

Work Health and Safety and Other Legislation Amendment Bill 2017

Explanatory Notes

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

In October 2016 the Government announced a best practice review of work health and safety laws (the Review) as a result of fatalities at Dreamworld and Eagle Farm. These fatalities highlighted the need to ensure the current work health and safety (WHS) framework, and how it is administered, is robust, operates as an effective deterrent to non-compliance, and is responsive to emerging issues. Under the terms of reference, the Review specifically considered:

- the appropriateness of WHSQ's Compliance and Enforcement Policy;
- the effectiveness of WHSQ's compliance regime, enforcement activities, and dispute resolution processes;
- WHSQ's effectiveness in relation to providing compliance information and promoting work health and safety awareness and education;
- the appropriateness and effectiveness of the administration of public safety matters by WHSQ; and
- any further measures that can be taken to discourage unsafe work practices, including the introduction of a new offence of gross negligence causing death as well as increasing existing penalties for work-related deaths and serious injuries.

On 3 July 2017, the final report for the Review was provided to the Government. The Review proposed a number of legislative amendments to the *Work Health and Safety Act 2011* (WHS Act), including some instances where mirror amendments are proposed for the *Electrical Safety Act 2002* and the *Safety in Recreational Water Activities Act 2011*.

The Bill implements the legislative amendments from the Review including:

- introducing an offence of industrial manslaughter;
- establishing an independent statutory office for work health and safety prosecutions;
- addressing issue resolution matters by expanding the jurisdiction of the QIRC to include hearing and determining work health and safety disputes;
- restoring the status of codes of practice as existed under the WHS Act 1995;

- prohibiting enforceable undertakings being accepted for contraventions, or alleged contraventions, of the WHS Act that involve a fatality;
- reintroducing the ability for a PCBU to appoint a WHSO; and
- enhancing support for, and the role of, HSRs.

Industrial manslaughter amendments

The Bill introduces a new offence in the WHS Act of industrial manslaughter. This includes both a “senior officer” offence and an “employer” offence where conduct negligently causes death of a worker. The existing standard of proof in Queensland for criminal negligence will be applied to both offences and the maximum custodial sentence for an individual will be 20 years and the maximum penalty for a body corporate will be \$10 million. The Bill makes equivalent amendments to include industrial manslaughter offences in the *Electrical Safety Act 2002* and the *Safety in Recreational Water Activities Act 2011*.

Independent statutory office for prosecutions amendments

The Bill establishes an independent statutory office for WHS prosecutions. The statutory office will be headed by a WHS Prosecutor appointed by the Governor-in-Council for a five year renewable term.

The Bill transfers the current functions of the Regulator to conduct and defend proceedings under the WHS Act before a court or tribunal to the WHS Prosecutor under the Bill and will enable the WHS Prosecutor to exercise all functions in relation to work health and safety prosecutions. Transfer of the prosecutorial role to the WHS Prosecutor will not however affect the requirement for indictable offences (Category 1 and industrial manslaughter) to be referred to the Director of the Public Prosecutions (DPP) for decision and action. In deciding whether to initiate a prosecution under the WHS Act, the Bill requires the WHS Prosecutor to follow the guidelines issued by the DPP.

Under the WHS Act inspectors with the written authorisation of the Regulator, generally or in a particular case may take proceedings of an offence. The Bill clarifies that inspectors may take proceedings for category 3 offences with the authority of the WHS Prosecutor. To facilitate this the Bill includes provisions to enable the sharing of information between the Regulator and the WHS Prosecutor

Issue resolution amendments

The Bill transfers jurisdiction for the review of reviewable decisions (under Schedule 2A of the WHS Act 2011) as currently vested in the Queensland Civil and Administrative Tribunal (QCAT), to the QIRC and expands the jurisdictions of the QIRC to hear and determine the following categories of disputes:

- a dispute in relation to the provision of information by an employer to a HSR;
- a dispute in relation to a request by a HSR for assistance;
- a dispute in relation to WHS issue resolution process; and

- a dispute in relation to cease work matters.

To ensure the role of inspectors in disputes is maintained and to encourage disputes to be resolved between the parties, and preferably at the workplace as is intended under the WHS Act, the Bill prescribes that disputes cannot be lodged with the QIRC until 24 hours after an inspector is requested to assist with resolving a dispute and the dispute remains unresolved.

The QIRC will be able to exercise all its powers (including conciliation, requiring the production of documents or compulsory attendance and the issuing of orders) in settling the dispute and will have the power to dismiss a matter without conducting a hearing or conference where it believes the matter is frivolous, vexatious or lacks substance.

Right of entry amendments

The Bill also enables inspectors to make a determination on the matters where WHS right of entry issues cannot be resolved (after reasonable efforts have been made) and remain in dispute by workplace parties. This includes whether there is a valid right to enter and the WHS issues that have given rise to the parties for entry.

Allowing inspectors to make a determination on these matters supports resolution of right of entry for workplace health and safety matters as quickly as possible at the workplace and possibly without the need for escalation to a tribunal.

