have an **adjusted threshold**, so that the mental health levy is payable on wages above a different threshold calculated as the proportion of Queensland taxable wages to Australian taxable wages. The adjusted thresholds are calculated as below:

$$A = B \times \frac{C}{D}$$

Where:

- **A** means the adjusted primary or additional threshold for the financial year for the employer.
- **B** means $10m or $100m, depending on whether it is the primary or additional threshold being calculated.
- **C** means the amount of Queensland taxable wages to be payable by the organisation for the financial year.
- **D** means the total amount of Australian taxable wages (including interstate wages) payable by the organisation for the financial year.

Reporting requirements

Periodic and annual returns must now include the organisation's liability for the mental health levy. Periodic returns must include the periodic liability, while annual returns must include the annual levy liability and any refund that is calculated for the year.

Organisations are also required to submit a return within 21 days of a change of status, stating what the organisation's levy liability was during their membership of a group, and the liability of other members of the group and the final levy liability or refund for the period of the return.

Conclusion

Organisations should be aware of their liability to pay a mental health levy in addition to their payroll tax liability. For further information, Business Queensland has published a guide, which can be accessed using this link.

South Australia Update

Voluntary Assisted Dying Act 2021 (SA) and *Voluntary Assisted Dying Regulations 2022* (SA)

On 31 January 2023, the *Voluntary Assisted Dying Act 2021* (SA) (the Act) and *Voluntary Assisted Dying Regulations 2022* (SA) (the Regulations) will commence and implement a voluntary assisted dying regime that enables eligible persons to access end-of-life choices.

Eligibility

Eligibility to access voluntary assisted dying

A person is eligible to access voluntary assisted dying under section 26 of the Act, if they are over 18 years of age, an Australia citizen or permanent resident, an ordinary resident in South Australia for at least 12 months, have decision making capacity and be diagnosed with a disease, illness or medical condition that is:

- incurable; and
- advanced, progressive and will cause death; and
- expected to cause death within weeks or months, not exceeding 6 months; and
- causing suffering to the person that cannot be relieved in a manner that the person considers tolerable.

If a person is diagnosed with a neurodegenerative disease, illness or medical condition they are eligible to access voluntary assisted dying if it is expected to cause death within, at most,12 months.

Decision making capacity is defined under section 4 of the Act, as the ability to:

- understand the information relevant to the decision relating to access to voluntary assisted dying and the effect of the decision; and
  - where a person is taken to understand information relevant to a decision if the person understands an explanation of the information given to the person in a way that is appropriate to the person's circumstances, whether by using modified language, visual aids or any other means;
- retain that information to the extent necessary to make the decision; and
- use or weigh that information as part of the process of making the decision; and
- communicate the decision and the person's views and needs as to the decision in some way, including by speech, gestures or other means.

Importantly, a person is presumed to have decision making capacity unless there is evidence to the contrary. When a medical practitioner is deciding decision making capacity, the practitioner must consider that:

- a person may have decision making capacity to make some decisions and not others;
- if a person does not have decision making capacity to make a particular decision, it may be temporary and not permanent;
- it should not be assumed that a person does not have decision making capacity to make a decision—
  - on the basis of the person's appearance; or
  - because the person makes a decision that is, in the opinion of others, unwise;
- a person has decision making capacity to make a decision if it is possible for the person to make a decision with practicable and appropriate support.

Eligibility to coordinate or consult on voluntary assisted dying

Medical practitioners are eligible to coordinate or consult on a voluntary assisted dying request if they hold a fellowship with a specialist medical college or are a vocationally registered general practitioner. Either the coordinating medical practitioner or each consulting medical practitioner must have practised as a registered medical practitioner for at least 5 years after completing a fellowship with a specialist medical college or vocational registration (whichever applies) and have relevant expertise and experience in the disease, illness or medical condition expected to cause the death of the person accessing voluntary assisted dying.

Under section 28 of the Act, medical practitioners must refuse to coordinate or consult on a person's request to access voluntary assisted dying if they:

- are a family member of the person; or
- know, or have reasonable grounds to believe, that they may be a beneficiary under a will of the person or otherwise benefit financially or in any other material way from the death of the person (other than by receiving reasonable fees for the provision of services).

