



New South Wales

Work Health and Safety Amendment Bill 2013

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to include in the *Work Health and Safety Act 2011* (the **WHS Act**) provisions of the regulations under that Act that establish savings and transitional arrangements relating to proceedings for offences under the *Occupational Health and Safety Act 2000* (the **OHS Act**) alleged to have been committed before the repeal of that Act,
- (b) to make it clear that proceedings for an offence against the WHS Act or the OHS Act may be brought and prosecuted by an Australian legal practitioner who represents a person authorised to bring the proceedings,
- (c) to put beyond doubt the validity of acts or omissions under provisions transferred from the regulations and of prosecutions by legal practitioners acting on behalf of authorised prosecutors,
- (d) to make it clear that restrictions on the power to make savings and transitional regulations under the WHS Act that deem provisions of that Act to be amended did not apply to certain provisions of the regulations,
- (e) to permit proceedings for offences under the OHS Act to be recommenced if the original proceedings were terminated for invalidity but would have been validated by this Bill, even if the time for commencing those proceedings has expired.

This Bill addresses issues raised in the following appeal proceedings:

Empire Waste Pty Ltd and Dean Baldwin v District Court of NSW and Inspector Steven Brock
Australian Native Landscapes Pty Ltd v Inspector Nathan McDonald and District Court of NSW

Attorney General for the State of NSW v Built NSW Pty Ltd and Air Conditioning Engineering Services Pty Ltd

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Work Health and Safety Act 2011 No 10

Schedule 1 [1] provides that proceedings for an offence against the WHS Act may be brought by an Australian legal practitioner who is authorised in writing to represent a person authorised to bring the proceedings.

Schedule 1 [2] provides for the making of savings and transitional regulations consequent on the enactment of the WHS Act or any Act that amends that Act.

Schedule 1 [3] makes it clear that savings and transitional provisions of the regulations under the WHS Act that did not deem provisions of that Act to be amended were not limited by restrictions that would otherwise prevent them from having effect after 31 December 2012.

Schedule 1 [4] transfers to the WHS Act savings and transitional provisions relating to proceedings for offences against the OHS Act or the regulations under that Act that are alleged to have been committed before the repeal of that Act.

Schedule 1 [4] also inserts provisions that:

- (a) put it beyond doubt that proceedings for an offence under the OHS Act alleged to have been committed before the repeal of that Act can be brought by an Australian legal practitioner representing a person authorised to bring the proceedings, and
- (b) validate matters (including criminal proceedings) that would have been valid if the provisions inserted by the proposed Act had been in force as part of the WHS Act.

Schedule 1 [5] inserts provisions that provide that:

- (a) the amendments made by the proposed Act dealing with the authority to prosecute WHS Act offences extend to proceedings before the commencement of the proposed Act (with existing proceedings validated on that basis),
- (b) proceedings for OHS Act offences can be recommenced even if the time for commencing those proceedings has expired, if the original proceedings were not validly instituted but would be validated by the amendments made by the proposed Act,
- (c) existing court decisions are not invalidated by the amendments made by the proposed Act.



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New South Wales

Work Health and Safety Amendment Bill 2013

No. , 2013

A Bill for

An Act to amend the *Work Health and Safety Act 2011* to make further provision for proceedings for offences and for savings and transitional regulations.

The Legislature of New South Wales enacts:

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1 Name of Act

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This Act is the *Work Health and Safety Amendment Act 2013*.

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2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Work Health and Safety Act 2011	1
	No 10	2
[1] Section 230 Prosecutions		3
Insert after section 230 (1):		4
(1A)	Proceedings for an offence against this Act may also be brought by an Australian legal practitioner authorised in writing to represent a person who is authorised under this section to bring the proceedings.	5 6 7
[2] Schedule 4 Savings, transitional and other provisions		8
Insert at the end of clause 1 (1):		9
	<i>Work Health and Safety Amendment Act 2013</i>	10
[3] Schedule 4, clause 1 (6)		11
Insert after clause 1 (5):		12
(6)	Subclause (5) (b) and (c) do not apply, and are taken never to have applied, to or in respect of:	13 14
	(a) Schedule 18B to the <i>Work Health and Safety Regulation 2011</i> , or	15
	(b) any other provision of the <i>Work Health and Safety Regulation 2011</i> that does not specifically state that provisions of this Act are deemed to be amended in a specified manner (whether that provision was made before or after the commencement of this subclause).	16 17 18 19
[4] Schedule 4, Part 2A		20
Insert after Part 2:		21
	Part 2A Prosecution of offences against OHS laws	22
9A Definitions		23
In this Part:		24
	<i>OHS Act</i> means the <i>Occupational Health and Safety Act 2000</i> .	25
	<i>OHS laws</i> means the OHS Act or the OHS Regulation.	26
	<i>OHS offence</i> means an offence against a provision of the OHS laws.	27
	<i>OHS Regulation</i> means the <i>Occupational Health and Safety Regulation 2001</i> .	28
	<i>WHS Act</i> means this Act.	29
	<i>WHS laws</i> means this Act or the WHS Regulation.	30
	<i>WHS Regulation</i> means regulations under this Act.	31
9B General transitional arrangements for OHS offences		32
	Proceedings for an OHS offence alleged to have been committed before the repeal of the OHS Act are to be dealt with after the repeal of the OHS Act as if that Act had not been repealed, except as otherwise provided by this Part.	33 34 35

