



New South Wales

Work Health and Safety Amendment Bill 2018

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to provide that certain members of the NSW Police Force who are involved in responding to active armed offender incidents do not commit offences under Division 5 of Part 2 of the *Work Health and Safety Act 2011* (the *Act*) for failures to comply with health and safety duties in connection with responding to such incidents, and
- (b) to make miscellaneous amendments to the Act as a result of a statutory review of the Act tabled in Parliament on 22 June 2017.

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—police responses to active armed offender incidents

Schedule 1 provides that a member of the NSW Police Force does not commit an offence under Division 5 of Part 2 of the *Work Health and Safety Act 2011* for a failure to comply with a health and safety duty that occurs while:

- (a) the member is responding to a particular active armed offender incident, or
- (b) the member is in command of, or is otherwise authorising actions by or providing directions to, other members of the NSW Police Force who are responding to a particular active armed offender incident, or
- (c) the member is receiving information from, or providing information to, other members of the NSW Police Force for the purposes of assisting them in responding to a particular active armed offender incident, or
- (d) the member is participating with other members of the NSW Police Force in preparing or planning for responding to a particular active armed offender incident.

A member of the NSW Police Force will be regarded as responding to a particular active armed offender incident if:

- (a) a person armed with an offensive weapon or instrument (the *offender*) is attacking or has attacked, or is attempting to attack or has attempted to attack, another person (the *victim*), and
- (b) the member reasonably believes (or one or more other members of the NSW Police Force who are commanding, authorising actions by or directing the member reasonably believe) that the offender will do any of the following unless prevented from doing so:
 - (i) continue attacking, or attempting to attack, the victim,
 - (ii) attack, or attempt to attack, the victim again,
 - (iii) attack, or attempt to attack, another person apart from the victim, and
- (c) the member is acting (whether or not in combination with, or at the command or direction of, other members of the NSW Police Force) to prevent the offender from doing so.

Schedule 2 Amendment of Work Health and Safety Act 2011 No 10—statutory review

Schedule 2 [3] extends the power of the regulator under the Act to require the provision of information, evidence and documents so that the power applies to persons and matters outside New South Wales. (See recommendation 1 of the review.)

Schedule 2 [6] removes facsimile transmission as a means by which an inspector may issue certain notices under the Act. **Schedule 2 [1]** removes facsimile transmission as an example of the means by which a person may give written notice of a notifiable incident to the regulator. (See recommendation 2 of the review.)

Schedule 2 [4] corrects a cross-reference. (See recommendation 3 of the review.)

Schedule 2 [5] permits an inspector to record questions asked, and answers given, orally under Part 9 (Securing compliance) of the Act. **Schedule 2 [2]** extends this power to permit the recording of evidence given orally following the regulator's issue of a notice requiring the evidence to be so given. (See recommendation 4 of the review.)

Schedule 2 [7] makes it clear that the Act's provisions with respect to prosecutions do not affect the Attorney General's ability to prosecute offences against the Act. (See recommendation 5 of the review.)

Schedule 2 [8] enables the regulator, or a designated member of the regulator's staff, to certify in writing certain matters and provides that, in proceedings under the Act, such a certificate is prima facie evidence of those matters. (See recommendation 7 of the review.)