



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.