Code of practice amendments

The Bill clarifies the status of codes of practice by restoring the previous requirements in section 26(3) of the repealed *Workplace Health and Safety Act 1995* (WHS Act 1995) to require, where relevant, the safety measures in a code of practice to be followed unless equal to or better than measures can be demonstrated. To ensure the content of codes of practice remain relevant and up to date the Bill requires codes of practice to be reviewed every five years.

Enforceable undertaking amendments

Previously, the WHS Act provided that a WHS undertaking (an enforceable undertaking) cannot be accepted for a contravention or alleged contravention that is a category 1 offence. The Bill expands this exclusion to all offences that involve a fatality. The Bill includes equivalent amendments to the enforceable undertakings requirements under the *Electrical Safety Act 2002* and the *Safety in Recreational Water Activities Act 2011*.

Workplace Health and Safety Officer and Health and Safety Representative amendments

The Bill reintroduces the role of Workplace Health and Safety Officer (WHSO) as existed under the WHS Act 1995. The requirement for appointment of a WHSO will be optional so employers can assess the appropriateness of engaging such an officer at their workplace. The Bill also contains provisions to incentivise PCBUs to engage a WHSO by providing that engagement of a WHSO can be used as evidence that steps have been taken to manage health and safety risks.

The WHS Act establishes a framework for health and safety representatives (HSRs) with powers to inspect their workplace, to be present at interviews, to receive information regarding work health and safety matters and to request the establishment of health and safety committees. Trained HSRs may also direct work to cease and issue provisional improvement notices (PINs), which require a person conducting a business or undertaking (PCBU) to rectify a contravention or prevent a likely contravention of the WHS Act. The Bill makes a number of amendments to support the role of HSRs to:

- reinstate repealed provisions to require a PCBU to provide the regulator with a list of HSRs and deputy HSRs for each work group;
- mandate training for HSRs within six months of a HSR being elected to the role, with refresher training to be undertaken at three yearly intervals; and
- require a PCBU to forward to the regulator a copy of all PINs issued by HSRs.

Mandatory training will support the role of HSRs in improving health and safety outcomes at the workplace by ensuring HSRs have the necessary skills and knowledge to effectively perform all of their functions. In particular, the ability to issue PINs and direct unsafe work to cease are considered critical functions to assist HSRs in securing compliance at the workplace.

The availability of a comprehensive list of HSRs will provide Workplace Health and Safety Queensland (WHSQ) with the capacity to communicate directly with HSRs and provide relevant support and information. Information on PINs issued by HSRs will also provide WHSQ with an understanding of common issues identified by HSRs across industry.

Achievement of policy objectives

The Bill will achieve its objectives by amending the *Work Health and Safety Act 2011*, *Electrical Safety Act 2002* and the *Safety in Recreational Water Activities Act 2011* to:

- introduce an offence of industrial manslaughter (negligence causing death);
- establish an independent statutory office for work health and safety prosecutions;
- address issue resolution matters by expanding the jurisdiction of the Queensland Industrial Relations Commission (QIRC) to include hearing and determining disputes;
- restore the status of codes of practice as they existed under the *Workplace Health and Safety Act 1995*;
- require a mandatory review of codes of practice in operation in Queensland every five years;
- clarify the circumstances in which the inspector powers under s.171 of the WHS Act apply;
- prohibit enforceable undertakings in circumstances involving a fatality;
- mandate training for health and safety representatives (HSRs);
- require persons conducting a business or undertaking to provide HSR lists and copies of provisional improvement notices issued by HSRs to the regulator;
- allow the discretionary appointment of a work health and safety officer (WHSO);

- permit the appointment of a WHSO or HSR to be used as evidence that a duty holder has taken action to mitigate health and safety risks at a workplace; and
- mandate the use of *The Director of Public Prosecutions Guidelines* when deciding whether to initiate a prosecution.

The approach to achieving the policy objectives is reasonable and appropriate. The amendments give effect to the recommendations of the Review that require legislative amendment.

The amendment to introduce offences of industrial manslaughter will provide appropriate penalties for the worst cases of workplace fatalities involving criminal negligence.

The amendment to establish a statutory office for work health and safety prosecutions headed up by a WHS Prosecutor will ensure that independence in prosecutorial decision making is maintained thereby supporting public confidence in the prosecutions system for work health and safety matters.

The amendment to expand the jurisdiction of the Queensland Industrial Relations Commission (QIRC) to include hearing and determining a number of disputes under the WHS Act will provide timely independent resolution of significant work health and safety disputes that are unable to be resolved at the workplace level.

The amendment to restore the status of codes of practice that existed under the *Workplace Health and Safety Act 1995* will ensure that codes of practice will be the minimum standard for managing work health and safety risks and inspectors are able to enforce those codes.

Alternative ways of achieving policy objectives

The amendments contained in this Bill are considered the best way of achieving the policy objectives.

Estimated cost for government implementation

There will be minimal costs to Government associated with the amendments, as these will be met within existing resources of the department.

Consistency with fundamental legislative principles

The Bill's amendments to the work health and safety legislation are consistent with fundamental legislative principles.

The new offence of industrial manslaughter potentially infringes upon fundamental legislative principles (FLPs) in terms of reasonableness for the conduct to be considered an offence and also, the severity of this penalty. The offence recognises the extremely serious circumstances in which both a fatality has occurred, and that an individual or corporation can be seen to have potentially failed through behaviours and attitude to a catastrophic extent, exceeding

that of recklessness under category 1 offences. The guidelines for such prosecutions are identical to those for manslaughter under the Criminal Code, therefore providing the standard safeguards around prosecution decisions.

