

DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

Work Health and Safety Amendment Bill 2023

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Mr Speaker, I move that the Bill now be read a second time.

Work health and safety laws are fundamental to our modern society, operating to protect the health, safety and wellbeing of workers and improve safety outcomes in our workplaces.

Tasmania is a signatory to the Inter-Governmental Agreement on Regulatory and Operational Reform in Occupational Health and Safety, which includes implementation of model Acts and Regulations to harmonise work health and safety laws across the nation.

Mr Speaker, this Bill will amend the *Work Health and Safety Act 2012* (the Act) to adopt the Model Work Health and Safety Legislation Amendment 2022, bringing Tasmania in line with harmonised work health and safety laws across Australia. These changes, proposed under the Model WHS Legislation Amendment, implement recommendations from the review of the model work health and safety laws conducted by Ms Marie Boland in 2018 at the request of Work Health and Safety Ministers. I would firstly like to acknowledge all the people who engaged with this significant national review, including the families who have lost a loved one at work.

Mr Speaker, I will now address each of the proposed changes as provided in the Bill.

Firstly, the Bill amends section 31 of the Act to introduce a negligence element to Category 1 offences as an alternative to the existing standard of recklessness. This expands the most serious offence under the Act to include negligence as a fault element. This change means that both reckless and grossly negligent employers who expose workers to serious risks will face the most serious consequences and penalties under the legislation.

There are significant penalties for a Category 1 offence, with the maximum penalties currently being \$300 000 or five years' imprisonment, or both, for an individual, \$600 000 or five years' imprisonment, or both, for an individual as a person conducting a business or undertaking (a PCBU), or officer, or \$3 million for a body corporate.

The Bill also 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. This is a change from the current provision which states that the work group is to be determined by

negotiation and agreement between the PCBU and the workers who will form the work group or their representatives. The amendment reflects fairer workplace representation in relation to work health and safety issues and will assist PCBUs to identify who they must negotiate with when forming a work group.

The Bill also amends section 72 to allow health and safety representatives to choose their own training courses instead of making the decision in consultation with the relevant PCBU.

The next amendment, to section 155, clarifies how a notice to produce documents may be served on a person and clarify its requirements. This amendment aligns the process with the service of notices provisions with those in section 209, dealing with all improvement, compliance, and non-disturbance notices. This improves consistency within the legislation, reduces ambiguity, and fosters a consistent interpretation and application of these provisions.

Further to that amendment, an amendment to section 171 allows an inspector to issue a written notice requiring the production of documents, written answers to specified questions, or attendance at an interview, within 30 days of entering a workplace and also the ability to attend via audio-visual or audio-link. Again, this further improves clarity and consistency.

The Bill also clarifies 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. This amendment does not change anything already contained in that section, but rather, it adds a clarifying element.

The Bill amends section 173 to clarify the nature of the warning given to a person when they are required to answer questions, provide information or provide documentation.

The Bill also 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 and the inclusion of a timeframe of six months to make such request following a coronial inquest or inquiry. The amendment also refers to the regulator advising the person that if an investigation is not complete the regulator must provide a written update about the investigation every three months and then when the investigation is complete, give the person written notice stating whether a prosecution will be brought and if it will not, the reasons why.

These amendments provide further time for prosecutions to be requested and to ensure ongoing accountability to the person who made a request and ongoing communication between the person and the work health and safety regulator.

The Bill introduces a new provision under section 271A which sets out how the regulator may use and share information obtained under compulsion in certain circumstances and including sharing information with other state and territory regulators. This new provision will enable cross-border information sharing between regulators around Australia and will include a specific power enabling regulators to share information between jurisdictions in situations where it would aid them in performing their functions. This amendment will encourage greater information sharing amongst regulators, provide for more efficient investigations and assist regulators to identify work health and safety trends.

And finally, Mr Speaker, the Bill introduces new provisions under sections 272A and 272B to prohibit a person from taking out insurance for payment of work health and safety penalties. This will mean that a body corporate or individual cannot contract out of the requirement to pay a fine for work health and safety offences, whether by use of an insurance policy or by way of contractual indemnity arrangements. Importantly, this will increase the deterrent effect of the penalties under the Act to improve work health and safety outcomes.

Mr Speaker, the Bill presents a number of changes as outlined, that ensure Tasmania's work health and safety laws are contemporary, effective, and in line with our agreement to harmonise work health and safety laws. The Bill reflects recommendations made in the Marie Boland Review of the Model Work Health and Safety Laws Final Report dated December 2018 and which have undergone significant consultation and feedback by Safe Work Australia.

The proposed changes contained in the Bill will apply from its commencement, on the day the Bill receives the Royal Assent.

Mr Speaker, these changes will be beneficial to Tasmanian workplaces and workers. They are valuable changes and are consistent with the objects of our Act and the model laws, ensuring that these amendments for Tasmania are consistent with the rest of Australia and aligns with our Government's goal to advance work health, safety and wellbeing in Tasmania.

Mr Speaker, I commend the Bill to the House.