



New South Wales

# Work Health and Safety Amendment (Review) Bill 2019

## 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 *Work Health and Safety Act 2011* (the *Act*) and the regulations under that Act to—

- (a) implement proposals based on recommendations made by the 2018 *Review of the model Work Health and Safety laws: Final report* (the **2018 Review**), and
- (b) make minor amendments to the Act recommended by the *Work Health and Safety Act 2011 Statutory Review Report* (the **Statutory Review**) in relation to the application of the Act to dangerous goods and high risk plant.

## 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

### Amendments based on recommendations made by the 2018 Review

**Schedule 1[1] and [2]** clarify that under the Act a person may be both a worker for a person conducting a business or undertaking and a person conducting a business or undertaking who owes duties to workers.

**Schedule 1[3]** inserts a note into Part 2 of the Act. Part 2 provides for the health and safety duties owed by a person conducting a business or undertaking to the person's workers and offences for contravening those duties. The proposed note makes it clear that, in addition to the offences and penalties in relation to the health and safety duties imposed by Part 2, in certain circumstances the death of a person at work may also constitute manslaughter under the *Crimes Act 1900* and may be prosecuted under that Act.

**Schedule 1[5]** amends section 31 of the Act, which makes it an offence for a person owing a health and safety duty to engage in conduct that is reckless in exposing an individual owed that duty to a risk of death or serious injury or illness, to include an alternative fault element of gross negligence. **Schedule 1[4]** is a consequential amendment to the heading of the section.

**Schedule 1[6]–[10]** amend section 72 of the Act to clarify that health and safety representatives are entitled to choose their course of training, and that the person conducting the business or undertaking and the health and safety representatives will consult each other about, and agree on, the reasonable costs associated with the training.

**Schedule 1[11]** amends section 112 of the Act to clarify that in civil proceedings in relation to engaging in or inducing discriminatory or coercive conduct, the District Court may make an order declaring that a person has engaged in conduct of that type.

**Schedule 1[12]** inserts proposed section 155B into the Act to provide for matters in relation to the service of notices, under section 155, on persons who may be able to give information, provide documents or to give evidence to the regulator in relation to a possible contravention of the Act or for other purposes specified in section 155.

**Schedule 1[13]** amends section 171 of the Act to provide that after an inspector has entered a workplace, the inspector or another inspector can exercise the investigative powers in section 171 for up to 30 days without having to re-enter the workplace. The powers in section 171 include powers to require a person to tell an inspector who has custody of documents, to require production of documents and to require a person to answer questions.

**Schedule 1[14]** inserts proposed section 171A into the Act to provide for matters in relation to the giving of notices, under section 171, on persons who may be able to give information, provide documents to or give evidence to an inspector who has entered a workplace for enforcement purposes.

**Schedule 1[16]** amends section 231 of the Act to extend the time within which a person can ask the regulator to start a prosecution in relation to a workplace incident involving a risk of death or serious injury or illness from 12 months to 18 months. This extension in time will allow more time for an effective review of the workplace incident.

**Schedule 1[17]** inserts a new subsection into section 231 of the Act. The new subsection requires the regulator to provide updates on the progress of an investigation to a person who has made a request, referred to in Schedule 1[16], every 3 months after receiving the request until a decision is made as to whether a prosecution will be brought.

**Schedule 1[18]** inserts proposed Division 2A into Part 13 of the Act. Division 2A provides for penalties for offences in the Act to be expressed as penalty units rather than monetary amounts. For the 2019–20 financial year a penalty unit would be \$100 and for future years the value of a penalty unit would be indexed to change in accordance with any increases in the Consumer Price Index. Division 2A also provides, in proposed section 242D, that the Secretary of the Department of Customer Service must give notice, on an appropriate government website, of the actual amounts of the penalties applying in each financial year. **Schedule 1[15]** and **[21]** are consequential amendments to convert monetary amounts in penalty provisions to penalty units.