There is a further potential FLP issue given the offences committed by individuals have no limitation period for prosecution. In general, the principle would apply that there must be an end to liability to prosecution at some reasonable point. However, in this situation, the severity of the outcome is considered great enough to warrant the drafting.

Consultation

In undertaking the review, the reviewer was supported by a tripartite reference group which was comprised of two technical experts and representatives from the Australian Industry Group, Master Builders Queensland, the Queensland Council of Unions, the Australian Workers Union and the Queensland Tourism Industry Council.

A discussion paper on the review, providing background information and containing 58 discussion questions relevant to the terms of reference, was also issued in April 2017. In addition, face to face consultations were held with a number of key worker, employer and industry representatives, relevant Queensland Government agencies, and statutory office holders.

The Office of Best Practice Regulation within the Queensland Productivity Commission was consulted on the amendments in the Bill and advised that a regulatory impact statement was not required.

The Office of the Queensland Parliamentary Counsel, the Parliamentary Liaison Officer, and the Department of Premier and Cabinet have also been consulted.

The Department of Justice and Attorney-General has been consulted about the proposed new industrial manslaughter offence and the establishment of the independent statutory office for the Work Health and Safety Prosecutor.

The QIRC has been consulted regarding the expansion of its jurisdiction to include hearing and determining issues resolution disputes.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland.

Notes on provisions

Part 1 Preliminary

Clause 1 states the short title of the Act.

Clause 2 states that Part 2, division 3 and part 3, division 3 commences on 1 July 2018 and Part 2, division 4 commences on a day to be fixed by proclamation.

Part 2 – Amendment of *Work Health and Safety Act 2011*

Division 1 Preliminary

Clause 3 states that this part amends the *Work Health and Safety Act 2011*.

Division 2 Amendments commencing on assent

Clause 4 inserts a new part 2A establishing offences for industrial manslaughter.

New section 34A(1) provides definitions for the following terms used in this part: *conduct*, *executive officer* and *senior officer*. New section 34A(2) clarifies that a person's conduct causes death if it substantially contributes to the death.

New section 34B establishes an exception to provide that a volunteer does not commit an offence under this part. However, this clause clarifies that despite section 34(2) of the Act, a senior officer of an unincorporated association, other than a volunteer, may commit an offence under this part.

New section 34C creates a new offence for industrial manslaughter by a person conducting a business or undertaking (PCBU). The new offence provides that the PCBU commits an offence if:

- a worker dies in the course of carrying work for the business or undertaking, or is injured and later dies; and
- the person's conduct causes the death of the worker; and
- the person is negligent about causing the death of the worker, or another worker by the conduct.

The maximum penalty for the new offence is 20 years imprisonment for an individual or 100,000 penalty units (\$10,000,000) for a body corporate. An offence against new section 34C(1) is a crime.

New section 34D creates a new offence for industrial manslaughter by a senior officer of a PCBU. The elements of this offence are the same as the new offence for industrial

manslaughter by a PCBU. The maximum penalty is 20 years imprisonment. An offence against new section 34D(1) is a crime.

Clause 5 amends section 71 to include a new subsection (7) to provide that a PCBU is not required to give a HSR access to information that is *confidential commercial information*. Subsection (8) provides the meaning of *confidential commercial information* for section 71.

Clause 6 removes the current section 74 and replaces it with a new section 74 which provides for a new obligation for PCBUs to provide a copy of the current list of HSRs and deputy HSRs to the regulator, as well as displaying the list in a specified manner. The maximum penalty for failure to comply with this provision is 20 penalty units.

Clause 7 amends section 216 (Regulator may accept WHS undertakings) to provide that, in addition to a category 1 offence, a WHS undertaking cannot be accepted for a contravention or alleged contraction that is –

- a category 2 offence, if the person's failure to comply with a health or safety duty results in the death of an individual; or
- an offence against part 2A (Industrial manslaughter).

Clause 8 makes a consequential amendment to section 222 to be consistent with amendments made to section 216.

Clause 9 amends section 230 (Prosecutions) to clarify that proceedings for an offence against part 2A (Industrial manslaughter) are not taken in a summary way under the *Justices Act 1886*.

Clause 10 amends section 231 (Procedure if prosecution not brought) to clarify that a written request that a prosecution be brought can also be made to the regulator if a person reasonably considers that an act or omission constitutes an offence against the new part 2A (industrial manslaughter) and no prosecution has been brought in relation to the act or omission 6 months after the act or omission occurs. It also makes consequential amendments to reflect the new offences in part 2A (Industrial manslaughter).

Clause 11 amends section 232 (Limitation period for prosecutions) to provide that the periods specified in section 232(1) do not apply to a proceeding for an offence against part 2A (Industrial manslaughter).

Clause 12 amends section 274 by inserting a new provision which provides that a code of practice expires 5 years after its commencement.

Clause 13 amends schedule 5 (Dictionary) to insert new definitions relating to *causes*, *conduct* and *senior officer*.

