

THIS PUBLIC BILL has this day been read a Third time and passed

*The Clerk of the Parliament.*

*Legislative Assembly Chamber,  
Brisbane,            October 2017*



Queensland

**No.  
A BILL for**

**An Act to amend the Electrical Safety Act 2002, the Safety in Recreational Water Activities Act 2011, the Work Health and Safety Act 2011 and the Work Health and Safety Regulation 2011 for particular purposes**





Queensland

# Work Health and Safety and Other Legislation Amendment Bill 2017

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**2017**

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**A Bill**

for

**An Act to amend the *Electrical Safety Act 2002*, the *Safety in Recreational Water Activities Act 2011*, the *Work Health and Safety Act 2011* and the *Work Health and Safety Regulation 2011* for particular purposes**

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[s 1]

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## **The Parliament of Queensland enacts—**

### **Part 1 Preliminary**

#### **1 Short title**

This Act may be cited as the *Work Health and Safety and Other Legislation Amendment Act 2017*.

#### **2 Commencement**

- (1) Part 2, division 3 and part 3, division 3 commence on 1 July 2018.
- (2) 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**

#### **3 Act amended**

This part amends the *Work Health and Safety Act 2011*.

#### **Division 2 Amendments commencing on assent**

#### **4 Insertion of new pt 2A**

After part 2—

*insert—*

## **Part 2A                    Industrial manslaughter**

### **34A Definitions for part**

(1) In this part—

*conduct* means an act or omission to perform an act.

*executive officer*, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

*senior officer*, of a person conducting a business or undertaking, means—

- (a) if the person is a corporation—an executive officer of the corporation; or
  - (b) otherwise—the holder of an executive position (however described) in relation to the person who makes, or takes part in making, decisions affecting all, or a substantial part, of the person's functions.
- (2) For this part, a person's conduct *causes* death if it substantially contributes to the death.
- (3) For this part, a reference to a worker carrying out work for a business or undertaking includes a reference to a worker who is at a workplace to carry out work for the business or undertaking, including during a work break.

*Note—*

In relation to the numbering of this part, see the note to section 3.

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### **34B Exceptions**

- (1) A volunteer does not commit an offence under this part.
- (2) Despite section 34(2), a senior officer of an unincorporated association (other than a volunteer) may commit an offence under this part.
- (3) The Criminal Code, section 23 does not apply to an offence under this part.

### **34C Industrial manslaughter—person conducting business or undertaking**

- (1) A person conducting a business or undertaking commits an offence if—
  - (a) a worker—
    - (i) dies in the course of carrying out work for the business or undertaking; or
    - (ii) is injured in the course of carrying out work for the business or undertaking and later dies; and
  - (b) the person's conduct causes the death of the worker; and
  - (c) the person is negligent about causing the death of the worker by the conduct.

Maximum penalty—

- (a) for an individual—20 years imprisonment; or
- (b) for a body corporate—100,000 penalty units.

*Note—*

See section 244 or 251 in relation to imputing to a body corporate or public authority particular conduct of employees, agents or officers of the body corporate or public authority.

- (2) An offence against subsection (1) is a crime.

### **34D Industrial manslaughter—senior officer**

- (1) A senior officer of a person who carries out a business or undertaking commits an offence if—
- (a) a worker—
    - (i) dies in the course of carrying out work for the business or undertaking; or
    - (ii) is injured in the course of carrying out work for the business or undertaking and later dies; and
  - (b) the senior officer's conduct causes the death of the worker; and
  - (c) the senior officer is negligent about causing the death of the worker by the conduct.

Maximum penalty—20 years imprisonment.

- (2) An offence against subsection (1) is a crime.

