

Passed by both Houses



New South Wales

Work Health and Safety Amendment (Review) Bill 2020

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2020



New South Wales

Work Health and Safety Amendment (Review) Bill 2020

Act No _____, 2020

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.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Work Health and Safety Amendment (Review) Act 2020*.

2 Commencement

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

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

[1] Section 5 Meaning of “person conducting a business or undertaking”

Insert at the end of the section—

Note. A person may be both a *person conducting a business or undertaking*, within the meaning of this section, and a *worker* within the meaning of section 7.

[2] Section 7 Meaning of “worker”

Insert at the end of the section—

Note. A person may be both a *worker*, within the meaning of this section, and a *person conducting a business or undertaking* within the meaning of section 5.

[3] Part 2, Division 5, note

Insert after the heading to the Division—

Note. 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 *Crimes Act 1900* and may be prosecuted under that Act. See section 18 of the *Crimes Act 1900*, 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.

[4] Section 31, heading

Omit “**Reckless**”. Insert instead “**Gross negligence or reckless**”.

[5] Section 31(1)(c)

Omit the paragraph. Insert instead—

- (c) the person—
 - (i) engages in the conduct with gross negligence, or
 - (ii) is reckless as to the risk to an individual of death or serious injury or illness.

[6] Section 72 Obligation to train health and safety representatives

Omit section 72(1)(c). Insert instead—

- (c) chosen by the health and safety representative.

[7] Section 72(2)

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”.

[8] Section 72(2)(a)

Omit “as soon as practicable within the period of 3 months after the request is made,”.

[9] Section 72(5)

Omit “subsections (1) (c) and (2)”. Insert instead “that subsection”.

[10] Section 72(7)

Omit “allow a health and safety representative to attend a course decided by the inspector and”.

[11] Section 112 Civil proceedings in relation to engaging in or inducing discriminatory or coercive conduct

Insert after section 112(3)(a)—

- (a1) an order declaring that the person has engaged in conduct of a type referred to in subsection (2)(a), (b) or (c), or

[12] Section 155B

Insert after section 155A—

155B Service of notices

- (1) A written notice served on a person under section 155(2) may be served—
 - (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
 - (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
 - (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
 - (d) in a way prescribed by the regulations.
- (2) The regulations may prescribe—
 - (a) the way of serving a notice, and
 - (b) the steps a person on whom a notice is served must take to bring it to the attention of other persons.

[13] Section 171 Power to require production of documents and answers to questions

Omit "An inspector who enters a workplace under this Division may" from section 171(1).

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".

[14] Section 171(1)(c)

Omit the paragraph. Insert instead—

- (c) require a person at the workplace to attend before the inspector at a stated reasonable time and place to answer questions put by the inspector.

[15] Section 171A

Insert after section 171—

171A Giving of notices

- (1) A written notice given to a person under section 171(2) may be given—
 - (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
 - (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

- (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
 - (d) in a way prescribed by the regulations.
- (2) The regulations may prescribe—
- (a) the way of giving a notice, and
 - (b) the steps a person to whom a notice is given must take to bring it to the attention of other persons.

[16] Section 229B Procedure for offences

Omit “\$50,000” from section 229B(4).

Insert instead “an amount equal to the monetary value of 650 penalty units”.

[17] Section 231 Procedure if prosecution is not brought

Omit “12 months” from section 231(1)(b). Insert instead “18 months”.

[18] Section 231(2A)

Insert after section 231(2)—

- (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.

[19] Part 13, Division 2A

Insert after Division 2—

Division 2A Penalty units

242A Definitions

In this Division—

CPI 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.

financial year means a period of 12 months starting on 1 July.

242B Value of penalty unit

- (1) For the purposes of this Act, the value of a *penalty unit* is—
- (a) for the financial year 2019–20—\$100, and
 - (b) for each subsequent financial year—the amount calculated as follows—

$$\$100 \times \frac{A}{B}$$

where—

A is the CPI number for the March quarter in the financial year immediately preceding the financial year for which the amount is calculated.

B is the CPI number for the March quarter of 2019.

- (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.

242C Amount of penalties

- (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.
- (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.

242D Notice of indexed penalties

- (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.
- (2) Failure to give the notice does not affect the amount of the penalty applying in a financial year.

[20] Section 271 Confidentiality of information

Insert after section 271(3)—

- (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—
- (a) information provided, or a document produced, under section 155 or Part 9,
- (b) information or a document that is personal information or health information about an individual despite the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*.

[21] Sections 272A and 272B

Insert after section 272—

272A Prohibition on certain insurance or indemnity arrangements

A person must not—

- (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
- (b) provide insurance or a grant of indemnity for liability for a monetary penalty under this Act, or
- (c) take the benefit of—
- (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
- (ii) a grant of indemnity for liability for a monetary penalty under this Act.