Key Elements

The request and assessment process for voluntary assisted dying consists of the following elements:

- first request;
- first assessment;
- consulting assessment;
- written declaration;
- final request;
- final review;
- voluntary assisted dying permit;
- prescribing, dispensing and administering a voluntary assisted dying substance;
- notification of death;
- disposal of remaining or unused voluntary assisted dying substance.

First request

When a person makes a first request for voluntary assisted dying, a medical practitioner must, within 7 days of receiving the request, inform the person making the request whether they accept or refuse and on what grounds they refuse the request. When a request is accepted, the medical practitioner who accepts it must make a record in the person's medical record and they will become the person's **coordinating medical practitioner**.

First assessment

The coordinating medical practitioner, after accepting the first request, is then required to make the first assessment. The first assessment is an evaluation of whether the person meets the eligibility criteria outlined in section 26 of the Act.

The coordinating medical practitioner can also refer the person making the request for a specialist opinion if they are unable to make a determination on any of the criteria to a registered health practitioner who has appropriate skills and training. The medical practitioner to whom the first request has been referred is not eligible to give their opinion if they:

- are a family member of the person; or
- know, or have reasonable grounds to believe, that they may be a beneficiary under a will of the person or otherwise benefit financially or in any other material way from the death of the person (other than by receiving reasonable fees for the provision of services).

The coordinating medical practitioner must adopt the determination made in relation to the eligibility criteria by the medical practitioner to whom the first request has been referred.

Once an assessment is made and the person is found to be eligible, the coordinating medical practitioner is required to give the person information on the matters listed in section 37(1) of the Act. This includes, but is not limited to, information on the person's diagnosis, prognosis and the treatment options available to the person and the likely outcomes of that treatment. The coordinating medical practitioner must also, if the person consents, inform a member of the person's family of all relevant clinical guidelines and any plan in respect of the self administration of a voluntary assisted dying substance for the purpose of causing death.

A coordinating medical practitioner who determines that a person requesting access to voluntary assisted dying is eligible, has given them the relevant information described above, is satisfied that the person is acting voluntarily and without coercion and the request is enduring, must notify the person requesting access to voluntary assisted dying of the outcome of the first assessment and, within 7 days after completing the first assessment, complete the first assessment report form and give a copy of that form to the Voluntary Assisted Dying Review Board (the **Board**).

If the coordinating medical practitioner is not satisfied that the person requesting access to voluntary assisted dying is eligible or that the person is acting voluntarily and without coercion or that the request is enduring, the coordinating medical practitioner must inform the person that they are ineligible for access to voluntary assisted dying and the request and assessment process ends.

Consulting assessment

Once a person's request is assessed as eligible, the coordinating medical practitioner must refer the person to another registered medical practitioner for a consulting assessment. The registered medical practitioner who accepts the request becomes the **consulting medical practitioner**. Importantly, a consulting medical practitioner must refuse the referral if:

- they do not hold a fellowship with a specialist medical college; or
- they are not a vocationally registered general practitioner; or
- they have not practised as a medical practitioner for at least 5 years after completing a fellowship with a specialist medical college or vocational registration, unless the coordinating medical practitioner has; or
- they do not have relevant expertise and experience in the disease, illness or medical condition expected to cause the person's death, unless the coordinating medical practitioner has the relevant expertise and experience.

The consulting medical practitioner must inform the person making the request and the coordinating medical practitioner within 7 days of the referral whether the consulting medical practitioner accepts or refuses the request. If the request is refused, the consulting medical practitioner must inform the person of the reason for the refusal.

The consulting medical practitioner must also assess the eligibility of the person requesting voluntary assisted dying by following the same process as the coordinating medical practitioner.

Written Declaration and Final request and review

Under section 55 of the Act, a person requesting voluntary assisted dying may make a final request for access to voluntary assisted dying if the person makes a written declaration in relation to that request which is signed and witnessed in the presence of two witnesses and the coordinating medical practitioner. Importantly, a final request for voluntary assisted dying may only be made by the person if they have made such a declaration personally, either verbally or by gestures or other means of communication available to the person. In addition, the final request must be made at least 9 days after the making of the first request and at least 1 day after the consulting assessment is completed. A final review must be made by the coordinating medical practitioner upon a final request which involves reviewing all forms that have been completed in relation to the process and certifying that the request and assessment process has been completed in accordance with the Act. A copy of the completed final review form must be given to the Board within 7 days of completion, upon which the coordinating medical practitioner may then apply for a voluntary assisted dying permit for the person.

