

WORK HEALTH AND SAFETY AMENDMENT BILL 2023

Statement of Public Interest

Need: Why is the policy needed based on factual evidence and stakeholder input?

The *Work Health and Safety Act 2011* (the Act) aims to secure the health and safety of workers and workplaces through the elimination or minimisation of risks, to provide workers and others with the highest level of protection from hazards and risks, so far as is reasonably practicable.

The *Work Health and Safety Amendment Bill 2023* (the Bill), implements the outstanding recommendations from the 2018 Review of the model work health and safety laws, reflecting amendments to the model WHS laws. It will also implement additional model amendments regarding the management of prohibited asbestos and establish a silica worker register, which is part of an NSW Government Election Commitment. Further miscellaneous amendments will address ambiguities and clarify the intent of the law, remove superseded requirements and provide for the necessary regulation-making powers in the WHS Act.

Safe Work Australia (SWA) is the Australian government statutory body established to develop national policy relating to work health and safety (WHS) and workers compensation. SWA engaged an independent reviewer to undertake the 2018 Review of the model WHS laws (the Review). Extensive public consultation was undertaken nationwide as part of the review process, including a Consultation Regulation Impact Statement (RIS) and a Decision RIS, facilitated by Safe Work Australia.

In May 2021, WHS Ministers agreed to the majority of the recommendations as per the Decision RIS, with many of the legislative amendments having only recently been finalised. The Review made 34 recommendations for improvements, noting not all were legislative amendments.

In 2020, NSW expedited 12 of the recommendations from the Review ahead of the national process, and enacted legislation in NSW, to prevent workplace deaths, streamline investigations and clarify the WHS laws. These amendments to the NSW WHS Act ensure it aligns with the updated model WHS Act, where applicable, to ensure the policy intent of the model WHS laws have been captured in NSW.

Objectives: What is the policy's objective couched in terms of the public interest?

The Bill seeks to make improvements to key areas of the work health safety framework and provide strong incentives for persons conducting a business or undertaking by:

1. Implementing outstanding recommendations from the 2018 Review of the model WHS Act, by aligning with recent changes made to the model WHS Act
2. Monitoring the health of workers exposed to respirable crystalline silica dust
3. Streamline compliance and enforcement activities
4. Clarify the intent of the law where there are ambiguities
5. Remove superseded requirements, and
6. Ensure there are sufficient regulation making powers to support the regulatory framework.

This will be achieved through the following amendments:

- Aligning with recent amendments to the model WHS Act by:
 - Removing the ambiguity regarding section 31 offences, clarifying that an officer of a PCBU can commit a Category 1 offence.
 - Increase the penalty amounts within the WHS legislation
 - Additional provisions within the WHS Act regarding the liability of bodies corporate for the conduct of officers and agents
 - Provides clarity as to when a person is prohibited from taking out insurance for penalties imposed under the WHS Act, adding that the evidential burden lies with the accused; and ensures that any contract a person enters into to cover monetary penalties under the WHS Act is rendered void.
 - Ensuring WHS Regulators have the appropriate powers to deal with prohibited asbestos, by giving them compliance powers to issue a notice directing the management and removal of prohibited asbestos (also referred to as 'illegally installed asbestos').
- Establishment of a silica worker register. These amendments will provide the legal framework, ensuring there are sufficient regulation making powers in the WHS Act to establish such a register to contribute to fulfilling the NSW Government election commitment CUS-EC233: Health Screening and tracking of at-risk workers
- Enable the NSW Police to enforce compliance in the food delivery industry, as well as SafeWork NSW inspectors, to ensure the policy intent brought by the WHS Regulation in 2022 to address the safety of food delivery riders. This bill ensures that Police have the authority to an issue penalty notice offence under clause 184U of the WHS Regulations, for not wearing appropriate PPE (personal protective equipment).
- Clarify the operation of section 162 in relation to directions given by SafeWork NSW inspectors (as per recommendation 5 in the *Ombudsman Report into the action undertaken by SafeWork NSW inspectors in relation to Blue Mountains City Council*).
- Updating consultation and advertising requirements for NSW Codes of Practice
- Clarifying regulation making powers for the approval of training providers and courses, associated fees and the keeping of registers, to ensure the continued operation of the law as it was intended.

Options: What alternative policies and mechanisms were considered in advance of the bill?

Based on the 2018 Review of the model WHS Laws, and the Ombudsman's Report into the actions undertaken by SafeWork NSW in relation to Blue Mountains City Council. There are no alternative options to address the issues and recommendations raised in relation to directions given by inspectors. The WHS Act, as the legislative instrument responsible for the regulation of WHS, is appropriate for the inclusion of these amendments. Non-regulatory options were not considered appropriate to address these issues.

The Bill will enable implementation of the remaining model WHS Act amendments in NSW, ensuring NSW meets its commitment to the harmonisation of the WHS legislation. NSW is a signatory to the intergovernmental agreement and follows the model, thus it is not appropriate for NSW to consider alternatives outside the national process.

The Bill also enables the NSW Government to meet a core component of one of its Election Commitments relating to silica reforms. It was not necessary to consider alternatives for this election commitment.

Analysis: What were the pros/cons and benefits/costs of each option considered?

If the legislative amendments are not made, there may be a reputational risk to the Government for not committing to the harmonisation of the WHS laws. There may also be a reputational risk if there are delays in implementing measures to tackle silicosis, which is an issue both in NSW and nationally.

The Bill will implement the remaining recommendation from the NSW Ombudsman's Report into actions undertaken by SafeWork NSW in relation to Blue Mountains City Council. All other recommendations have been implemented.

The remaining recommendations are housekeeping and administrative, but provide clarity on the intent of the laws, providing certainty to persons conducting a business or undertaking.

The Bill also ensures there are sufficient regulation making powers within the WHS Act, as advised by Parliamentary Counsel, as will assist with the remake of the WHS Regulation.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The Minister for Industrial Relations and Work Health and Safety is responsible for administering the legislation being amended, with support from the Department of Customer Service, SafeWork NSW and the NSW Resources Regulator as regulatory authorities.

The Bill is currently proposed to commence on assent, except for the increase in WHS penalties, which is due to commence on 1 July 2024; and the prohibited asbestos provisions which will commence 6 months after the date of assent to allow for a smooth implementation for stakeholders.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

Consultation with external stakeholders regarding aligning with the Model WHS legislation has been managed at the national level by Safe Work Australia, as the 2018 Review of the Model WHS laws was Australia wide. Extensive consultation was undertaken by Safe Work Australia as part of the review process, including a Consultation Regulation Impact Statement (RIS) and a Decision RIS, with the majority of WHS Ministers agreeing to the recommendations as per the Decision RIS in May 2021.

Further amendments within the Bill are a result of issues raised through external and internal consultation, to improve, streamline and provide clarity to key components of the WHS Act.

Consultation was then undertaken with targeted key stakeholders in September 2023, including unions and industry groups on the components of the draft Bill.