**Schedule 1[19]** amends section 271 of the Act to clarify that information, including personal or health information, can be shared with work health and safety regulators in other Australian jurisdictions if it is relevant to a workplace incident being investigated in that jurisdiction.

**Schedule 1[20]** inserts proposed sections 272A and 272B into the Act. Proposed section 272A creates an offence for entering into, providing or benefiting from insurance or other arrangements, including indemnity arrangements, in relation to the payment of penalties for offences under the

Act. Proposed section 272B makes officers of a body corporate liable for offences committed against proposed section 272A by the body corporate.

**Schedule 1[25]** inserts a new clause 27 into Schedule 4, consequent on the amendment made by Schedule 1[20]. Clause 27 is a transitional provision that provides that a person does not commit an offence against proposed section 272A for providing insurance or a grant of indemnity, or for taking the benefit of such insurance or arrangement, if the insurance or indemnity was in force before the commencement and any payment made under the insurance or indemnity is not in relation to a penalty for an incident that occurred after the commencement.

### **Amendments based on recommendations of Statutory Review**

**Schedule 1[22]–[24]** amends Schedule 1 of the Act to make minor amendments recommended by the Statutory Review in relation to the application of the Act to dangerous goods and high risk plant. The amendments clarify that the Act applies to dangerous goods and high risk plant that are stored, handled, operated or used at premises that are not a workplace or for use in carrying out work.

## **Schedule 2      Consequential amendments of Work Health and Safety Act 2011 No 10**

**Schedule 2[1]–[14]** amend the penalty provisions for offences in the Act to increase the value of the penalties by the increases in the Consumer Price Index between 2011–2019 and to convert the monetary values of the penalties to penalty units, consequent on the amendments made to the Act by Schedule 1[18].

## **Schedule 3      Consequential amendments of Work Health and Safety Regulation 2017**

**Schedule 3[1]–[5]** amend the penalty provisions for offences in the Regulation to increase the value of the penalties by the increases in the Consumer Price Index between 2011–2019 and to convert the monetary values of the penalties to penalty units, consequent on the amendments made to the Act by Schedule 1[18].



New South Wales

# Work Health and Safety Amendment (Review) Bill 2019

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New South Wales

# Work Health and Safety Amendment (Review) Bill 2019

No. , 2019

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## **A Bill for**

An Act to amend the *Work Health and Safety Act 2011* to make miscellaneous amendments resulting from a review of the national Model Work Health and Safety Act; and for related purposes.

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**The Legislature of New South Wales enacts—**

1

**1 Name of Act**

2

This Act is the *Work Health and Safety Amendment (Review) Act 2019*.

3

**2 Commencement**

4

This Act commences on the date of assent to this Act.

5

<b>Schedule 1</b>	<b>Amendment of Work Health and Safety Act 2011</b>	1
	<b>No 10</b>	2
<b>[1] Section 5 Meaning of “person conducting a business or undertaking”</b>		3
Insert at the end of the section—		4
<b>Note.</b> A person may be both a <b>person conducting a business or undertaking</b> , within the meaning of this section, and a <b>worker</b> within the meaning of section 7.		5 6
<b>[2] Section 7 Meaning of “worker”</b>		7
Insert at the end of the section—		8
<b>Note.</b> A person may be both a <b>worker</b> , within the meaning of this section, and a <b>person conducting a business or undertaking</b> within the meaning of section 5.		9 10
<b>[3] Part 2, Division 5, note</b>		11
Insert after the heading to the Division—		12
<b>Note.</b> This Division sets out offences, and penalties for the offences, in relation to the health and safety duties imposed by Divisions 2, 3 and 4 of Part 2. In certain circumstances, the death of a person at work may also constitute manslaughter under the <i>Crimes Act 1900</i> and may be prosecuted under that Act. See section 18 of the <i>Crimes Act 1900</i> , which provides for the offence of manslaughter, and section 24 of that Act, which provides that the offence of manslaughter is punishable by imprisonment for 25 years.		13 14 15 16 17 18 19
<b>[4] Section 31, heading</b>		20
Omit “ <b>Reckless</b> ”. Insert instead “ <b>Gross negligence or reckless</b> ”.		21
<b>[5] Section 31(1)(c)</b>		22
Omit the paragraph. Insert instead—		23
(c) the person—		24
(i) engages in the conduct with gross negligence, or		25
(ii) is reckless as to the risk to an individual of death or serious injury or illness.		26 27
<b>[6] Section 72 Obligation to train health and safety representatives</b>		28
Omit section 72(1)(c). Insert instead—		29
(c) chosen by the health and safety representative.		30
<b>[7] Section 72(2)</b>		31
Insert “, in consultation with the health and safety representative and as soon as practicable within the period of 3 months after the request is made” after “must”.		32 33
<b>[8] Section 72(2)(a)</b>		34
Omit “as soon as practicable within the period of 3 months after the request is made,”.		35
<b>[9] Section 72(5)</b>		36
Omit “subsections (1) (c) and (2)”. Insert instead “that subsection”.		37
<b>[10] Section 72(7)</b>		38
Omit “allow a health and safety representative to attend a course decided by the inspector and”.		39 40