## **5 Amendment of s 71 (Exceptions from obligations under s 70(1))**

Section 71—

*insert—*

- (7) The person conducting a business or undertaking may refuse to grant access to the information mentioned in section 70(1)(c) if the information is confidential commercial information.
- (8) In this section—
- confidential commercial information*** means—
- (a) information about a trade secret; or
  - (b) financial information or other information that has a commercial value and, if

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disclosed, will cause significant financial harm to a business or undertaking.

## **6 Replacement of s 74 (List of health and safety representatives)**

Section 74—

*omit, insert—*

### **74 List of health and safety representatives**

A person conducting a business or undertaking must ensure that—

- (a) a list of each health and safety representative and deputy health and safety representative (if any) for each work group of workers carrying out work for the business or undertaking is prepared and kept up to date; and
- (b) as soon as practicable after the list is prepared or amended, a copy is given to the regulator; and
- (c) a copy of the up-to-date list is displayed, in a way that is readily accessible to workers in each of the work groups—
  - (i) at the principal place of business of the business or undertaking; and
  - (ii) at any other workplace that is appropriate, taking into account the constitution of each work group.

Maximum penalty—20 penalty units.

## **6A Insertion of new s 97A**

After section 97—

*insert—*

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**97A Person conducting business or undertaking to give copy of provisional improvement notice to regulator**

- (1) This section applies if a health and safety representative issues a provisional improvement notice to a person conducting a business or undertaking.
- (2) As soon as practicable after the provisional improvement notice is issued, the person conducting the business or undertaking must give the regulator a copy of the notice.

Maximum penalty—50 penalty units.

**7 Amendment of s 216 (Regulator may accept WHS undertakings)**

Section 216(2)—

*omit, insert—*

- (2) A WHS undertaking can not be accepted for a contravention or alleged contravention that is—
  - (a) a category 1 offence; or
  - (b) a category 2 offence, if the person's failure to comply with a health and safety duty results in the death of an individual; or
  - (c) an offence against part 2A.

**8 Amendment of s 222 (Proceeding for alleged contravention)**

Section 222(3), after 'alleged contravention'—

*insert—*

, other than a contravention or alleged contravention mentioned in section 216(2)(a), (b) or (c),

[s 9]

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**9 Amendment of s 230 (Prosecutions)**

Section 230(1AA), after ‘category 1 offence’—

*insert—*

or an offence against part 2A

**10 Amendment of s 231 (Procedure if prosecution is not brought)**

(1) Section 231—

*insert—*

(1A) Also, a person may make a written request to the regulator that a prosecution be brought if—

- (a) the person reasonably considers an act or omission constitutes an offence against part 2A; and
- (b) no prosecution has been brought in relation to the act or omission; and
- (c) it has been at least 6 months since the act or omission happened.

(2) Section 231(2), after ‘a request’—

*insert—*

under subsection (1) or (1A)

(3) Section 231(3), after ‘a category 1 or category 2 offence’—

*insert—*

or an offence against part 2A

**11 Amendment of s 232 (Limitation period for prosecutions)**

Section 232—

*insert—*

- (3) Subsection (1) does not apply to a proceeding for an offence against part 2A.



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**12 Amendment of s 274 (Approved codes of practice)**

Section 274—

*insert—*

- (4C) A code of practice expires 5 years after it is approved.

**13 Amendment of sch 5 (Dictionary)**

Schedule 5—

*insert—*

*causes*, for part 2A, see section 34A(2).

*conduct*, for part 2A, see section 34A(1).

*executive officer*, of a corporation, for part 2A, see section 34A(1).

*senior officer*, of a person conducting a business or undertaking, for part 2A, see section 34A(1).

**Division 3 Amendments commencing on 1 July 2018**

**14 Insertion of new s 26A**

Part 2, division 3—

*insert—*

**26A Duty of persons conducting business or undertaking—codes of practice**

A person conducting a business or undertaking must, if the Minister approves a code of practice for the purposes of this Act—

- (a) comply with the code; or
- (b) manage hazards and risks arising from the work carried out as part of the conduct of

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the business or undertaking in a way that is different to the code but provides a standard of health and safety that is equivalent to or higher than the standard required under the code.