9C	Arrangements for proceedings commenced after WHS Act commencement	1
	Proceedings for an OHS offence that are commenced after the commencement of the WHS Act are to be dealt with as follows:	2
		3
	(a) proceedings are to be dealt with summarily before the Local Court or the District Court in its summary jurisdiction, except as provided by paragraph (b),	4
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		6
	(b) proceedings for an offence against section 32A (Reckless conduct causing death at workplace by person with OHS duties) of the OHS Act are to be taken on indictment.	7
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9D	Arrangements for offences committed on or after 7/6/11 and prosecuted in Industrial Court	10
		11
	Proceedings for an OHS offence alleged to have been committed on or after 7 June 2011 that were commenced in the Industrial Court before the commencement of the WHS Act but not finally determined by the Industrial Court before that commencement are discontinued in the Industrial Court on that commencement and are then to be dealt with:	12
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	(a) summarily before the District Court in its summary jurisdiction, unless paragraph (b) applies, or	17
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	(b) on indictment in the case of proceedings for an offence against section 32A of the OHS Act.	19
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9E	Requirements for workplace death offence prosecutions	21
		22
	Proceedings for an offence against section 32A of the OHS Act cannot be instituted after the commencement of the WHS Act except with the written consent of a Minister of the Crown (including such a consent given before the commencement of the WHS Act) or by an inspector under the WHS Act.	23
		24
		25
9F	Enforceable undertakings for OHS offences	26
		27
	(1) Part 11 (Enforceable undertakings) of the WHS Act extends to a contravention or alleged contravention of a provision of the OHS laws that occurred or is alleged to have occurred on or after 7 June 2011.	28
		29
	(2) This clause does not apply to a contravention or alleged contravention of section 32A of the OHS Act.	30
		31
9G	Authority to prosecute for OHS offences	32
		33
	(1) In addition to the persons authorised under section 106 of the OHS Act to institute proceedings for an OHS offence, proceedings for such an offence may be instituted by an Australian legal practitioner representing a person so authorised to institute the proceedings.	34
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		36
	(2) This clause extends to proceedings instituted before the commencement of this Part and before the commencement of the WHS Act.	37
		38
9H	Validation	39
		40
	(1) Any act or omission that would have been valid had this Part been in force at the time of the act or omission is taken to be (and always to have been) valid.	41
		41

(2)	To remove doubt, this clause extends to the commencement or institution of criminal proceedings (including the purported commencement or institution of criminal proceedings) and any act or omission in connection with criminal proceedings.	1 2 3 4
[5]	Schedule 4, Part 5	5
	Insert as Part 5 of Schedule 4:	6
	Part 5 Provisions consequent on enactment of Work Health and Safety Amendment Act 2013	7 8
23	Definition	9
	In this Part:	10
	<i>amending Act</i> means the <i>Work Health and Safety Amendment Act 2013</i> .	11
24	Authority to prosecute	12
(1)	Section 230 (1A) as inserted by the amending Act extends to proceedings brought before the commencement of that Act.	13 14
(2)	Proceedings brought or purporting to have been brought before the commencement of section 230 (1A) that would have been validly brought had section 230 (1A) been in force at the time the proceedings were brought are taken to have been (and always to have been) validly brought.	15 16 17 18
25	Court decisions not affected	19
(1)	An amendment made by the amending Act does not affect any decision of a court made before the date of assent to that Act, except as provided by subclause (2).	20 21 22
(2)	A decision of a court made before the date of assent to the amending Act that would have been validly made had the amendments made by that Act been in force when the decision was made (and that would otherwise not have been valid) is validated.	23 24 25 26
26	Recommencement of terminated proceedings	27
(1)	Proceedings for an OHS offence that were terminated before the date of assent to the amending Act because they were not validly instituted may be recommenced whether or not the time for commencing the proceedings has expired if the proceedings would have been validly instituted if the amending Act had commenced before the proceedings were terminated.	28 29 30 31 32
(2)	Proceedings cannot be recommenced under this clause later than 6 months after the date of assent to the amending Act.	33 34
(3)	Terminated proceedings that were terminated in the District Court may be recommenced under this clause on the basis of the applications and other documents by which those proceedings were last commenced, and any thing done in the terminated proceedings (other than the termination of the proceedings) is taken to have been done in the recommenced proceedings.	35 36 37 38 39

- (4) In this clause: 1
- OHS offence*** means an offence against a provision of the *Occupational Health and Safety Act 2000* or the *Occupational Health and Safety Regulation 2001*. 2
- proceedings*** includes purported proceedings. 3
- terminated*** includes stayed, dismissed or not proceeded with for any other 4
- reason (including nullity). 5
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