<b>[11] Section 112 Civil proceedings in relation to engaging in or inducing discriminatory or coercive conduct</b>	1
Insert after section 112(3)(a)—	2
(a1) an order declaring that the person has engaged in conduct of a type referred to in subsection (2)(a), (b) or (c), or	3
	4
	5
<b>[12] Section 155B</b>	6
Insert after section 155A—	7
<b>155B Service of notices</b>	8
(1) A written notice served on a person under section 155(2) may be served—	9
(a) by delivering it personally to the person or sending it by post or electronic transmission to the person’s usual or last known place of residence or business, or	10
	11
	12
(b) by leaving it for the person at the person’s usual or last known place of residence or business with a person who appears to be over 16 years and who appears to reside or work there, or	13
	14
	15
(c) by leaving it for the person at the workplace to which the notice relates with a person who is or appears to be the person with management or control of the workplace, or	16
	17
	18
(d) in a way prescribed by the regulations.	19
(2) The regulations may prescribe—	20
(a) the way of serving a notice, and	21
(b) the steps a person on whom a notice is served must take to bring it to the attention of other persons.	22
	23
<b>[13] Section 171 Power to require production of documents and answers to questions</b>	24
Omit “An inspector who enters a workplace under this Division may” from section 171(1).	25
Insert instead “If an inspector enters a workplace under this Division, or has within the last 30 days entered a workplace under this Division, the inspector or another inspector may”.	26
	27
<b>[14] Section 171A</b>	28
Insert after section 171—	29
<b>171A Giving of notices</b>	30
(1) A written notice given to a person under section 171(2) may be given—	31
(a) by delivering it personally to the person or sending it by post or electronic transmission to the person’s usual or last known place of residence or business, or	32
	33
	34
(b) by leaving it for the person at the person’s usual or last known place of residence or business with a person who appears to be over 16 years and who appears to reside or work there, or	35
	36
	37
(c) by leaving it for the person at the workplace to which the notice relates with a person who is or appears to be the person with management or control of the workplace, or	38
	39
	40
(d) in a way prescribed by the regulations.	41
(2) The regulations may prescribe—	42
(a) the way of giving a notice, and	43