**15 Amendment of s 72 (Obligation to train health and safety representatives)**

(1) Section 72(1) and (2)—

*omit, insert—*

- (1) The person conducting a business or undertaking must ensure, so far as is reasonably practicable, a health and safety representative for a work group for that business or undertaking has completed the training prescribed by regulation.

Maximum penalty—100 penalty units.

- (2) The person conducting a business or undertaking must—

- (a) allow a health and safety representative time off work to attend the training; and  
(b) pay the training fees and any other reasonable costs associated with the health and safety representative's attendance at the training.

Maximum penalty—100 penalty units.

(2) Section 72(5) to (7)—

*omit.*

**16 Amendment of s 76 (Constitution of committee)**

Section 76(2)—

*omit, insert—*

- (2) The membership of the committee must

include—

- (a) if there is a health and safety representative at a workplace and the representative consents to being a member—the representative; and
- (b) if there is a work health and safety officer at the workplace—the officer.

**17 Amendment of s 78 (Meetings of committee)**

Section 78(b)—

*omit, insert—*

- (b) at any reasonable time if—
  - (i) at least half the members of the committee request that the committee meet; or
  - (ii) if there is a work health and safety officer at the workplace—the work health and safety officer requests that the committee meet.

**18 Amendment of s 85 (Health and safety representative may direct that unsafe work cease)**

Section 85(6)(a)—

*omit, insert—*

- (a) completed initial training prescribed by regulation under section 72(1); or

**19 Amendment of s 90 (Provisional improvement notices)**

Section 90(4)(a)—

*omit, insert—*

- (a) completed initial training prescribed by regulation under section 72(1); or

[s 20]

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## 20 Insertion of new pt 5A

After part 5—

*insert—*

### **Part 5A                      Work health and safety    officers**

#### **103A Appointment**

- (1) A person conducting a business or undertaking may appoint, as a work health and safety officer for that business or undertaking, a person who holds a certificate of authority for appointment as a work health and safety officer.
- (2) A person conducting a business or undertaking may appoint himself or herself as a work health and safety officer for that business or undertaking under subsection (1).

*Note—*

In relation to the numbering of this part, see the note to section 3.

#### **103B General functions of work health and safety officer who is not the person conducting the business or undertaking**

- (1) This section applies to a work health and safety officer if the officer is not the person conducting the business or undertaking.
- (2) The functions of the work health and safety officer are—
  - (a) to notify the person conducting the business or undertaking about work health and safety matters; and
  - (b) to identify hazards and risks to health and safety arising from the work carried out as

- part of the conduct of the business or undertaking; and
- (c) to report, in writing to the person conducting the business or undertaking, any hazards and risks identified under paragraph (b); and
  - (d) to immediately notify the person conducting the relevant business or undertaking about—
    - (i) any incident the work health and safety officer is aware has occurred at the business or undertaking; or
    - (ii) any immediate or imminent risk to health and safety at the business or undertaking; and
  - (e) to investigate, or assist in the investigation of, any incidents that occurred at the business or undertaking; and
  - (f) to accompany and assist an inspector during an inspection of the business or undertaking; and
  - (g) to establish educational and training programs on matters relating to work health and safety; and
  - (h) any other function prescribed by regulation.

**103C General functions of work health and safety officer who is the person conducting the business or undertaking**

- (1) This section applies to a work health and safety officer if the officer is the person conducting the business or undertaking.
- (2) The functions of the work health and safety officer are—

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- (a) to investigate, or assist in the investigation of, any incidents that occurred at the business or undertaking; and
- (b) to accompany and assist an inspector during an inspection of the business or undertaking; and
- (c) to establish educational and training programs on matters relating to work health and safety; and
- (d) any other function prescribed by regulation.