Division 3 Amendments commencing on 1 July 2018

Clause 1 inserts a new section (section 26A Duty of persons conducting a business or undertaking – codes of practice). This section provides that where the Minister has approved a code of practice for the purposes of the *Work Health and Safety Act 2011* that a person conducting a business or undertaking (PCBU) must either comply with the code or otherwise provide a standard of health and safety that is equivalent to or higher than the standard required under the code.

Clause 15 amends section 72 to provide that PCBUs must ensure so far as is reasonably practicable that a HSR completes training prescribed in regulation. Failure to meet this obligation attracts a maximum penalty of 100 penalty units. The PCBU must allow a HSR time off work to attend the training; pay the training fees and any other associated reasonable costs; and pay the HSR their usual entitlements while attending the training.

Clause 16 amends section 76 by omitting subsection 76(2) and replacing it with a new provision. The new section 76(2) sets extends membership of a health and safety committee to include any work health and safety officer (WHSO) for the business or undertaking.

Clause 17 amends section 78 to provide that a HSR committee must meet when requested by the WHSO for the business or undertaking.

Clause 18 makes a consequential amendment to section 85(6)(a) as a result of amendments to section 72(1).

Clause 19 makes a consequential amendment to section 90(4)(a) as a result of amendments to section 72(1).

Clause 20 inserts a new part 5A (Work health and safety officers).

New section 103A sets out that a PCBU may appoint a person who holds a certificate of authority for appointment as a WHSO for the business or undertaking. Nothing prevents a PCBU from appointing themselves as the WHSO for the business or undertaking.

New Section 103B sets out the general functions of a WHSO (who is not a PCBU) for a business or undertaking. These are to notify the PCBU on WHS matters; to identify hazards and risks arising from the work of the business or undertaking and report on them in writing to the PCBU; to immediately notify the PCBU about a work health and safety incident or any immediate or imminent risk to health and safety; to investigate or assist in the investigation of any incidents; to accompany an inspector during inspection of a business or undertaking; to establish appropriate WHS educational and training programs; and any other function prescribed in regulation.

New section 103C sets the functions of a WHSO who is the PCBU. The functions are to investigate or assist in the investigation of any incidents; to accompany an inspector during inspection of a business or undertaking; to establish appropriate WHS educational and training programs; and any other function prescribed in regulation. Functions that require the WHSO to report or notify the PCBU do not apply when the WHSO is the PCBU.

New section 103D sets out the assessment functions which a WHSO must undertake at specified intervals to assess risks to health and safety from the work of the business or undertaking and in accordance with any work health and safety criteria approved by the health and safety committee. Specified intervals means the intervals agreed between the health and safety committee and the WHSO or otherwise at least every 12 months.

Section 103E sets out the requirements for a WHSO to prepare a report on the assessment carried out under in section 103D. If the assessment identifies any risks to health and safety the report must include recommendations about managing the risks. The report is to be provided to the PCBU within 30 days of the assessment being carried out.

Section 103F sets out the general obligations of a PCBU in relation to WHSOs. These obligations include: giving the WHSO information the PCBU has about risks to work health and safety at the business or undertaking; allowing the WHSO to be present at interviews between the PCBU and a worker (with the worker's consent); consultation requirements regarding proposed changes with WHS implications for the business or undertaking; allowing WHSOs to undertake their WHS assessment and inspection functions during normal business hours. The PCBU must take appropriate action to manage hazards and risks notified to the PCBU or identified in the WHSO's assessment report and as a result of any incidents or immediate or imminent risks that have been notified to the PCBU by the WHSO. The PCBU must provide appropriate resources and assistance to the WHSO for the exercise of their functions and keep a copy of the assessment report for at least five years. The PCBU may instruct the WHSO to take reasonable actions to minimise risks to health and safety.

New section 103G sets out the circumstances in which a person cannot be held personally liable for their actions or omissions as a WHSO.

New section 103H provides that appointment of a WHSO by a PCBU does not affect any duties or obligation owed by the PCBU under the WHS Act.

New section 103I imposes an obligation on the PCBU to display a notice identifying each WHSO at that business or undertaking. The maximum penalty for non-compliance with this provisions is 40 penalty units.

Clause 21 amends various provisions of section 106 to ensure work health and safety officers are included in the list of office holders to whom that section applies, with reference to the prohibited (discriminatory) conduct provision in section 105.

Clause 22 amends section 164 by adding the position of WHSO to the list of office holders whom an inspector must notify upon entering a workplace under section 163.

Clause 23 amends section 171 to clarify the situations in which an inspector can require production or documents and answers to questions. It differs from the current section 171 in that it clarifies that the power extends not only to the inspector who enters (or has entered) a workplace, but to any other inspector if an inspector has entered the workplace within the last 30 days. In particular, the amendment provides that the powers under section 171:

- apply to an inspector who has entered a workplace on a previous occasion, or another inspector;

- apply were documents located at another place, not just the workplace;
- ensure that the production of the document is not limited to the workplace but can be at any place;
- require a person to answer questions at any time and place convenient.

