

Work Health and Safety and Other Legislation Amendment Bill 2017

Explanatory Notes

For an amendment to be moved during consideration in detail by
The Honourable Grace Grace MP
Minister for Employment and Industrial Relations
Minister for Racing and
Minister for Multicultural Affairs

Short title

The short title of the Bill is the Work Health and Safety and Other Legislation Amendment Bill 2017.

Policy objectives and the reasons for them

The amendments to be moved during consideration in detail support the fundamental policy underpinning the Bill to implement the findings and recommendations of the Best Practice Review of Workplace Health and Safety Queensland. They include:

- specifically excluding the defence of ‘accident’ from the offence of industrial manslaughter to reflect the fact that a failure to discharge such significant duties cannot be negated by reliance on the defence of accident;
- clarifying that, for the industrial manslaughter offences, a reference to a worker carrying out work for the business or undertaking includes a reference to a worker who is at a workplace to carry out work for the business or undertaking, including during a work break; and
- inserting a requirement for persons conducting a business or undertaking to provide a copy of provisional improvement notices issued by HSRs to the regulator (as previously approved by Government).

These amendments are intended to improve clarity of the Bill, provide certainty for stakeholders, and implement the intended policy and objectives of the Bill already approved by Government.

Achievement of policy objectives

The objectives are achieved by:

- amending clauses 4, 55 and 62 to exclude the defence of accident from the industrial manslaughter offences and clarify the meaning of ‘carrying out work for the business or undertaking’; and
- inserting a new clause 6A into the Bill to give effect to the recommendation from the Best Practice Review that the WHS Act be amended to require persons conducting a business

or undertaking to provide the regulator with a copy of all provisional improvement notices issued by HSRs in their workplace.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives.

Estimated cost for government implementation

There are no additional costs associated with the amendment to be moved during consideration in detail.

Consistency with fundamental legislative principles

The amendments are consistent with fundamental legislative principles.

Consultation

The amendments to be moved during consideration in detail have been informed by stakeholder feedback on the Bill, including through submissions provided to the Finance and Administration Committee as part of the Inquiry into the Bill.

Notes on provisions

Amendment 1 amends clause 4 (Insertion of new pt 2A) to clarify that, for the industrial manslaughter offences, a reference to a worker carrying out work for the business or undertaking includes a reference to a worker who is at a workplace to carry out work for the business or undertaking, including during a work break.

Amendment 2 amends clause 4 (Insertion of new pt 2A) to clarify that section 23 of the Criminal Code, the defence relating to intention and motive (accidents), does not apply to an offence under new sections 34C and 34D.

Amendment 3 inserts a new clause 6A which inserts a new section 97A in the *Work Health and Safety Act 2011*. New section 97A provides that, where a health and safety representative issues a provisional improvement notice to a person conducting a business or undertaking under section 90, the person must give a copy of the notice to the regulator. The copy of the notice must be given to the regulator as soon as practicable after the notice has been issued and failure to provide a copy of the notice to the regulator may result in a maximum penalty of 50 penalty units (\$5000).

Amendment 4 amends clause 55 (Insertion of new pt 2B) to clarify that, for the industrial manslaughter offences, a reference to a worker carrying out work for the business or undertaking includes a reference to a worker who is at a workplace to carry out work for the business or undertaking, including during a work break.

Amendment 5 amends clause 55 (Insertion of new pt 2B) to clarify that section 23 of the Criminal Code, the defence relating to intention and motive (accidents), does not apply to an offence under new sections 48N and 48O of the *Electrical Safety Act 2002*.

Amendment 6 amends clause 62 (Insertion of new pt 2A) to clarify that, for the industrial manslaughter offences, a reference to a worker carrying out work for the business or undertaking includes a reference to a worker who is at a workplace to carry out work for the business or undertaking, including during a work break.

Amendment 7 amends clause 62 (Insertion of new pt 2A) to clarify that section 23 of the Criminal Code, the defence relating to intention and motive (accidents), does not apply to an offence under new sections 25C and 25D of the *Safety in Recreational Water Activities Act 2011*.