Voluntary assisted dying permits

There are two types of permits available to administer the voluntary assisted dying substance. These are the **self administration permit** and the **practitioner administration permit**.

The self administration permit allows the coordinating medical practitioner to prescribe the voluntary assisted dying substance sufficient to cause death and to be self administered.

The practitioner administration permit authorises the coordinating medical practitioner for a person:

- to prescribe and supply to the person a sufficient dose of the voluntary assisted dying substance specified in the permit; and
- in the presence of a witness receive an administration request; and
- to possess, use and administer in the presence of a witness, the voluntary assisted dying substance to the person if:
  - the person is physically incapable of self administration or digestion of the voluntary assisted dying substance; and
  - the person at the time of making the administration request has decision making capacity in relation to voluntary assisted dying; and
  - the person in requesting access to voluntary assisted dying is acting voluntarily and without coercion; and
  - the person's request to access voluntary assisted dying is enduring; and
  - the person is administered the voluntary assisted dying substance immediately after making the administration request.

If the coordinating medical practitioner is satisfied that the person has decision making capacity in relation to voluntary assisted dying and the person's request for access to voluntary assisted dying is enduring, then they may apply for a self administration permit. If the person is physically incapable of the self administration or digestion of the voluntary assisted dying substance, then the coordinating medical practitioner may only apply for a practitioner administration permit. If a person has a self administration permit and they lose the capability of self administration or digestion of the voluntary assisted dying substance, then they may request the coordinating medical practitioner to apply for a practitioner administration permit. The coordinating medical practitioner must, on receiving such a request, destroy any prescription under the relevant self administration permit which has not been filled.

Prescribing, dispensing and administering a voluntary assisted dying substance

Before prescribing a voluntary assisted dying substance to a person with a self administration permit, the coordinating medical practitioner must provide the information listed in section 74 of the Act. This includes, but is not limited to, how to self administer the voluntary assisted dying substance, and that the person is not under any obligation to obtain the voluntary assisted dying substance and may at any time return an unfilled prescription to the coordinating medical practitioner.

A pharmacist must, on dispensing a prescription for a voluntary assisted dying substance, provide the person to whom the voluntary assisted dying substance is being dispensed with the information listed in section 75 of the Act, including but not limited to, how to self administer the voluntary assisted dying substance and that the voluntary assisted dying substance must be stored in a locked box. Under regulation 18 of the Regulations, the locked box must be constructed from steel, be sturdy and not be easily penetrable. Under section 76 of the Act, pharmacists are also required to comply with additional labelling requirements, with warnings of the purpose, dangers, storage and returning procedures of a voluntary assisted dying substance. When a voluntary assisted dying substance is dispensed, the pharmacist is required, within 7 days of dispensing the substance, to give a copy of the voluntary assisted dying substance dispensing form to the Board stating the date the substance was dispensed, that the labelling requirements under section 76 have been met and the information under section 75 has been given.

If a coordinating medical practitioner has administered a voluntary assisted dying substance, they and the witness must complete the same coordinating medical practitioner administration form stating that they were satisfied that the person was physically incapable of the self administration or digestion of the voluntary assisted dying substance; the person at the time of making the administration request had decision making capacity in relation to voluntary assisted dying; in requesting access to voluntary assisted dying acted voluntarily and without coercion; and the request to access voluntary assisted dying was enduring. This form must be given to the Board within 7 days of administering a voluntary assisted dying substance to the person.

Notification of death

A registered medical practitioner who was responsible for a person's care immediately before death, or who examines the body of a deceased person after death and reasonably believes or knows that the person was the subject of a voluntary assisted dying permit is required to notify the Registrar of Births, Deaths and Marriages and the State Coroner. This notification must contain a statement of reasonable belief or knowledge that the person was the subject of a voluntary assisted dying permit; whether or not the substance was administered; if the substance was administered, whether it was self administered or administered by a practitioner; and the disease, illness or medical condition that was the grounds for accessing voluntary assisted dying.