(b)	the steps a person to whom a notice is given must take to bring it to the attention of other persons.	1 2
<b>[15]</b>	<b>Section 229B Procedure for offences</b>	3
	Omit “\$50,000” from section 229B(4).	4
	Insert instead “an amount equal to the monetary value of 650 penalty units”.	5
<b>[16]</b>	<b>Section 231 Procedure if prosecution is not brought</b>	6
	Omit “12 months” from section 231(1)(b). Insert instead “18 months”.	7
<b>[17]</b>	<b>Section 231(2A)</b>	8
	Insert after section 231(2)—	9
(2A)	If, under subsection (2)(a), the regulator advises the person the investigation is not complete, the regulator must, from the time that advice is provided and until the investigation is complete, advise the person at least every 3 months of the matters set out in that paragraph.	10 11 12 13
<b>[18]</b>	<b>Part 13, Division 2A</b>	14
	Insert after Division 2—	15
	<b>Division 2A Penalty units</b>	16
<b>242A</b>	<b>Definitions</b>	17
	In this Division—	18
	<i>CPI</i> means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics in the latest published series of that index.	19 20 21
	<i>financial year</i> means a period of 12 months starting on 1 July.	22
<b>242B</b>	<b>Value of penalty unit</b>	23
(1)	For the purposes of this Act, the value of a <i>penalty unit</i> is—	24
(a)	for the financial year 2019–20—\$100, and	25
(b)	for each subsequent financial year—the amount calculated as follows—	26
	$\$100 \times \frac{A}{B}$	
	where—	27
	<i>A</i> is the CPI number for the March quarter in the financial year immediately preceding the financial year for which the amount is calculated.	28 29 30
	<i>B</i> is the CPI number for the March quarter of 2019.	31
(2)	However, if the amount of a penalty unit calculated for any financial year is less than the amount that applied in the previous financial year, then the amount for that previous financial year applies instead.	32 33 34
<b>242C</b>	<b>Amount of penalties</b>	35
(1)	If, in this Act, a penalty is expressed as a number of penalty units, the monetary value of the penalty is the number of dollars obtained by multiplying the value of a penalty unit by the number of penalty units.	36 37 38

(2)	However, if the monetary value of the penalty obtained under subsection (1) is not a multiple of \$1, the amount is rounded down to the nearest multiple of \$1.	1 2 3
<b>242D</b>	<b>Notice of indexed penalties</b>	4
(1)	As soon as practicable after the CPI number for the March quarter is published by the Australian Statistician, the Secretary must give notice, on an appropriate government website, of the monetary value of the penalties applying in each financial year under this Division.	5 6 7 8
(2)	Failure to give the notice does not affect the amount of the penalty applying in a financial year.	9 10
<b>[19]</b>	<b>Section 271 Confidentiality of information</b>	11
	Insert after section 271(3)—	12
(3A)	Without limiting subsection (3), any information or document, including the following information or documents, lawfully obtained or accessed by a person exercising a power or function under this Act may be disclosed or given under subsection (3)(c)(v) to a corresponding regulator—	13 14 15 16
(a)	information provided, or a document produced, under section 155 or Part 9,	17 18
(b)	information or a document that is personal information or health information about an individual despite the <i>Privacy and Personal Information Protection Act 1998</i> or the <i>Health Records and Information Privacy Act 2002</i> .	19 20 21 22
<b>[20]</b>	<b>Sections 272A and 272B</b>	23
	Insert after section 272—	24
<b>272A</b>	<b>Prohibition on certain insurance or indemnity arrangements</b>	25
	A person must not—	26
(a)	without reasonable excuse, enter into a contract of insurance or other arrangement under which the person or another person is covered for liability for a monetary penalty under this Act, or	27 28 29
(b)	provide insurance or a grant of indemnity for liability for a monetary penalty under this Act, or	30 31
(c)	take the benefit of—	32
(i)	a contract of insurance or other arrangement under which the person or another person is covered for liability for a monetary penalty under this Act, or	33 34 35
(ii)	a grant of indemnity for liability for a monetary penalty under this Act.	36 37
	Maximum penalty—	38
(a)	for paragraph (a)—	39
(i)	in the case of an individual—250 penalty units, or	40
(ii)	in the case of a body corporate—1,250 penalty units, or	41
(b)	for paragraph (b) or (c)—	42
(i)	in the case of an individual—500 penalty units, or	43
(ii)	in the case of a body corporate—2,500 penalty units.	44

