



New South Wales

# Occupational Health and Safety Amendment (Prosecutions) Bill 2003

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Occupational Health and Safety Act 2000* (the **Principal Act**) to enable any Minister of the Crown to consent to a prosecution for an offence under that Act or under the former *Occupational Health and Safety Act 1983* (the **former Act**) and to extend the effect of the amendments to current proceedings. The amendments will extend to proceedings relating to the death of miners at Gretley Colliery.

## 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.

**Clause 3** is a formal provision that gives effect to the amendments to the *Occupational Health and Safety Act 2000* set out in Schedule 1.

## Schedule 1 Amendments

Currently, proceedings for an offence under the Principal Act or regulations under that Act (and any continuing proceedings for offences against the former Act or regulations under that Act) may be instituted only with the consent of the Minister or the consent of an officer prescribed by the regulations or by an inspector or (in certain circumstances) the secretary of an industrial organisation of employees. The Principal Act is administered by the Minister for Commerce and, in part, by the Minister for Mineral Resources. Another Minister may act for such a Minister if a formal acting appointment is made or that Minister is “unavailable”.

**Schedule 1 [1]** enables any Minister to consent to the institution of proceedings for an offence. This resolves any uncertainty arising out of the administration of the Act or the unavailability of the relevant Minister and enables another Minister to act for the relevant Minister. **Schedule 1 [2]** makes a consequential amendment.

**Schedule 1 [3]** enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

**Schedule 1 [4]** extends the operation of the provisions amended by the proposed Act to proceedings for offences under the Principal Act and the former Act, or regulations under those Acts, that were or are instituted before, on or after the commencement of the amendments, whether or not proceedings are pending on that commencement. It also provides for references to the Minister in the provisions relating to the commencement of prosecutions under the former Act to be construed as references to any Minister of the Crown and validates the institution of existing proceedings if they were consented to by a Minister of the Crown.

The amendments also provide for proceedings for offences under the Principal Act or the former Act, or regulations under those Acts, which were previously terminated merely because the proceedings were incorrectly instituted to be able to be recommenced if those proceedings would have been taken to have been valid under the Principal Act, as amended by the proposed Act. The proceedings may be recommenced, relying on the original processes, even if the time for commencing proceedings has expired or the manner of commencing proceedings has changed. Things done in the terminated proceedings are taken to have been done in any recommenced proceedings.

First print



New South Wales

# Occupational Health and Safety Amendment (Prosecutions) Bill 2003

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New South Wales

# **Occupational Health and Safety Amendment (Prosecutions) Bill 2003**

No. , 2003

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## **A Bill for**

An Act to amend the *Occupational Health and Safety Act 2000* with respect to prosecutions for offences.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Occupational Health and Safety Amendment (Prosecutions) Act 2003</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on the date of assent to this Act.	6
<b>3 Amendment of Occupational Health and Safety Act 2000 No 40</b>	7
The <i>Occupational Health and Safety Act 2000</i> is amended as set out in Schedule 1.	8 9

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## Schedule 1 Amendments

(Section 3)

### [1] Section 106 Authority to prosecute

Omit “the Minister” from section 106 (1) (a).

Insert instead “a Minister of the Crown”.

### [2] Section 106 (2)

Omit “the Minister” where firstly occurring.

Insert instead “a Minister”.

### [3] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

*Occupational Health and Safety Amendment (Prosecutions)  
Act 2003*

### [4] Schedule 3, Part 3

Insert after Part 2:

## Part 3 Provisions consequent on enactment of Occupational Health and Safety Amendment (Prosecutions) Act 2003

### 18 Definitions

In this Part:

*amending Act* means the *Occupational Health and Safety  
Amendment (Prosecutions) Act 2003*.

*former Act* means the *Occupational Health and Safety  
Act 1983*.

*proceedings* includes purported proceedings.

*terminated* includes stayed, dismissed or not proceeded with  
for any other reason (including nullity).

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- 19 Application of amendments to offences** 1
- (1) Section 106, as amended by the amending Act, extends to proceedings relating to offences under this Act or the regulations committed before the commencement of the amending Act. 2  
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- (2) Section 106, as amended by the amending Act, extends (by the operation of clause 13) to proceedings relating to offences under the former Act or regulations under that Act. 6  
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- (3) This clause applies whether any proceedings referred to in this clause were or are instituted before, on or after the commencement of the amending Act or are pending on that commencement. 9  
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- (4) In the case of proceedings instituted under section 48 of the former Act before that commencement, section 48 (1) (a) of that Act is to be construed as if a reference to the Minister in that paragraph was and always had been a reference to any Minister of the Crown. 13  
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- (5) In the case of any proceedings referred to in this clause that were instituted before that commencement, any such proceedings are taken to have been validly instituted, and to have always been validly instituted, if they were consented to by a Minister of the Crown. 18  
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- 20 Terminated proceedings** 23
- (1) This clause applies to proceedings terminated in the Industrial Relations Commission before the commencement of the amending Act if: 24  
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- (a) the proceedings related to alleged offences under this Act or the former Act or the regulations under those Acts, and 27  
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- (b) the proceedings were consented to by a Minister of the Crown and were terminated merely because the proceedings were invalidly instituted, and 30  
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- (c) the proceedings would have been taken to have been validly instituted if the amending Act had commenced before the proceedings were terminated. 33  
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- (2) Any such proceedings may be recommenced, on the basis of the applications and other documents by which those proceedings were last commenced and without any further 36  
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consent being required, whether or not the time for commencing such proceedings has expired under this or any other Act and despite any changes to the manner of commencing proceedings since they were last commenced.

- (3) If any terminated proceedings are recommenced, any thing done in the terminated proceedings (other than the termination of the proceedings) is taken to have been done in the recommenced proceedings.

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