Mandatory notifications

Under section 90 of the Act, both health practitioners and their employers are required to notify the Australian Health Practitioner Regulation Agency (**AHPRA**) if they form a belief on reasonable grounds that a registered health practitioner providing health services or professional care services to a person is initiating a discussion, or attempting to initiate a discussion about accessing voluntary assisted dying; or is suggesting or attempting to suggest accessing voluntary assisted dying to a person in their care that is not in accordance with the Act.

Importantly, the failure of a registered health practitioner to notify AHPRA in accordance with section 90 will be regarded as partaking in unprofessional conduct within the meaning and for the purposes of the Health Practitioner Regulation National Law.

Offences

There are a number of offences specified in Part 9 of the Act, as follows:

- It is an offence under section 98 for a coordinating medical practitioner to knowingly administer a voluntary assisted dying substance to a person other than as authorised by, and in accordance with, a practitioner administration permit (**maximum penalty of imprisonment for life**).
- Under section 99, it is an offence for a person to knowingly administer to another person a voluntary assisted dying substance dispensed in accordance with a self administration permit (**maximum penalty of imprisonment for life**).
- Section 100 prohibits a person from inducing (dishonestly or by undue influence) another person to make a request for access to voluntary assisted dying (**maximum penalty of imprisonment for 5 years**).
- Inducing another person (dishonestly or by undue influence) to self administer a voluntary assisted dying substance dispensed in accordance with a self administration permit is an offence under section 101 (**maximum penalty of imprisonment for 5 years**).
- Falsifying forms or records required to be made under the Act is prohibited under section 102 (**maximum penalty of imprisonment for 5 years**).
- Under section 103, it is an offence for a person to knowingly make a statement in a report or form in respect of another person who requests access to voluntary assisted dying that is false or misleading (**maximum penalty of imprisonment for 5 years**).
- Section 105 prohibits providing a copy of a form to the Board other than in accordance with the Act (**maximum penalty of $10,000**).

Conscientious objections

Under section 10 of the Act, registered health practitioners who have a conscientious objection to voluntary assisted dying have the right to refuse to participate in the scheme.

Under section 11 of the Act, operators of health service establishments also have the right to refuse to authorise or permit the carrying out of, any part of the voluntary assisted dying process in relation to any patient at the establishment, including any request or assessment process.

Health service establishments is defined to include private hospitals within the meaning of the *Health Care Act 2008* (SA), other private health facilities as may be prescribed by the regulations, or the whole or part of any other private institution, facility, building or place that is operated or designed to provide inpatient or outpatient treatment, diagnostic or therapeutic interventions, nursing, rehabilitative, palliative, convalescent, preventative or other health services (including, to avoid doubt, places of short-term respite care), but does not include prescribed residential premises.

Prescribed residential premises means a facility defined under Part 2 of the Act and includes a nursing home, hostel or other facility at which accommodation, nursing or personal care is provided to persons on a residential basis due to need, residential aged care facilities and retirement villages (within the meaning of the *Retirement Villages Act 2016* (SA)).

Under the Act, owners and occupiers of prescribed residential premises must act in accordance with Part 2 of the Act and:

- not hinder the person's access at the facility to information about voluntary assisted dying;
- allow access to those providing a service linked to voluntary assisted dying; or
- assist transferring a person to and from a place to meet a coordinating medical practitioner and others, and have any activities associated with voluntary assisted dying performed.

Conclusion

The Act and Regulations create a comprehensive framework for people in South Australia to access voluntary assisted dying. Subscribers should be aware of the important requirements surrounding access and administration of voluntary assisted dying to people under their care and the process that medical practitioners must follow.

Tasmania Update

Work Health and Safety Regulations 2022 (Tas)

On 12 December 2022, the *Work Health and Safety Regulations 2022* (Tas) (the Regulations) commenced and replaced the *Work Health and Safety Regulations 2012* (Tas).

Psychosocial Risks

The Regulations provide that all businesses and undertakings must manage any psychosocial risks for the purposes of securing the health and safety of workers and workplaces. A **psychosocial risk** is a risk to the health or safety of a worker or another person arising from a psychosocial hazard.