<b>272B</b>	<b>Liability of officers for offences by body corporate under section 272A</b>	1
(1)	A person commits an offence against this section if—	2
(a)	a body corporate commits an offence against section 272A, and	3
(b)	the person is an officer of the body corporate, and	4
(c)	the person—	5
(i)	aids, abets, counsels or procures the commission of the offence, or	6 7
(ii)	induces, whether by threats or promises or otherwise, the commission of the offence, or	8 9
(iii)	conspires with others to effect the commission of the offence, or	10
(iv)	is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence.	11 12
	Maximum penalty—1,250 penalty units.	13
(2)	The prosecution bears the legal burden of proving the elements of the offence against this section.	14 15
(3)	The offence against this section can only be prosecuted by a person who can bring a prosecution for the offence against section 272A.	16 17
(4)	This section does not affect the liability of the body corporate for the offence against section 272A, and applies whether or not the body corporate is prosecuted for, or convicted of, an offence against that section.	18 19 20
(5)	This section does not affect the application of any other law relating to the criminal liability of a person, whether or not an officer of the body corporate, who is concerned in, or party to, the commission of the offence against section 272A.	21 22 23 24
<b>[21]</b>	<b>Section 276 Regulation-making powers</b>	25
	Omit “\$30,000” from section 276(3)(h).	26
	Insert instead “an amount equal to the monetary value of 345 penalty units”.	27
<b>[22]</b>	<b>Schedule 1 Application of Act to dangerous goods and high risk plant</b>	28
	Insert in appropriate order in clause 2—	29
(a1)	a reference in this Act to a person conducting a business or undertaking includes a reference to a person in control of premises where the dangerous goods are stored or handled, and	30 31 32
(a2)	a reference in this Act to a business or undertaking, or the conduct of a business or undertaking, includes a reference to the storage or handling of dangerous goods, and	33 34 35
(a3)	a reference in this Act to a worker includes a reference to a person at the premises at or in which the dangerous goods are stored or handled, and	36 37
(b1)	a reference in this Act to a work environment includes a reference to the environment at the premises at or in which the dangerous goods are stored or handled, and	38 39 40
(b2)	a reference in this Act to a business address includes a reference to the address of the premises where the dangerous goods are stored or handled, and	41 42
<b>[23]</b>	<b>Schedule 1, clause 4</b>	43
	Insert in appropriate order—	44

(a1)	a reference in this Act to a person conducting a business or undertaking includes a reference to a person in control of premises where the high risk plant is operated or used, and	1 2 3
(a2)	a reference in this Act to a business or undertaking, or the conduct of a business or undertaking, includes a reference to the operation or use of high risk plant, and	4 5 6
(a3)	a reference in this Act to a worker includes a reference to a person at the premises at or in which the high risk plant is operated or used, and	7 8
(b1)	a reference in this Act to a work environment includes a reference to the environment at the premises at or in which the high risk plant is operated or used, and	9 10 11
(b2)	a reference in this Act to a business address includes a reference to the address of the premises where the high risk plant is operated or used, and	12 13
<b>[24]</b>	<b>Schedule 1, clause 6</b>	14
	Insert in alphabetical order—	15
	<i>premises</i> includes a vehicle, vessel, aircraft or other mobile structure.	16
<b>[25]</b>	<b>Schedule 4 Savings, transitional and other provisions</b>	17
	Insert after Part 5—	18
<b>Part 6</b>	<b>Provisions consequent on enactment of Work Health and Safety Amendment (Review) Act 2019</b>	19 20
<b>27</b>	<b>Insurance and indemnity arrangements</b>	21
(1)	This clause applies in relation to a contract of insurance or other arrangement, or a grant of indemnity for liability, (each an <i>existing arrangement</i> ) mentioned in section 272A that is in force immediately before the commencement.	22 23 24 25
(2)	A person does not commit an offence against section 272A for providing insurance or a grant of indemnity under an existing arrangement, or for taking the benefit of an existing arrangement, to the extent any payment made under the existing arrangement is not in relation to a liability for a monetary penalty under this Act for an incident that occurred after the commencement.	26 27 28 29 30
(3)	In this clause— <i>commencement</i> means the commencement of section 272A, as inserted by the <i>Work Health and Safety Amendment (Review) Act 2019</i> .	31 32 33

