

TASMANIA

WORK HEALTH AND SAFETY AMENDMENT BILL 2023

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**WORK HEALTH AND SAFETY AMENDMENT
BILL 2023**

*(Brought in by the Minister for Workplace Safety and
Consumer Affairs, the Honourable Elise Nicole Archer)*

A BILL FOR

An Act to amend the *Work Health and Safety Act 2012*

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Work Health and Safety Amendment Act 2023*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

3. Principal Act

In this Act, the *Work Health and Safety Act 2012** is referred to as the Principal Act.

*No. 1 of 2012

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

Section 31(1) of the Principal Act is amended by omitting paragraph (c) and substituting the following paragraph:

- (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.

5. Section 52 amended (Negotiations for agreement for work group)

Section 52(1)(b) of the Principal Act is amended by omitting “will” and substituting “are proposed to”.

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

Section 72 of the Principal Act is amended as follows:

- (a) by omitting paragraph (c) from subsection (1) and substituting the following paragraph:
 - (c) chosen by the health and safety representative.

- (b) by omitting from subsection (5) “as to the matters set out in subsection (1)(c) and subsection (2)” and substituting “about a matter mentioned in subsection (2)”.

7. Section 155 amended (Powers of regulator to obtain information)

Section 155 of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (2):
 - (2A) The notice may be served in any way that a notice may be issued or given under section 209.
- (b) by omitting paragraph (b) from subsection (3) and substituting the following paragraph:
 - (b) contain a statement to the effect that it is an offence to refuse or fail to comply with the requirement without reasonable excuse; and
- (c) by inserting the following subsection after subsection (7):
 - (8) A notice may be served on a person under this section even though –

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- (a) the person is outside the State; or
- (b) the notice relates to information, documents or evidence –
 - (i) outside the State; or
 - (ii) relating to a matter happening outside the State.

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

Section 171 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “, while the inspector is at the workplace” after “may”;
- (b) by omitting paragraph (b) from subsection (1) and substituting the following paragraph:
 - (b) require a person who has custody of, or access to, a document mentioned in paragraph (a) to produce the document to the inspector; or
- (c) by inserting the following subsections after subsection (2):

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- (2A) Also, within 30 days after the day an inspector enters a workplace under this Division, the inspector or another inspector may give a written notice to a person –
- (a) requiring the person, if the person has custody of, or access to, a specified document, to produce the document to the inspector within a specified period; or
 - (b) requiring the person to give written answers to specified questions within a specified period; or
 - (c) requiring the person to –
 - (i) attend before the inspector at a specified time and place and answer any questions put by the inspector; or
 - (ii) attend before the inspector at a specified time, by audiovisual link or audio link, and answer any

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questions put by
the inspector.

- (2B) If a requirement is made of a person under subsection (2A)(c)(i) to attend before the inspector in person –
- (a) the person may ask to attend before the inspector by audiovisual link or audio link instead; and
 - (b) the inspector must agree to the request if it would be reasonable in the circumstances.
- (2C) If a requirement is made of a person under subsection (2A)(c)(ii) to attend before the inspector by audiovisual link or audio link –
- (a) the person may ask to attend before the inspector in person instead; and
 - (b) the inspector must agree to the request if it would be reasonable in the circumstances.
- (2D) A requirement under subsection (2A) may only relate to a

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document or question relevant to the purpose for which the workplace was entered.

(2E) A notice under subsection (2A) may be served in any way that a notice may be issued or given under section 209.

(d) by inserting in subsection (3) “or (2A)(c)” after “subsection (1)(c)”.

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

Section 172 of the Principal Act is amended by inserting after subsection (2) the following subsection:

(3) To avoid doubt, this section does not apply to answering a question or providing information or a document in response to a requirement made under a corresponding WHS law.

10. Section 173 amended (Warning to be given)

Section 173 of the Principal Act is amended as follows:

(a) by inserting in subsection (1) “other than by a written notice under section 171(2A),” after “Part,”;

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(b) by omitting paragraph (b) from subsection (1) and substituting the following paragraph:

(b) warn the person it is an offence to refuse or fail to comply with the requirement without reasonable excuse; and

(c) by inserting the following subsection after subsection (1):

(1A) A written notice under section 171(2A) must –

(a) state that the notice is given under section 171(2A); and

(b) state the purpose of the entry to the workplace to which the notice relates; and

(c) contain a statement to the effect that it is an offence to refuse or fail to comply with a requirement in the notice without reasonable excuse; and

(d) contain a statement about the effect of sections 172 and 269; and

(e) if the notice requires the person to attend before an

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inspector, state that the person may attend with a legal practitioner or other representative.