Maximum penalty—

- (a) for paragraph (a)—
 - (i) in the case of an individual—250 penalty units, or
 - (ii) in the case of a body corporate—1,250 penalty units, or
- (b) for paragraph (b) or (c)—
 - (i) in the case of an individual—500 penalty units, or
 - (ii) in the case of a body corporate—2,500 penalty units.

272B Liability of officers for offences by body corporate under section 272A

- (1) A person commits an offence against this section if—
 - (a) a body corporate commits an offence against section 272A, and
 - (b) the person is an officer of the body corporate, and
 - (c) the person—
 - (i) aids, abets, counsels or procures the commission of the offence, or
 - (ii) induces, whether by threats or promises or otherwise, the commission of the offence, or
 - (iii) conspires with others to effect the commission of the offence, or
 - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence.

Maximum penalty—1,250 penalty units.

- (2) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (3) The offence against this section can only be prosecuted by a person who can bring a prosecution for the offence against section 272A.
- (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.
- (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.

[22] Section 276 Regulation-making powers

Omit “\$30,000” from section 276(3)(h).

Insert instead “an amount equal to the monetary value of 345 penalty units”.

[23] Schedule 1 Application of Act to dangerous goods and high risk plant

Insert in appropriate order in clause 2—

- (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
- (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
- (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

- (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
- (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

[24] Schedule 1, clause 4

Insert in appropriate order—

- (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
- (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
- (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
- (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
- (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

[25] Schedule 1, clause 6

Insert in alphabetical order—

premises includes a vehicle, vessel, aircraft or other mobile structure.

[26] Schedule 4 Savings, transitional and other provisions

Insert after Part 5—

Part 6 Provisions consequent on enactment of Work Health and Safety Amendment (Review) Act 2020

27 Insurance and indemnity arrangements

- (1) This clause applies in relation to a contract of insurance or other arrangement, or a grant of indemnity for liability, (each an *existing arrangement*) mentioned in section 272A that is in force immediately before the commencement.
- (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.
- (3) In this clause—
commencement means the commencement of section 272A, as inserted by the *Work Health and Safety Amendment (Review) Act 2020*.

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

- [1] **Whole Act**
Omit “\$50,000” wherever occurring in the penalty provisions.
Insert instead “575 penalty units”.
- [2] **Whole Act**
Omit “\$100,000” wherever occurring in the penalty provisions.
Insert instead “1,155 penalty units”.
- [3] **Whole Act**
Omit “\$10,000” wherever occurring in the penalty provisions.
Insert instead “115 penalty units”.
- [4] **Sections 31(1)**
Omit “\$600,000” from the penalty provision.
Insert instead “6,925 penalty units”.
- [5] **Section 31(1)**
Omit “\$3,000,000” from the penalty provision.
Insert instead “34,630 penalty units”.
- [6] **Sections 31(1) and 32**
Omit “\$300,000” from the penalty provisions.
Insert instead “3,465 penalty units”.
- [7] **Section 32**
Omit “\$150,000” from the penalty provision.
Insert instead “1,730 penalty units”.
- [8] **Section 32**
Omit “\$1,500,000” from the penalty provision.
Insert instead “17,315 penalty units”.
- [9] **Sections 33, 104(1), 107, 108(1), 109(1), 197**
Omit “\$500,000” wherever occurring in the penalty provisions.
Insert instead “5,770 penalty units”.
- [10] **Sections 38(7), 75(1), 97(1) and (2), 150, 210(1) and (2) and 273**
Omit “\$5,000” wherever occurring in the penalty provisions.
Insert instead “60 penalty units”.
- [11] **Sections 38(7), 75(1), 97(1) and (2), 150, 210(1) and (2), 273**
Omit “\$25,000” wherever occurring in the penalty provisions.
Insert instead “290 penalty units”.

[12] Sections 41, 99(2), 190, 193, 200(1), 219 and 242(1)

Omit "\$250,000" wherever occurring in the penalty provisions.

Insert instead "2,885 penalty units".

[13] Sections 42(1) and (2), 43(1) and (2), 44(1) and (2), 45, 46 and 47(1)

Omit "\$20,000" wherever occurring in the penalty provisions.

Insert instead "230 penalty units".

[14] Sections 53(1) and (2), 57(1) and (2), 74(1) and 149(1)

Omit "\$2,000" wherever occurring in the penalty provisions.

Insert instead "25 penalty units".

Schedule 3 Consequential amendments of Work Health and Safety Regulation 2017

[1] Whole Regulation

Omit “\$6,000” wherever occurring in the penalty provisions.

Insert instead “70 penalty units”.

[2] Whole Regulation

Omit “\$30,000” wherever occurring in the penalty provisions.

Insert instead “345 penalty units”.

[3] Whole Regulation

Omit “\$18,000” wherever occurring in the penalty provisions.

Insert instead “210 penalty units”.

[4] Whole Regulation

Omit “\$3,600” wherever occurring in the penalty provisions.

Insert instead “40 penalty units”.

[5] Whole Regulation

Omit “\$1,250” wherever occurring in the penalty provisions.

Insert instead “15 penalty units”.