<b>Schedule 2</b>	<b>Consequential amendments of Work Health and Safety Act 2011 No 10</b>	1
		2
<b>[1] Whole Act</b>		3
	Omit “\$50,000” wherever occurring in the penalty provisions.	4
	Insert instead “575 penalty units”.	5
<b>[2] Whole Act</b>		6
	Omit “\$100,000” wherever occurring in the penalty provisions.	7
	Insert instead “1,155 penalty units”.	8
<b>[3] Whole Act</b>		9
	Omit “\$10,000” wherever occurring in the penalty provisions.	10
	Insert instead “115 penalty units”.	11
<b>[4] Sections 31(1)</b>		12
	Omit “\$600,000” from the penalty provision.	13
	Insert instead “6,925 penalty units”.	14
<b>[5] Section 31(1)</b>		15
	Omit “\$3,000,000” from the penalty provision.	16
	Insert instead “34,630 penalty units”.	17
<b>[6] Sections 31(1) and 32</b>		18
	Omit “\$300,000” from the penalty provisions.	19
	Insert instead “3,465 penalty units”.	20
<b>[7] Section 32</b>		21
	Omit “\$150,000” from the penalty provision.	22
	Insert instead “1,730 penalty units”.	23
<b>[8] Section 32</b>		24
	Omit “\$1,500,000” from the penalty provision.	25
	Insert instead “17,315 penalty units”.	26
<b>[9] Sections 33, 104(1), 107, 108(1), 109(1), 197</b>		27
	Omit “\$500,000” wherever occurring in the penalty provisions.	28
	Insert instead “5,770 penalty units”.	29
<b>[10] Sections 38(7), 75(1), 97(1) and (2), 150, 210(1) and (2) and 273</b>		30
	Omit “\$5,000” wherever occurring in the penalty provisions.	31
	Insert instead “60 penalty units”.	32
<b>[11] Sections 38(7), 75(1), 97(1) and (2), 150, 210(1) and (2), 273</b>		33
	Omit “\$25,000” wherever occurring in the penalty provisions.	34
	Insert instead “290 penalty units”.	35

- |             |   |   |
|-------------|---|---|
| <b>[12]</b> | <b>Sections 41, 99(2), 190, 193, 200(1), 219 and 242(1)</b>                   | 1 |
|             | Omit "\$250,000" wherever occurring in the penalty provisions.                | 2 |
|             | Insert instead "2,885 penalty units".   | 3 |
| <b>[13]</b> | <b>Sections 42(1) and (2), 43(1) and (2), 44(1) and (2), 45, 46 and 47(1)</b> | 4 |
|             | Omit "\$20,000" wherever occurring in the penalty provisions.                 | 5 |
|             | Insert instead "230 penalty units".   | 6 |
| <b>[14]</b> | <b>Sections 53(1) and (2), 57(1) and (2), 74(1) and 149(1)</b>                | 7 |
|             | Omit "\$2,000" wherever occurring in the penalty provisions.                  | 8 |
|             | Insert instead "25 penalty units".  | 9 |

<b>Schedule 3</b>	<b>Consequential amendments of Work Health and Safety Regulation 2017</b>	1
		2
<b>[1] Whole Regulation</b>		3
	Omit “\$6,000” wherever occurring in the penalty provisions.	4
	Insert instead “70 penalty units”.	5
<b>[2] Whole Regulation</b>		6
	Omit “\$30,000” wherever occurring in the penalty provisions.	7
	Insert instead “345 penalty units”.	8
<b>[3] Whole Regulation</b>		9
	Omit “\$18,000” wherever occurring in the penalty provisions.	10
	Insert instead “210 penalty units”.	11
<b>[4] Whole Regulation</b>		12
	Omit “\$3,600” wherever occurring in the penalty provisions.	13
	Insert instead “40 penalty units”.	14
<b>[5] Whole Regulation</b>		15
	Omit “\$1,250” wherever occurring in the penalty provisions.	16
	Insert instead “15 penalty units”.	17