

Work Health and Safety and Other Legislation Amendment Bill 2023

Explanatory Notes

For

Amendments to be moved during consideration in detail by the Honourable Grace Grace MP, Minister for State Development and Infrastructure, Minister for Industrial Relations and Minister for Racing

Title of the Bill

Work Health and Safety and Other Legislation Amendment Bill 2023

Policy objectives of the amendments

The Work Health and Safety and Other Legislation Amendment Bill 2023 (the Bill) implements recommendations from the 2022 *Review of the Work Health and Safety Act 2011 – Final Report* (the WHS Act Review Report) and the national 2018 *Review of the model work health and safety laws* (the Boland Review).

Amendments relating to Category 1 offences

The Bill, as introduced, proposed amending the Category 1 offence in the *Work Health and Safety Act 2011* (WHS Act) and the *Safety in Recreational Water Activities Act 2011* (SRWA Act) to include negligence as a fault element, in addition to the current fault element of reckless conduct. This amendment was recommended by the Boland Review.

In February 2024, the independent Work Health and Safety (WHS) Prosecutor completed the *Review to examine the scope and application of the industrial manslaughter provisions in the Work Health and Safety Act 2011* (the Industrial Manslaughter Review), which makes recommendations to improve and strengthen the industrial manslaughter offence and provide for alternative verdicts. The Industrial Manslaughter Review occurred as a result of recommendation 31 of the WHS Act Review Report.

The objective of the proposed amendments is to retain the Category 1 offences in the WHS Act and SRWA Act in their current form to provide government with the opportunity to consider implementation of recommendations from the Industrial Manslaughter Review and amendments to Category 1 offences in a comprehensive manner at the same time.

Achievement of the policy objectives

The proposed amendments support the Bill to achieve its policy objectives by:

- omitting clause 8 in the Bill which had proposed amending section 21 (Reckless conduct – category 1) of the SRWA Act to include negligence as a fault element in the Category 1 offence, in addition to reckless conduct; and
- omitting clause 16 in the Bill which had proposed amending section 31 (Reckless conduct – category 1) of the WHS Act to include negligence as a fault element in the Category 1 offence, in addition to reckless conduct.

Alternative ways of achieving policy objectives

There are no alternative ways to achieve the policy objectives other than by legislative amendment.

Estimated cost for government implementation

There are no additional costs for government associated with the amendments.

Consistency with fundamental legislative principles

The amendments are consistent with the fundamental legislative principles under the *Legislative Standards Act 1992*.

Consultation

The proposed amendments will allow further consideration to be given to the recommendations of the Industrial Manslaughter Review. In conducting the review, the independent WHS Prosecutor invited a range of parties to provide confidential submissions to the Industrial Manslaughter Review, including unions, employer representatives, government agencies and the Office of the Director of Public Prosecutions.

Consistency with legislation of other jurisdictions

National model WHS laws have been adopted by all jurisdictions except for Victoria. Amendments to the model WHS Act are developed through Safe Work Australia and considered for approval by WHS Ministers. Governments in each jurisdiction are responsible for considering and giving effect to amendments to the model WHS Act in their jurisdiction.

At present, the Category 1 offence amendments in the model WHS Act to include negligence have been adopted in New South Wales, the Australian Capital Territory and by the Commonwealth.

Notes on provisions

Amendment 1 omits clause 8 of the Bill.

Amendment 2 amends clause 16 of the Bill.