Clause 24 inserts a new section (section 273A, Evidentiary Aids). This section applies in a proceeding against a PCBU for an offence under this Act and provides that evidence that the business or undertaking had a WHSO or HSR in place at the time of the offence is admissible in proceedings as evidence of whether or not a duty under the Act has been complied with but is not conclusive evidence.

Clause 25 amends the reviewable decisions under Schedule 2A to omit a decision in relation to HSR training (Item 2).

Clause 26 amends the regulation making powers in Schedule 3 to include matters relating to the applications for appointment as a WHSO and training courses for WHSOs.

Clause 27 amends the dictionary in Schedule 5 to include *assessment report*.

Division 4 Amendments commencing on proclamation

Clause 28 inserts a new note under section 70(1)(c) to clarify that the issues resolution procedures in Part 5, division 5, and the new dispute resolution procedures in Part 5, division 7A can be used to resolve a dispute in relation to this section.

Clause 29 inserts a new note under section 71(6) to clarify that the new dispute resolution procedures in Part 5, division 7A can be used to resolve a dispute in relation to this section.

Clause 30 inserts a new note under section 82(2) to clarify that the new dispute resolution procedures in Part 5, division 7A can be used to resolve a dispute in relation to this section.

Clause 31 amends the note under section 89 to clarify that the new dispute resolution procedures in Part 5, division 7A can be used to resolve a dispute in relation to this section.

Clause 32 inserts a new part 5, division 7A (Work health and safety disputes) which expands the jurisdiction of the Queensland Industrial Relations Commission (commission) to hear and determine disputes relating to:

- the provision of information to Health and Safety Representatives (HSRs) under section 70(1)(c);
- requests for assistance by HSRs under section 70(1)(g);
- work health and safety issues raised under Part 5, Division 5; or
- cease work matters under Part 5, Division 6.

Parties to the dispute can be a PCBU, an affected worker, an affected HSR or a union representing an affected worker.

New section 102A provides definitions for the terms *dispute* and *WHS matter*.

New section 102B, enables the commission to be notified of a dispute if it remains unresolved at least 24 hours after any of the parties to the dispute has asked for an inspector to be appointed to assist in resolving the dispute. Notice must state the name of the parties to the dispute, the workplace where the dispute exists, the subject matter of the dispute, and whether a decision made by an inspector to exercise, or not exercise, compliance powers under Part 10 to assist in resolving the dispute is already subject to review under Part 12.

New section 102C, enables the commission to deal with a dispute in any way it thinks fit, including by means of mediation, conciliation or arbitration. If the commission deals with the dispute by arbitration, the commission may make any order it considers appropriate for the prompt settlement of the dispute. Contravention of an order made by the commission has a maximum penalty of 100 penalty units.

New section 102D, enables the commission, as part of a dealing with a dispute, to review a compliance decision made by an inspector to exercise, or not to exercise, compliance powers under Part 10. In undertaking the review, the commission may decide to confirm or vary the decision, set aside the decision and substitute the decision, or set aside the decision and return the matter to the inspector with directions the commission considers appropriate.

The commission must give the regulator notice of their decision to review the compliance decision and any decision made by the commission under section 102D(2)(a). If the compliance decision is, or has been, the subject of review under part 12 any review of the compliance decision, or any stay of the operation of the compliance decision, under that part ends when the commission decides to review the compliance decision and the inspector's decision stands until such time as the commission makes a decision under new section 102D(2)(a). For clarity, new section 102D(5) states that a compliance decision reviewed by the commission, is, from the time the commission decides to review the decision, taken not to be a reviewable decision under section 223.

New section 102E enable the commission, on its own initiative, to decide not to deal with a dispute about a WHS matter if notice of the dispute is not given in accordance with section 102B or the commission considers the disputed WHS matter to be frivolous, vexatious, misconceived or lacking in substance. The commission's ability to decide not to deal with a dispute is not however limited by these circumstances.

New section 102F clarifies that a party to a dispute must bear their own costs in relation to the dispute. The commission may however order a party who originally notified the dispute to pay the cost incurred by another party in relation to the dispute if the commission is satisfied that the WHS matter subject of the dispute is frivolous, vexatious, misconceived or lacking in substance. If the commission orders payment of costs, the amount ordered is recoverable as a debt, however this does not limit other ways in which amounts may be recovered on an order or the commission.

Decisions of the commission under new Part 5, division 7A, may be appealed under new section 102G.

Clause 33 inserts a new part 7, division 6, subdivision 1 heading (Role of inspectors).

Clause 34 inserts a new section 141A which provides for powers that can be exercised by an inspector who is asked to assist in resolving a dispute about a right of entry, or purported right of entry, under part 7, division 2 or 3, or disputes about whether notice requirements under sections 119 or 122 have been complied with.

The inspector may decide whether the WHS entry permit holder has a valid right of entry under division 2 or 3, or has complied with notice requirements under sections 119 or 122 and, if the inspector is reasonably satisfied that a right of entry under division 2 or 3 exists, give the person conducting the business or undertaking a direction to immediately allow the WHS entry permit holder to enter the workplace.

A direction by the inspector must state that the inspector is reasonably satisfied the WHS entry permit holder has a right of entry to the workplace under division 2 or 3 and the reasons the inspector is reasonably satisfied about the right to enter.

