



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].