### **103D Assessment functions**

- (1) A work health and safety officer must, at least every 12 months or within any other intervals agreed under subsection (2) for the business or undertaking—
  - (a) assess risks to health and safety arising from work carried out as part of the conduct of the business or undertaking; and
  - (b) if there is a work health and safety criteria for the business or undertaking—assess the risks in accordance with the criteria; and
  - (c) comply with section 103E in relation to the assessment.
- (2) If there is a health and safety committee at the business or undertaking, the committee and the work health and safety officer may agree on the intervals within which the officer must carry out the functions mentioned in subsection (1).
- (3) In this section—  
***work health and safety criteria***, for a business or undertaking, means a work health and safety criteria approved by a health and safety committee for the business or undertaking.

### **103E Assessment reports**

- (1) The work health and safety officer must—
  - (a) prepare a report (an *assessment report*) for the assessment carried out under section 103D(1); and
  - (b) if the assessment identifies any risks to health and safety arising from the work carried out as part of the conduct of the business or undertaking—include in the report recommendations about managing the risks.
- (2) The work health and safety officer must, within 30 days after the assessment has been carried out, give a copy of the assessment report to—
  - (a) if the work health and safety officer is not the person conducting the business or undertaking—the person conducting the business or undertaking; and
  - (b) if there is a health and safety committee at the business or undertaking—the committee.

### **103F General obligations of person conducting business or undertaking to work health and safety officer**

- (1) This section applies to a person conducting a business or undertaking if the person has appointed another person as a work health and safety officer for the business or undertaking.
- (2) The person conducting the business or undertaking must—
  - (a) give the work health and safety officer information that the person has about risks to the health and safety of workers and any

[s 20]

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- other person at the business or undertaking;  
and
- (b) with the consent of a worker, allow the work health and safety officer to be present at an interview concerning work health and safety matters between the worker and the person;  
and
  - (c) consult, so far as is reasonably practicable, with the work health and safety officer about any proposed changes to workplace practices that affect, or may affect, work health and safety at the business or undertaking; and
  - (d) allow the work health and safety officer to inspect the business or undertaking and carry out assessments at the business or undertaking during normal working hours;  
and
  - (e) take appropriate action to manage—
    - (i) any hazards and risks notified to the person by the work health and safety officer or included in an assessment report prepared by the work health and safety officer; and
    - (ii) any incidents or immediate or imminent risks that have been notified to the person by the work health and safety officer; and
  - (f) provide resources and assistance to the work health and safety officer that are reasonably necessary to enable the officer to exercise the officer's functions under this Act; and
  - (g) keep an assessment report given to the person for at least 5 years.

Maximum penalty—50 penalty units.



- (3) The person conducting the business or undertaking may instruct the work health and safety officer to take reasonable action to eliminate or minimise risks to health and safety.

### **103G Immunity for work health and safety officers**

A work health and safety officer who is not the person conducting the business or undertaking is not personally liable for anything done or omitted to be done in good faith—

- (a) in performing a function under this Act; or
- (b) in the reasonable belief that the thing was done or omitted to be done in the performance of a function under this Act.

### **103H Appointment of work health and safety officers does not affect duties and obligations under this Act**

The appointment of a work health and safety officer at a business or undertaking by a person conducting the business or undertaking does not affect any duty or obligation owed by the person under this Act.

### **103I Displaying identities**

- (1) The person conducting a business or undertaking must display, under this section, an up-to-date list of each work health and safety officer for the business or undertaking.

Maximum penalty—40 penalty units.

- (2) The list must—
  - (a) be displayed within 5 days after the day a work health and safety officer is appointed for that business or undertaking; and

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- (b) be displayed in at least 1 conspicuous place at the business or undertaking and in a way that ensures it can be seen by workers at the business or undertaking.

