

LEGISLATIVE COUNCIL

Work Health and Safety Bill 2011

First Print

Proposed amendments

- No. 1 Page 4, clause 4. Insert after line 20:
Industrial Court means the Industrial Court of New South Wales.
- No. 2 Page 5, proposed definition of *reasonably practicable*, lines 19 and 20. Omit all words on those lines.
- No. 3 Page 10, clause 17, lines 25–31. Omit all words on those lines.
- No. 4 Page 11, proposed Subdivision 2 of Division 1 of Part 2, lines 1–19. Omit all words on those lines.
- No. 5 Page 11, clause 19, lines 22 and 23. Omit “, so far as is reasonably practicable,”.
- No. 6 Page 11, clause 19, lines 28 and 29. Omit “, so far as is reasonably practicable,”.
- No. 7 Page 11, clause 19, line 33. Omit “, so far as is reasonably practicable”.
- No. 8 Page 12, clause 19, lines 21 and 22. Omit “, so far as is reasonably practicable,”.
- No. 9 Page 12, clause 19, line 24. Omit “, so far as is reasonably practicable,”.
- No. 10 Page 13, clause 20, lines 1 and 2. Omit “, so far as is reasonably practicable,”.
- No. 11 Page 13, clause 21, line 17. Omit “, so far as is reasonably practicable,”.
- No. 12 Page 13, clause 22, line 30. Omit “, so far as is reasonably practicable,”.
- No. 13 Page 14, clause 22, line 34. Omit “, so far as is reasonably practicable,”.
- No. 14 Page 15, clause 23, line 11. Omit “, so far as is reasonably practicable,”.
- No. 15 Page 16, clause 23, line 14. Omit “, so far as is reasonably practicable,”.
- No. 16 Page 16, clause 24, line 28. Omit “, so far as is reasonably practicable,”.
- No. 17 Page 17, clause 24, line 36. Omit “, so far as is reasonably practicable,”.
- No. 18 Page 18, clause 25, line 11. Omit “, so far as is reasonably practicable,”.

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- No. 19 Page 19, clause 25, line 15. Omit “, so far as is reasonably practicable,”.
- No. 20 Page 19, clause 26, line 24. Omit “, so far as is reasonably practicable,”.
- No. 21 Page 26, clause 39, lines 17 and 18. Omit “so far as is reasonably practicable,”.
- No. 22 Page 30, clause 46, lines 6 and 7. Omit “, so far as is reasonably practicable,”.
- No. 23 Page 30, clause 47, lines 14 and 15. Omit “, so far as is reasonably practicable,”.
- No. 24 Page 41, clause 70, line 14. Omit “, so far as is reasonably practicable,”.
- No. 25 Pages 60 and 61, clause 112, line 27 on page 60 to line 22 on page 61. Omit “District Court” wherever occurring. Insert instead “Industrial Court”.
- No. 26 Page 62, clause 114, lines 14 and 19. Omit “District Court” wherever occurring. Insert instead “Industrial Court”.
- No. 27 Page 103, clause 215, line 27. Omit “District Court”. Insert instead “Industrial Court”.
- No. 28 Page 104, clause 220, line 30. Omit “District Court”. Insert instead “Industrial Court”.
- No. 29 Page 115, clause 229B, lines 16–28. Omit all words on those lines. Insert instead:

229B Summary procedure for offences

- (1) Proceedings for an offence against this Act are to be dealt with summarily:
 - (a) before the Local Court, or
 - (b) before the Industrial Court.
- (2) The maximum monetary penalty that may be imposed in those proceedings by the Local Court is \$50,000, despite any higher maximum monetary penalty provided in respect of the offence.
- (3) The provisions of the *Industrial Relations Act 1996*, and of the regulations under that Act, relating to appeals from the Local Court to the Industrial Court in connection with offences against that Act apply to proceedings before the Local Court for offences against this Act.

Note. Section 197 of the *Industrial Relations Act 1996* deals with appeals against convictions or penalties in connection with offences against that Act.

- No. 30 Page 115. Insert after line 28:

229C General defence

It is a defence to any proceedings against a person for an offence against a provision of this Act if the person proves that:

- (a) it was not reasonably practicable for the person to comply with the provision, or
- (b) the commission of the offence was due to causes over which the person had no control and against the happening of which it was impracticable for the person to make provision.