A maximum penalty of 100 penalty units will apply for failure to comply with a direction.

Clause 35 inserts a new part 7, division 6, subdivision 2 heading (Role of commission).

Clause 36 inserts a new section 142A which enables the commission to review decisions made by an inspector under new section 141A. The section applies if the commission is dealing with a dispute under section 142 and an inspector has made a decision under section 141A in relation to the dispute. If the commission reviews the decision under this section the commission may decide to confirm or vary the decision, set aside the decision and substitute another decision the commission considers appropriate, or set aside the decision and return the matter to the inspector who made it with directions the commission considers appropriate.

A person dissatisfied with the commission's decision may appeal under the *Industrial Relations Act 2016*.

Clause 37 amends section 152 (Functions of the regulator) to omit the function relating to the regulator conducting and defending proceedings under the Act before a court or tribunal.

Clause 38 amends section 160 (Functions and power of inspectors) to enable inspectors to perform any other function or power conferred on the inspector under the Act.

Clause 39 amends section 216 (Regulator may accept WHS undertakings) to provide that the regulator must issue, and publish on the regulator's website, general guidelines in relation to the acceptance of WHS undertakings under the Act. This effectively replaces the note under section 216(1) which is to be omitted by this clause.

Clause 40 makes consequential amendments to section 222(4) as a result of the establishment of the WHS prosecutor.

Clause 41 amends section 223 (Which decisions are reviewable) to insert a note in relation to new section 103D(3) regarding particular decisions that are taken not to be reviewable under this section.

Clause 42 amends section 230 (Prosecutions) to provide that proceedings for an offence against the Act may only be taken by either:

- The director of WHS prosecutions; or
- For a category 3 offence – an inspector with the written authorisation of the director of WHS prosecutions.

This clause also requires the director of WHS prosecutions to have regard to any guidelines issued under the *Director of Public Prosecutions Act 1984* when deciding whether to bring a prosecution for an offence under the Act.

Clause 43 amends section 231 (Procedure if prosecution not brought) to change references from regulator to WHS prosecutor to reflect amendments to section 230 under clause 42.

Clause 44 makes consequential amendments to section 232 as a result of the establishment of the WHS prosecutor.

Clause 45 amends section 236 (Adverse publicity orders) to change references from regulator to WHS prosecutor to reflect amendments to section 230 under clause 42.

Clause 46 amends section 254 (When is a provision a WHS civil penalty provision) to include part 5, division 7A.

Clause 47 amends section 259 (Proceeding for a contravention of a WHS civil penalty provision) to include part 5, division 7A.

Clause 48 replaces section 260 (Proceedings may be taken by the regulator or an inspector) to clarify that proceedings for a contravention of a WHS civil penalty provision may only be taken by the WHS Prosecutor.

Clause 49 amends section 261 (Limitation period for WHS civil penalty proceedings) to change references from regulator to WHS prosecutor to reflect amendments to section 260 under clause 47.

Clause 50 inserts a new part 16, division 5 (Transitional provisions for Work Health and Safety and Other Legislation Amendment Act 2017).

New section 312 provides definitions of *amending Act* and *pre-amended* for this division.

New section 313 provides transitional arrangements for existing proceedings for offences against the Act, proceedings for a contravention of a WHS civil penalty provision, and appeals against a decision made on either of these proceedings. These arrangements enable the WHS prosecutor to become a party to the proceedings.

New section 314 provides a transitional arrangement for an appeal against a decision of court in a proceeding for a contravention of a WHS civil penalty provision. This arrangement allows the WHS prosecutor to be regarded as having been party to the proceeding for the purposes of appealing against the decision.

New section 315 provides a transitional arrangement for application of section 232 (1) to offences allegedly committed, but a proceeding has not been started, before commencement of the amended Act.

New section 316 provides that section 231 (Procedure if prosecution is not brought) of the amended Act applies to a request made to the regulator under section 231 before the commencement.

New section 317 provides clarification regarding adverse publicity orders made before the commencement under section 236 of the pre-amended Act. Evidence of compliance with the order is to be given to the WHS prosecutor in place of the regulator.

New section 318 provides a transitional arrangement for contraventions of WHS civil penalty provisions allegedly committed, but a proceeding has not been started, before commencement of the amended Act.

New section 319 provides a transitional arrangement for applications for external review by QCAT of reviewable decisions in schedule 2A, items 4 to 12 of the pre-amended Act. If the application has been made but not decided before the commencement, the review may continue to be decided under the QCAT Act.

New section 320 provides a transitional arrangement for appeals against QCAT decisions on external review of a reviewable decision in schedule 2A, items 4 to 12 of the pre-amended Act. The QCAT Act continues to apply to appeals specified in the provision.

Clause 51 inserts a new schedule 2, part 4 (WHS Prosecutor) in the Act.

Division 1 Office of the WHS prosecutor

New section 25, schedule 2 establishes a Work Health and Safety Prosecutor (the WHS prosecutor).

New section 26, schedule 2 provides that the WHS prosecutor represents the State and has the status, privileges and immunities of the State.

Division 2 Functions and powers

New section 27, schedule 2 specifies the functions of the WHS prosecutor are to conduct and defend proceedings under the Act before a court or tribunal, and to advise the regulator on matters relating to the Act. The WHS prosecutor also has any other function specified under the Act or another Act.