**21 Amendment of s 106 (What is a *prohibited reason*)**

- (1) Section 106(a), before ‘health’, first mention—

*insert—*

work health and safety officer, a

- (2) Section 106(c), before ‘health’, first mention—

*insert—*

work health and safety officer, as a

- (3) Section 106(h)—

*insert—*

(iva) a work health and safety officer who is not the person conducting the business or undertaking; or

- (4) Section 106(h)(iva) to (viii)—

*renumber* as section 106(h)(v) to (ix).

**22 Amendment of s 164 (Notification of entry)**

Section 164(2)—

*insert—*

- (d) any work health and safety officer for that business or undertaking at the workplace.

**23 Amendment of s 171 (Power to require production of documents and answers to questions)**

Section 171(1)—

*omit, insert—*

- (1) If an inspector enters a workplace under this division, or has within the last 30 days entered a workplace under this division, the inspector or another inspector may—
  - (a) require a person to tell the inspector who has custody of, or access to, a document; or
  - (b) require a person who has custody of, or access to, a document mentioned in paragraph (a) to give the document to the inspector; or
  - (c) require a person at the workplace to attend before the inspector at a stated reasonable time and place to answer questions put by the inspector.

## **24 Insertion of new s 273A**

Part 14, division 1—

*insert—*

### **273A Evidentiary aids**

- (1) This section applies in a proceeding against a person conducting a business or undertaking for an offence against this Act.
- (2) Evidence that there was a person holding office as a work health and safety officer or a health and safety representative for the business or undertaking when the offence was alleged to have been committed is admissible in the proceeding as evidence of whether or not a duty or obligation under this Act has been complied with.

## **25 Amendment of sch 2A (Reviewable decisions)**

Schedule 2A, item 2—

*omit.*

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**26 Amendment of sch 3 (Regulation-making powers)**

Schedule 3—

*insert—*

**9A Work health and safety officers**

Matters relating to—

- (a) procedures for applications for certificates of authority for appointment as work health and safety officers; and
- (b) approving work health and safety officer courses and work health and safety officer recertification courses.

**27 Amendment of sch 5 (Dictionary)**

Schedule 5—

*insert—*

*assessment report* see section 103E(1).

**Division 4 Amendments commencing on proclamation**

**28 Amendment of s 70 (General obligations of person conducting business or undertaking)**

Section 70(1)(c)—

*insert—*

*Note—*

The issue resolution procedures in division 5, and the dispute resolution process in division 7A, can be used to resolve a dispute arising in relation to paragraph (c).

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**29 Amendment of s 71 (Exceptions from obligations under s 70(1))**

Section 71(6)—

*insert—*

*Note—*

The dispute resolution process in division 7A can be used to resolve a dispute about the refusal of access to a person assisting a health and safety representative under subsection (5).

**30 Amendment of s 82 (Referral of issue to regulator for resolution by inspector)**

Section 82(2)—

*insert—*

*Note—*

The dispute resolution process in division 7A can be used to resolve the issue.

**31 Amendment of s 89 (Request to regulator to appoint inspector to assist)**

Section 89, note, after ‘division 5’—

*insert—*

, and the dispute resolution process in division 7A,

**32 Insertion of new pt 5, div 7A**

Part 5—

*insert—*

**Division 7A Work health and safety disputes**

## **102A Definitions for division**

In this division—

***dispute*** means a dispute about a WHS matter that exists between any of the following persons—

- (a) a person conducting a business or undertaking;
- (b) a worker affected by the WHS matter;
- (c) a health and safety representative affected by the WHS matter;
- (d) a relevant union for the WHS matter.

***relevant union***, for a WHS matter, means a union of which a worker who works at the workplace is a member or eligible to be a member.

***WHS matter*** means any of the following matters—

- (a) access to information by a health and safety representative under section 70(1)(c);
- (b) a request by a health and safety representative for an assistant to have access to the workplace under section 70(1)(g);
- (c) a matter about work health and safety that is an issue to which division 5 applies;
- (d) an issue about cessation of work under division 6.

