

## CLAUSE NOTES

### *Work Health and Safety Amendment Bill 2023*

**Clause 1**      **Short title**

The short title will be the *Work Health and Safety Amendment Act 2023*.

**Clause 2**      **Commencement**

The Amendment Act will commence on the day on which it receives Royal Assent.

**Clause 3**      **Principal Act**

Provides that the *Work Health and Safety Act 2012* is the Principal Act referred to in the amendments.

**Clause 4**      **Section 31 amended (Gross negligence or reckless conduct Category 1)**

Clause 4 amends section 31 (Category 1 offence) to include an alternative element of gross negligence as a fault element, in addition to the current element of being reckless to the risk to an individual. The amendment to the Category 1 offence has the effect that the offence will apply if a person with a health and safety duty engages in conduct that is either grossly negligent or reckless as to the risk, and that conduct exposes an individual to a risk of death or serious injury or serious illness without reasonable excuse.

**Clause 5**      **Section 52 amended (Negotiations for agreement for work group)**

Clause 5 amends section 52 to clarify that a work group is to be negotiated and agreed with the workers who are proposed to form the group.

**Clause 6**      **Section 72 amended (Obligation to train health and safety representatives)**

Section 72 provides for the obligation to train health and safety representatives. A current requirement is that the PCBU must allow a health and safety representative to attend a course that is approved by the regulator, in accordance with the regulations, and chosen by the representative in consultation with the PCBU.

Clause 6 amends section 72(1)(c) (and consequentially a related reference in section 72(5)) to allow health and safety representatives to choose their training courses without the requirement to make the decision in consultation with the relevant PCBU.

**Clause 7**

**Section 155 amended (Powers of regulator to obtain information)**

Clause 7 amends section 155 to clarify how a notice to obtain information may be served on a person, and clarify its requirements. This amendment aligns the process for the issuing and service of notices under section 155 with those general requirements in section 209 which apply to improvement, prohibition, infringement, and non-disturbance notices.

The amendment also provides a notice may be served where the person is outside the State, or the notice relates to information that is outside the State or relates to a matter outside the State.

**Clause 8**

**Section 171 amended (Power to require production of documents and answers to questions)**

Clause 8 amends section 171 to:

- Clarify that the power in subsection (1) to require information of a person applies while the inspector is at the workplace;
- Clarify the reference to the document that may be required by the inspector in subsection (1)(b);
- Insert new provisions to allow an inspector to issue a written notice requiring the production of documents, written answers to specified questions, or attendance at an interview by audio-visual or audio link or in person, within 30 days of entering a workplace and provide a process to allow the person to request a change in the manner in which they attend the interview, which must be agreed to if it is reasonable in the circumstances. The requirements under these new provisions can only be exercised relevant to the purpose for which the workplace was entered. The notices are issued subject to the general requirements on notices in section 209.

**Clause 9**

**Section 172 amended (Abrogation of privilege against self-incrimination)**

Clause 9 amends section 172 to clarify that abrogation of privilege against self-incrimination does not apply to answering a question or providing information or a document in response to a requirement made under a corresponding work health and safety law.

**Clause 10**

**Section 173 amended (Warning to be given)**

Clause 10 amends section 173 to:

- Make amendments to subsection (1) to clarify the nature of the warning given to a person when they are required to answer questions or provide information or documents, and provide that subsection does not apply to the new process in section 171 to require information within 30 days of entering a workplace;
- Inserts new provisions adapted from subsection (1), related to the requirements for written notices and warnings that are issued under the new process in section 171.

**Clause 11**

**Section 231 amended (Procedure if prosecution is not brought)**

Clause 11 amends section 231 to extend the timeframe for a person to make a request to the regulator to bring a prosecution for a category 1 or a category 2 offence from 12 to 18 months.

The amendment includes a new provision and timeline so that such a request can also be made within 6 months following a coronial report being made, or coronial inquest or inquiry ending, if the person reasonably considers from the report, inquest or inquiry that a Category 1 or Category 2 offence has been committed.

Under the current provision, the regulator must advise the person within 3 months of their request whether the investigation is complete. The amendments add a new provision which applies when the investigation is not complete. This requires the regulator to provide written updates about the investigation to the person at least every 3 months, and give further advice on the completion of the investigation.

**Clause 12**

**Section 271 amended (Confidentiality of information)**

Clause 12 amends section 271 to include reference to the new provisions of section 271A.

**Clause 13**

**Section 271A inserted (Additional ways that regulator may use and share information)**

Clause 13 introduces section 271A to provide for how the regulator may use and share information obtained under the Act (other than Part 7) to another person including a corresponding regulator in the defined circumstances.

The defined circumstances relate to the sharing of information being necessary for administering, or monitoring or enforcing compliance with the Act, or another prescribed Act; or is necessary to lessen or prevent a serious risk to public health and safety; or for the recognition of authorisations under a corresponding WHS law; or where required for the exercise of powers or functions under a WHS law.

The amendment provides the section does not limit the other disclosures that may occur under s 271(3).

**Clause 14**      **Section 272A and 272 inserted (272A No insurance or other indemnity against penalties) (272B Liability of officers for offences by body corporate under section 272A)**

Clause 14 introduces section 272A to prohibit, without reasonable excuse, a person entering into a contract of insurance which covers a liability for a monetary penalty under the Act. Clause 14 also prohibits a person providing insurance or indemnity for a liability for a monetary penalty under the Act; and a person taking the benefit from the previously mentioned contracts, arrangements or indemnities. The provision provides such a contract or other arrangement is void to the extent it is prohibited by the section. The provision places an evidential burden on the accused if they wish to rely on a reasonable excuse.

Section 272B creates an offence for a person if a body corporate contravenes section 272A, the person is an officer of the body corporate, and involved in the contravention section 272A.

The purpose of the amendments is that a body corporate, an officer of a body corporate or an individual cannot contract out of the requirement to pay a fine for offences under the Act, whether by use of an insurance policy or by way of contractual indemnity arrangements.

**Clause 15**      **Repeal of Act**

The *Work Health and Safety Amendment Act 2023* will be automatically repealed after the first anniversary of this Act commencing.