A **psychosocial hazard** arises from, or relates to, the design and management of work, the work environment itself, a plant at a workplace or workplace interactions and behaviour. A psychosocial hazard is anything that can cause psychological harm to a person, but does not need to also cause physical harm to be classified as such.

Specifically, the Regulations will require organisations to implement control measures to eliminate risks if reasonably practicable and if they are unable to be eliminated, minimise them as far as is reasonably practicable.

Organisations should take all relevant matters as well as the following into consideration to determine what control measures to implement:

- the duration, frequency and severity of exposure to a psychosocial hazard;
- how the psychosocial hazards may interact or combine;
- design of the work;
- system of work and how it is managed, designed and supported;
- layout and environmental conditions of the workplace and worker's accommodation (including safe means of entering and exiting the workplace, as well as facilities for the welfare of workers);
- the plant, substances and structures at the workplace;
- workplace interactions and behaviours; and
- information, training, instruction and supervision provided to workers.

Conclusion

Organisations should identify possible psychosocial hazards that could cause psychological harm to their workers and reduce the impact as much as reasonably practicable or remove them entirely if it is reasonable to do so.

Staff News

Law Compliance is growing!

We are delighted to welcome **Guy Watson** as our new Head of Technology.

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.

Environment Protection Amendment (Banning Single-Use Plastic Items) Regulations 2022 (Vic)

On 1 February 2023 the *Environment Protection Amendment (Banning Single-Use Plastic Items) Regulations 2022* (Vic) (the Amending Regulations) commenced and amended the *Environment Protection Regulations 2021* (Vic) (the Principal Regulations).

The objective of the Amending Regulations is to reduce the overall use of certain single-use plastic items by banning the sale, supply, distribution and provision of those items.

Offence to sell, supply, distribute or provide banned single-use plastic items

The Amending Regulations have inserted a new Division 2 of Part 5.5 (Single-use plastic item ban) into the Principal Regulations which introduced new regulations and an offence concerning single-use plastic items.

It is an offence for a person conducting a business or undertaking to supply, distribute or provide a **banned single-use plastic item** (whether free of charge or otherwise), without reasonable excuse.

The maximum penalty for a natural person is 60 penalty units (currently **$11,095.20**) and for a body corporate is 300 penalty units (currently **$55,476**).

Banned single-use plastic item means an item that:

- is either wholly or partly made of plastic, whether or not that plastic is biodegradable, degradable or compostable; and
- is not reusable.

The following are not banned single-use plastic items:

- before 1 January 2026, **integrated items** that are single-use plastic drinking straws, cutlery or sealed expanded polystyrene cups;
- before 1 November 2024, paper or cardboard plates lined with any plastic;
- cotton bud sticks used or intended to be used for testing carried out for scientific, medical, forensic or law enforcement purposes; and
- cutlery used or intended to be used by a mental health service provider or premises, or correctional, police or youth justice facility for the purposes of preventing any physical harm or injury.

Integrated item means a plastic item that is, as the result of a machine automated process:

- an integrated part of packaging material used to seal or contain food or beverages; or
- included within or attached to packaging material used to seal or contain food or beverages, including pre-packaged portions of food or beverages.

Exception

It will not be an offence if the item sold, supplied, distributed or provided is a single use drinking straw to a **designated person** or a person or entity acting on behalf of a designated person.

Designated person means a person who requires a single-use plastic drinking straw due to a disability or for medical reasons.

In these circumstances, an organisation must ensure that, if single use drinking straws are sold, supplied, distributed or provided to designated persons, those items are not accessible to the public without assistance from the organisation's staff.

Conclusion

Organisations should have systems and controls in place to ensure that relevant staff are aware of the new offence and do not supply, distribute, or provide a banned single-use plastic item to any person, other than a single use drinking straw to a designated person.

Western Australia Update

Building and Construction Industry (Security of Payment) Act 2021 (WA)

Relevant provisions of the *Building and Construction Industry (Security of Payment) Act 2021* (WA) (the Act) commenced on 1 February 2023.

The provisions that have commenced have introduced a new retention money trust scheme for construction contracts whilst introducing an offence to threaten or intimidate a claimant or person entitled to make a payment claim.