*Note*—

In relation to the numbering of this division, see the note to section 3.

## **102B Notice of dispute may be given to commission**

- (1) This section applies if a dispute remains unresolved at least 24 hours after any of the parties to the dispute has, under another provision

of this part, asked the regulator to appoint an inspector to assist in resolving the dispute.

*Note—*

See also section 71(5), 82(2) or 89 in relation to a request by a party that the regulator appoint an inspector to assist in resolving the dispute.

- (2) A party to the dispute may give the industrial registrar written notice of the dispute.
- (3) The notice must state each of the following matters—
  - (a) the names of the parties to the dispute;
  - (b) the workplace where the dispute exists;
  - (c) the WHS matter the subject of the dispute;
  - (d) whether a decision made by an inspector to exercise, or not to exercise, compliance powers under part 10 to assist in resolving the dispute is subject to review under part 12.
- (4) On receiving the notice, the industrial registrar must immediately publish it on the QIRC website within the meaning of the *Industrial Relations Act 2016*.
- (5) A relevant union for the WHS matter may notify the industrial registrar, in writing, that the union wants to participate in the resolution of the dispute.
- (6) A relevant union that gives notice under subsection (5) is taken to be a party to the dispute for the purposes of this division.

### **102C Action for settling dispute**

- (1) This section applies if notice of a dispute has been given under section 102B.
- (2) The commission may deal with the dispute in any

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way it thinks fit, including by means of mediation, conciliation or arbitration.

- (3) Without limiting subsection (2), 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.
- (4) A person must not contravene an order made under subsection (3).

WHS civil penalty provision.

Maximum penalty—100 penalty units.

### **102D Review of particular decisions made by inspector**

- (1) In dealing with the dispute, the commission may review a decision (a *compliance decision*) made by an inspector to exercise, or not to exercise, compliance powers under part 10 to assist in resolving the dispute.
- (2) If the commission reviews a compliance decision under subsection (1), the commission—
  - (a) may decide to—
    - (i) confirm or vary the compliance decision; or
    - (ii) set aside the compliance decision and substitute another decision the commission considers appropriate; or
    - (iii) set aside the compliance decision and return the matter to the inspector who made it with directions the commission considers appropriate; and
  - (b) must give the regulator notice of—
    - (i) the commission's decision to review the compliance decision; and



- (ii) any decision made by the commission under paragraph (a) (the *review decision*).
- (3) A notice mentioned in subsection (2)(b)(i) must state that any review of the compliance decision, or any stay of the operation of the compliance decision, under part 12 ends on the making of the commission's decision to review the compliance decision under this section.
- (4) Despite section 102C(3), the commission must not make an order staying the operation of the compliance decision.
- (5) A compliance decision reviewed by the commission under this section is, from the time the commission decides to review the decision, taken not to be a reviewable decision under section 223.
- (6) If the compliance decision is or has been the subject of review proceedings under part 12—
  - (a) 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
  - (b) subsection (5) does not affect the validity of any action taken under part 12 before the making of the commission's decision to review the compliance decision.

### **102E Decision not to deal with dispute**

- (1) The commission may decide not to deal with a dispute about a WHS matter if—
  - (a) notice of the dispute was not given in accordance with section 102B; or

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- (b) the commission considers the WHS matter the subject of the dispute is frivolous, vexatious, misconceived or lacking in substance.
- (2) Subsection (1) does not limit the grounds on which the commission may decide not to deal with the dispute.
- (3) The commission may make a decision under subsection (1) on its own initiative.

### **102FCosts**

- (1) A party to a dispute notified to the commission under this division must bear the party's own costs in relation to the dispute.
- (2) However, the commission may order a party (the *first party*) to pay costs incurred by another party in relation to the dispute if the commission is satisfied—
  - (a) the WHS matter the subject of the dispute is frivolous, vexatious, misconceived or lacking in substance; and
  - (b) the first party notified the dispute to the commission or has otherwise acted without reasonable cause in relation to the dispute.
- (3) If the commission orders the payment of costs, the amount ordered may be recovered as a debt.
- (4) Subsection (3) does not limit other ways in which amounts may be recovered on an order of the commission.