- No. 31 Page 115, clause 230. Insert at the end of line 34:
, or

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- (c) the secretary of an industrial organisation of employees any member or members of which are concerned in the matter to which the proceedings relate.

No. 32 Pages 121–123, proposed Division 2A of Part 13, line 1 on page 121 to line 4 on page 123. Omit all words on those lines. Insert instead:

Division 2A Sentencing guidelines

242A Definitions

In this Division:

Full Bench means the Full Bench of the Industrial Court.

guideline judgment means a judgment of the Full Bench containing guidelines to be taken into account by the Industrial Court, the Local Court, the District Court or the Supreme Court in sentencing persons convicted of an offence being:

- (a) guidelines that apply generally, or
- (b) guidelines that apply to particular courts or classes of courts, to particular offences or classes of offences, to particular penalties or classes of penalties or to particular classes of persons convicted of an offence (but not to particular persons).

guideline proceedings means proceedings under section 242B on an application for a guideline judgment referred to in that section.

offence means an offence under this Act.

State peak council has the meaning that it has in the *Industrial Relations Act 1996*.

242B Guideline judgments on application of Attorney General

- (1) The Full Bench may give a guideline judgment on application of the Attorney General.
- (2) An application for a guideline judgment may include submissions with respect to the framing of the guidelines.
- (3) An application is not to be made in any proceedings before the Full Bench with respect to any particular person.
- (4) The powers and jurisdiction of the Full Bench to give a guideline judgment in proceedings under this section in relation to an offence are the same as the powers and jurisdiction that the Court of Criminal Appeal has to give a guideline judgment in a proceeding under section 37A of the *Crimes (Sentencing Procedure) Act 1999*.
- (5) A guideline judgment under this section may be given separately or may be included in any judgment of the Full Bench that it considers appropriate.

242C Peak councils may intervene

- (1) A State peak council, or a representative of a State peak council who is an Australian legal practitioner, may appear in guideline proceedings.
- (2) Without limiting subsection (1), a State peak council or its representative may do either or both of the following:
 - (a) make submissions with respect to the framing of the guidelines,

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- (b) assist the Full Bench with respect to any relevant matter.

242D Full Bench may give persons or organisations leave to appear

- (1) The Full Bench may grant leave to any person, organisation or government department or agency (or a representative of any person, organisation, department or agency who is an Australian legal practitioner) to appear in guideline proceedings.
- (2) Without limiting subsection (1), any person, organisation, government department or agency that is granted leave to appear (or its representative, if any) may do either or both of the following:
 - (a) make submissions with respect to the framing of the guidelines,
 - (b) assist the Full Bench with respect to any relevant matter.
- (3) This section does not apply to State peak councils.

242E Alteration of guideline judgments

A guideline judgment given in proceedings under this Division may be reviewed, varied or revoked in a subsequent guideline judgment of the Full Bench, whether made under this Division or apart from it.

242F Discretion of Full Bench preserved

Nothing in this Division:

- (a) limits any power or jurisdiction of the Full Bench to give a guideline judgment that the Full Bench has apart from this Division, or
- (b) requires the Full Bench to give any guideline judgment under this Division if it considers it inappropriate to do so.

242G Rules of Industrial Relations Commission

Rules of the Industrial Relations Commission may be made under the *Industrial Relations Act 1996* with respect to applications, and proceedings to determine applications, under this Division.

242H Use of evidence in giving guideline judgments

- (1) Nothing in section 12 of the *Criminal Appeal Act 1912* or in section 163 (2) of the *Industrial Relations Act 1996* limits the evidence or other matters that the Full Bench may take into consideration in giving a guideline judgment (whether or not on an application under this Division) and the Full Bench may inform itself as it sees fit.
- (2) The Full Bench must not increase a sentence in any appeal by reason of, or in consideration of, any evidence that is used by the Full Bench in giving a guideline judgment in the appeal but was not given in the original proceedings.

No. 33 Page 128, clause 255, line 10. Omit “District Court”. Insert instead “Industrial Court”.

No. 34 Page 134, note to clause 275 (3), line 35. Omit all words on that line.

No. 35 Page 146, Schedule 5.1, lines 2–5. Omit all words on those lines.