Retention money trust scheme

The Act has introduced a new retention money trust scheme, in which money is retained by a party to a construction contract as security for the performance of obligations in relation to carrying out construction work or the supply of goods and services. The party to a construction contract that retains the money are now required to ensure that the money is paid into a trust account established within 10 business days of entering into the contract or within 20 business days if the contract becomes a construction contract after being entered into.

The Act also outlines the requirements in relation to retention money trust accounts which include:

- the account must be a deposit or transaction account of the recognised financial institution;
- the name of the account and the description of the account in the records of the party who established the account must include the words “trust account”;
- the party who established the account must give the other party to the contract written notice of the establishment of the account and the prescribed particulars of the account.

There is also an obligation that interest earned on any money held in a retention money trust account is payable to the party who established and operates the account unless it relates to any period after the money is required to be released to the other party to the construction contract.

The party to a construction contract who established and operates a retention money trust account must now keep proper accounting records relating to the account that:

- records all transactions relating to the money held in the retention money trust account; and
- shows a true position in relation to the outcome of those transactions; and
- can be readily and properly audited; and
- is in the English language; and
- complies with any other requirements prescribed by the Regulations.

New offences

The Act has also introduced a new offence for a person who directly or indirectly threatens or intimidates, or attempts to threaten or intimidate, a claimant or a person entitled to make a payment claim in relation to:

- their entitlement to, or claim for, a progress payment; or
- their exercise of any other rights under Part 3 of the Act.
- Organisations must refrain from engaging in this type of behaviour or risk receiving a fine of up to $50,000.
- Further, if an organisation is found guilty of such an offence, an officer of the organisation is also guilty of the offence if the officer failed to take all reasonable steps to prevent the commission of the offence by the organisation.

Provisions yet to commence

Relevant provisions that are yet to commence include:

- Sections 59 and 60 which relate to compliant performance bonds substituting performance security; and
- Section 87 which introduces an offence for failing to comply with certain requirements of Part 4 of the Act.

Conclusion

Subscribers should ensure that both themselves and relevant staff are aware of the new requirements outlined above. Any relevant policies and procedures should be updated to ensure they comply with these new obligations.

Law Compliance Update

Law Compliance is a legislative compliance business of Health Legal.

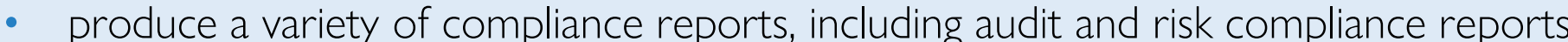
Whilst initially focussed on health care organisations Law Compliance now provides compliance services to hundreds of organisations across Australia and this number grows each month. Our aim is to make compliance easy.

Our clients range from small rural community service organisations to government related entities to some of Australia's largest health care organisations, local councils, universities, charities, community service organisations, aged care providers and child care organisations.

Our online platform, **Comply Online**®, continues to be successfully rolled out across Australia. With Comply Online® our subscribers can easily:

- assign topics to individuals within their organisation

- monitor organisation wide compliance activity



- produce a variety of compliance reports, including audit and risk compliance reports

For more information about Comply Online® or to arrange a free demonstration, please go to: https://lawcompliance.com.au/comply-online/ *or contact* Natalie Franks *on* (03) 9865 1324 *or* natalie.franks@lawcompliance.com.au.

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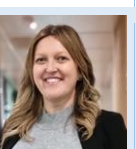

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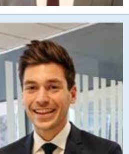

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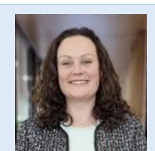

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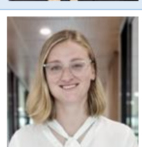

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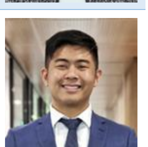

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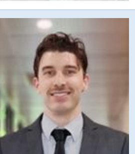

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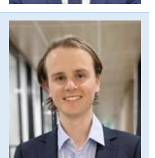

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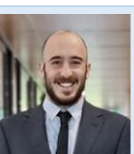

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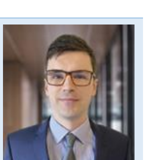

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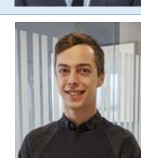

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