New section 28, schedule 2 provides that the WHS prosecutor has the powers given under the Act and has the power to do all things necessary or convenient to be done in performing his or her functions.

New section 29, schedule 2 stipulates that in performing and exercising the powers of the WHS prosecutor, the WHS prosecutor is not under the control or direction of the Minister.

New section 30, schedule 2 allows the WHS prosecutor to delegate the WHS prosecutor's functions and powers under the Act to an appropriately qualified member of the WHS prosecutor's staff.

Division 3 Appointment of WHS prosecutor and related matters

New section 31, schedule 2 provides how the WHS prosecutor is appointed by the Governor in Council on the recommendation of the Minister. This section also specifies that the Minister may recommend a person for appointment only if the person is a lawyer who has been admitted to practice for at least 5 years, and the Minister is satisfied the person has demonstrated qualities of leadership, management and innovation in a senior government or private sector role.

New section 33, schedule 2 provides the term of office for the WHS prosecutor.

New section 34, schedule 2 provides for the conditions of appointment for the WHS prosecutor.

New section 35, schedule 2 preserves the rights accrued or accruing to a person as a public service officer if the person is a public service officer and is appointed as the WHS prosecutor.

New section 36, schedule 2 provides that, other than under the Act, the WHS prosecutor must not engage in specific work without the Minister's consent.

New section 37, schedule 2 clarifies that the WHS prosecutor's previous involvement in a matter does not prevent or limit performance of the WHS prosecutor's function, however, the provision limits disclosure of information to specific circumstances and states the WHS prosecutor must not act personally in relation to the matter.

New section 38, schedule 2 states the circumstances in which the WHS prosecutor's office becomes vacant.

New section 39, schedule 2 specifies the arrangements that can be made for an acting WHS prosecutor if there is a vacancy in the office.

New section 40, schedule 2 declares the WHS prosecutor is not a statutory body for the purpose of the *Statutory Bodies Financial Arrangements Act 1982* or the *Financial Accountability Act 2009*.

Division 4 Office and staff

New section 41, schedule 2 establishes the Office of the WHS Prosecutor.

New section 42, schedule 2 provides the function of the office to help the WHS prosecutor perform his or her functions.

New section 43, schedule 2 provides the WHS prosecutor's staff are employed under the *Public Service Act 2008*.

New section 44, schedule 2 provides that the WHS prosecutor controls the office but this does not prevent the office being attached to the department for the purpose of ensuring the office is supplied with the administrative support services it requires to carry out its functions effectively and efficiently.

Division 5 Information exchange

New section 45, schedule 2 provides that for the purpose of this division, the term *information* includes a document.

New section 46, schedule 2 provides that the WHS prosecutor may ask the regulator for information relevant to the performance of the WHS prosecutor's functions, and the regulator must take reasonable steps to provide the information.

New section 47, schedule 2 specifies the duty of the regulator regarding disclosure of all relevant information to the WHS prosecutor in relation to a proceeding for an offence under the Act or a contravention of a WHS civil penalty provision.

Division 6 Miscellaneous

New section 48, schedule 2 requires the WHS prosecutor to issue and publish general guidelines in relation to the prosecution of offences under the Act. In addition, the WHS prosecutor may issue written guidelines to certain other persons, including the staff of the WHS prosecutor and the regulator. This section stipulates a guidelines must not be issued in relation to a particular case.

New section 49, schedule 2 requires the WHS prosecutor to give the Minister an annual report on the performance of the WHS prosecutor's functions. The report must include a copy of each guideline made under new section 48 in force during the financial year.

Clause 52 amends schedule 2A (Reviewable decisions) to transfer the jurisdiction of items 4 to 12 from the Queensland Civil and Administrative Tribunal (QCAT) to the Queensland Industrial Relations Commission.

Clause 53 amends schedule 5 (Dictionary) to insert new definitions relating to *disputes*, *information*, *WHS matter* and *WHS prosecutor*.

Part 3 Amendments of other legislation

Part 3, Division 1 – Amendment of *Electrical Safety Act 2002*

Clause 54 provides that this division amends the *Electrical Safety Act 2002*.

Clause 55 inserts a new Part 2B (Industrial manslaughter).

New section 48L provides definitions for the following terms used in this part: *conduct*, *executive officer* and *senior officer*. New section 48L(2) clarifies that a person's conduct causes death if it substantially contributes to the death.

New section 48M establishes an exception to provide that a volunteer does not commit an offence under this part. However, this clause clarifies that despite section 40F(2) of the Act, a senior officer of an unincorporated association, other than a volunteer, may commit an offence under this part.

New section 48N creates a new offence for industrial manslaughter by a person conducting a business or undertaking (PCBU). The new offence provides that the PCBU commits an offence if:

- a worker dies in the course of carrying work for the business or undertaking, or is injured and later dies; and
- the person's conduct causes the death of the worker and the person is negligent about causing the death of the worker or another worker by the conduct.

The maximum penalty for the new offence is 20 years imprisonment for an individual or 100,000 penalty units (\$10,000,000) for a body corporate. An offence against new section 34C(1) is a crime.

