



New South Wales

Work Health and Safety Amendment Bill 2023

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 amend the *Work Health and Safety Act 2011* (***the Act***) to incorporate amendments made to the *Model Work, Health and Safety Act* (the ***model Act***) relating to the following—
 - (i) penalty amounts,
 - (ii) liability of bodies corporate for the conduct of officers, employees and agents,
 - (iii) the powers and responsibilities of inspectors,
 - (iv) prohibited asbestos notices,
 - (v) prohibiting a person from taking out insurance for penalties imposed under the Act,
- (b) to amend the Act to make provision for the establishment of a register to monitor the health of workers exposed to silica dust,
- (c) to amend the *Work Health and Safety Regulation 2017* to incorporate increased penalty amounts in line with penalty increases incorporated in the *Model Work Health and Safety Regulations* (the ***model Regulations***).

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.

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

Schedule 1[1] and [2] incorporate certain definitions in the definitions section.

Schedule 1[3] extends criminal liability for gross negligence or reckless conduct to an individual acting in the individual's capacity as an officer of a person conducting a business or undertaking.

Schedule 1[4]–[15], [17], [28], [32] and [37] increase maximum penalties in line with the equivalent increases in the model Act. **Schedule 1[29]** is a consequential amendment.

Schedule 1[16], [23] and [30] make minor amendments to the powers and functions of inspectors.

Schedule 1[18] inserts proposed Part 10, Division 2A. The proposed division provides for—

- (a) the regulator to issue prohibited asbestos notices, and
- (b) the content of prohibited asbestos notices, and
- (c) related compliance matters.

Schedule 1[19], [20], [22] and [24]–[27] are consequential amendments.

Schedule 1[21] is a minor amendment to clarify the effect of section 204(b).

Schedule 1[31] inserts proposed sections 244–244D to provide that the conduct of officers, employees and agents of a body corporate may be taken to be the conduct of the body corporate. The proposed sections reflect equivalent sections in the model Act.

Schedule 1[33] proposes to amend section 272A to clarify the operation of the section and to provide that a contract is void to the extent it provides for insurance cover for monetary penalties under the Act. **Schedule 1[39]** inserts a consequential transitional provision.

Schedule 1[34] inserts proposed Part 14, Division 1A. The proposed division provides for the establishment of and access to a silica worker register to monitor the health of workers exposed to silica dust.

Schedule 1[35] and [36] make minor amendments to section 274 to simplify the process for making minor amendments to an approved code of practice.

Schedule 1[38] makes amendments to the Act, Schedule 3 to clarify regulation-making powers relating to—

- (a) registers, and
- (b) the approval or authorisation by the regulator of training providers and courses.

Schedule 2 Amendment of Work Health and Safety Regulation 2017

Schedule 2[1] omits the definitions of *asbestos* and *asbestos containing material* as the terms are now defined in the Act, proposed section 197A.

Schedule 2[2]–[4] increase maximum penalties in line with the equivalent increases in the model Regulations.

Schedule 2[5] provides that a police officer is an authorised officer who may issue a penalty notice to a food delivery rider.

Schedule 2[6] is consequential to Schedule 1[17], proposed section 197B, which provides for the issue of prohibited asbestos notices.