- (d) by inserting in subsection (2) “or a notice with the statement mentioned in subsection (1A)(d)” after “subsection (1)(c)”.

11. Section 231 amended (Procedure if prosecution is not brought)

Section 231 of the Principal Act is amended as follows:

- (a) by omitting subsection (1) and substituting the following subsections:

(1) This section applies if –

(a) a person –

- (i) reasonably considers that the occurrence of an act, matter or thing constitutes a Category 1 offence or a Category 2 offence; or
- (ii) reasonably considers, from a coronial report or

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the proceedings at
a coronial inquiry
or inquest, that a
Category 1
offence or a
Category 2
offence has been
committed; and

(b) no prosecution for the
offence has been brought.

(1A) The person may make a written
request to the regulator that a
prosecution be brought.

(1B) The request may only be made –

(a) if subsection (1)(a)(i)
applies, at least 6 months
but not more than 18
months after the act,
matter or thing occurs; or

(b) if subsection (1)(a)(ii)
applies, within 6 months
after the report is made or
the inquiry or inquest
ends.

Note

See section 232 in relation to the limitation period for
prosecutions.

(b) by inserting the following subsection
after subsection (2):

(2A) If, under subsection (2)(a)(i), the regulator advises the person that the investigation is not complete, the regulator must –

(a) until the investigation is complete, give the person a written update about the investigation at least every 3 months; and

(b) when the investigation is complete, give the person a written notice stating –

(i) whether a prosecution will be brought; and

(ii) if a prosecution will not be brought, the reasons why.

(c) by inserting in subsection (3) “under subsection (2) or (2A)” after “advises the person”.

12. Section 271 amended (Confidentiality of information)

Section 271(3) of the Principal Act is amended by omitting paragraph (c) and substituting the following paragraph:

(c) that is authorised under section 271A; or

13. Section 271A inserted

After section 271 of the Principal Act, the following section is inserted in Division 1:

271A. Additional ways that regulator may use and share information

- (1) This section applies in relation to information or a document mentioned in section 271(1).
- (2) The regulator or a person authorised by the regulator may, in the circumstances stated in subsection (3) –
 - (a) disclose the information, or the contents of or information contained in the document, to any other person including a corresponding regulator; or
 - (b) give access to the document to any other person including a corresponding regulator; or
 - (c) use the information or document.
- (3) The circumstances are that the regulator reasonably believes the disclosure, access or use –
 - (a) is necessary for administering, or monitoring or enforcing compliance with, this Act; or
 - (b) is necessary for the administration or enforcement of

another Act prescribed by the regulations; or

(c) is necessary for the administration or enforcement of another Act or law, if the disclosure, access or use is necessary to lessen or prevent a serious risk to public health or safety; or

(d) is necessary for the recognition of authorisations under a corresponding WHS law; or

(e) is required for the exercise of a power or function under a corresponding WHS law.

(4) This section does not limit the operation of section 271(3)(a), (b), (d), (e) or (f) in relation to the disclosure of information, giving of access to a document or use of information or a document by the regulator or a person authorised by the regulator.

14. Sections 272A and 272B inserted

After section 272 of the Principal Act, the following sections are inserted in Division 1:

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272A. No insurance or other indemnity against penalties

- (1) A person must not, without reasonable excuse –
- (a) enter into a contract of insurance or other arrangement under which the person, or another person, is purportedly covered for all or part of a liability for a monetary penalty under this Act; or
 - (b) provide insurance or a grant of indemnity for all or part of a liability for a monetary penalty under this Act; or
 - (c) take the benefit of a contract of insurance, arrangement or grant of indemnity mentioned in paragraph (a) or (b).

Penalty: In the case of –

- (a) an individual, a fine not exceeding \$50 000; or
 - (b) a body corporate, a fine not exceeding \$250 000.
- (2) Subsection (1) places an evidential burden on the accused to show a reasonable excuse.
- (3) A term of a contract of insurance or other arrangement is void to the extent it

purports to cover a person for all or part of a liability for a monetary penalty under this Act.

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 contravenes section 272A; and
 - (b) the person is an officer of the body corporate; and
 - (c) the person is involved in the body corporate's contravention of section 272A.

Penalty: A fine not exceeding \$50 000.

- (2) For subsection (1)(c), section 256(2) applies as if a reference in that section to a civil penalty provision were a reference to section 272A.

15. Repeal of Act

This Act is repealed on the first anniversary of the day on which it commenced.