New section 48O creates a new offence for industrial manslaughter by a senior officer of a PCBU. The elements of this offence are the same as the new offence for industrial manslaughter by a PCBU. The maximum penalty is 20 years imprisonment. An offence against new section 34D(1) is a crime.

Clause 56 amends section 49 (Regulator may accept an electrical safety undertaking) to provide that, in addition to a category 1 offence, a WHS undertaking cannot be accepted for a contravention or alleged contraction that is –

- a category 2 offence, if the person's failure to comply with a health or safety duty results in the death of an individual; or
- an offence against part 2B (Industrial manslaughter).

Clause 57 amends section 186 (Prosecutions) to clarify that proceedings for an offence against part 2B (Industrial manslaughter) are not taken in a summary way under the *Justices Act 1886*.

Clause 58 amends section 186A (Procedure if prosecution not brought) to clarify that a written request that a prosecution be brought can also be made to the regulator if a person reasonably considers that an act or omission constitutes an offence against the new part 2B (industrial manslaughter) and no prosecution has been brought in relation to the act or omission 6 months after the act or omission occurs. It also makes consequential amendments to reflect the new offences in part 2B (Industrial manslaughter).

Clause 59 amends section 186B (Limitation period for prosecutions) to provide that the periods specified in section 186B(1) do not apply to a proceeding for an offence against part 2B (Industrial manslaughter).

Clause 60 amends schedule 2 (Dictionary) to insert the terms *conduct*, *senior officer* and *causes*, and refer to the sections of the Act where those terms are defined.

Division 2 Amendment of *Safety in Recreational Water Activities Act 2011*

Clause 61 provides that this division amends the *Safety in Recreational Water Activities Act 2011*.

Clause 62 inserts a new part 2A (Industrial manslaughter).

New section 25A provides definitions for the following terms used in this part: *conduct*, *executive officer* and *senior office*. New section 25A(2) clarifies that a person's conduct causes death if it substantially contributes to the death.

New section 25B establishes an exception to provide that a volunteer does not commit an offence under this part. However, this clause clarifies that despite section 25(2) of the Act, an officer of an unincorporated association, other than a volunteer, may commit an offence under this part.

New section 25C creates a new offence for industrial manslaughter by a person conducting a business or undertaking (PCBU). The new offence provides that the PCBU commits an offence if:

- A worker dies in the course of carrying work for the business or undertaking, or is injured and later dies; and
- The person's conduct causes the death of the worker and the person is negligent about causing the death of the worker, or another worker by the conduct.

The maximum penalty for the new offence is 20 years imprisonment for an individual or 100,000 penalty units (\$10,000,000) for a body corporate. An offence against new section 34C(1) is a crime.

New section 25D creates a new offence for industrial manslaughter by a senior officer of a PCBU. The elements of this offence are the same as the new offence for industrial manslaughter by a PCBU. The maximum penalty is 20 years imprisonment. An offence against new section 25D(1) is a crime.

Clause 63 amends section 34 (Enforceable undertakings) which enables provisions of part 11 of the WHS Act to apply for the SRWA Act. This amendment inserts new subsections to clarify that a reference to category 1 or category 2 offence in the WHS Act is taken as a reference to a category 1 or category 2 offence under the SRWA Act and that a reference to an offence against part 2A were a reference to an offence against part 2A of the SRWA Act.

Clause 64 amends section 36 (Legal proceedings) which enables provisions of part 13 of the WHS Act to apply for the SRWA Act. This amendment inserts a new subsection to clarify that a reference to an offence against part 2A is taken as a reference to an offence against part 2A of the SRWA Act.

Clause 65 amends schedule 2 (Dictionary) to insert the terms *causes*, *conduct*, *executive officer*, *senior officer* and *causes*, and refer to the sections of the Act where those terms are defined.

Division 3 Amendment of *Work Health and Safety Regulation 2011*

Clause 66 states that this division amends the *Work Health and Safety Regulation 2011*.

Clause 67 makes amendments to sections 21 and 21A as a result of amendments to section 72 which require a PCBU to ensure, so far as is reasonably practicable, that a HSR for a work group has completed prescribed training. The prescribed training is an initial 5 day course of training and a 1 day refresher training course every 3 years.

Clause 68 inserts a new chapter 2A (Work health and safety officers). It contains the following new provisions:

New section 31A provides that a person may apply to the regulator for a certificate of authority for appointment as a WHSO in the form approved by the regulator.

New section 31B sets out the matters about which the regulator must be satisfied before deciding to grant an application for a certificate of authority. It also sets out what constitutes an approved work health and safety officer course.

New section 31C provides that the regulator may approve a WHSO course or WHSO recertification course. It also sets out the matters which the regulator must consider when making a decision under this section.

Clause 69 amends section 540(4) to include any WHSO for a business or undertaking as an interested party in the consultation requirements under inquiry procedures for major hazard facilities.

Clause 70 inserts a new Part 13.4 (Transitional provisions for Work Health and Other Legislation Amendment Act 2017).

New section 787 provides transitional arrangements for HSRs who hold office prior to commencement of the amending Act. The requirement for these HSRs to complete the initial 5 day course of training under section 21(2) is within 6 months of the commencement.