### **102GAppeal**

A person dissatisfied with a decision made by the commission under this division may appeal under the *Industrial Relations Act 2016*, chapter 11, part

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6.

**33 Insertion of new pt 7, div 6, sdiv 1, hdg**

Part 7, division 6, before section 141—

*insert—*

**Subdivision 1 Role of inspectors**

**34 Insertion of new s 141A**

After section 141—

*insert—*

**141A Powers of inspector asked to assist in resolving dispute**

- (1) This section applies if—
- (a) an inspector is appointed by the regulator under section 141 to assist in resolving a dispute; and
  - (b) the dispute is about—
    - (i) whether the WHS entry permit holder has a right to enter the workplace under division 2 or 3; or
    - (ii) whether section 119 or 122 has been complied with in relation to notice of the entry or purported entry.

*Note—*

This section does not apply if the dispute is about rights the WHS entry permit holder may exercise while at the workplace under division 2 or 3.

- (2) The inspector may—
- (a) decide the matter mentioned in subsection (1)(b)(i) or (ii); and

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- (b) if the inspector is reasonably satisfied the WHS entry permit holder has a right of entry under division 2 or 3—give the person conducting the business or undertaking a direction, in writing, to immediately allow the WHS entry permit holder to enter the workplace under a stated provision of division 2 or 3.

*Note—*

The commission may review a decision made under subsection (2) in dealing with a dispute under subdivision 2—see section 142A.

- (3) A direction under subsection (2)(b) must state—
- (a) that the inspector is reasonably satisfied the WHS entry permit holder has a right to enter the workplace under division 2 or 3; and
- (b) the reasons the inspector is reasonably satisfied about the right to enter.
- (4) A person given a direction under subsection (2)(b) must comply with it.

WHS civil penalty provision.

Maximum penalty—100 penalty units.

- (5) This section does not limit the powers of the inspector under this Act.

*Example of powers of the inspector—*

the inspector's power to issue a notice under part 10

## **35 Insertion of new pt 7, div 6, sdiv 2, hdg**

After section 141A, as inserted by this Act—

*insert—*

### **Subdivision 2 Role of commission**

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**36 Insertion of new s 142A**

After section 142—

*insert—*

**142A Review by commission of decision made by inspector under s 141A**

- (1) This section applies if—
  - (a) the commission is dealing with a dispute under section 142; and
  - (b) an inspector has made a decision under section 141A in relation to the dispute.
- (2) In dealing with the dispute, the commission may review the decision.
- (3) If the commission reviews the decision under this section, the commission may decide to—
  - (a) confirm or vary the decision; or
  - (b) set aside the decision and substitute another decision the commission considers appropriate; or
  - (c) set aside the decision and return the matter to the inspector who made it with directions the commission considers appropriate.
- (4) A person dissatisfied with the commission's decision may appeal under the *Industrial Relations Act 2016*, chapter 11, part 6.

**37 Amendment of s 152 (Functions of regulator)**

- (1) Section 152(1)(h)—

*omit.*
- (2) Section 152(1)(i)—

*renumber* as section 152(1)(h).
- (3) Section 152(2)—

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*omit.*

**38 Amendment of s 160 (Functions and powers of inspectors)**

Section 160—

*insert—*

- (f) any other function or power conferred on the inspector under this Act.

**39 Amendment of s 216 (Regulator may accept WHS undertakings)**

- (1) Section 216(1), note—

*omit.*

- (2) Section 216—

*insert—*

- (4) The regulator must issue, and publish on the regulator's website, general guidelines in relation to the acceptance of WHS undertakings under this Act.

**40 Amendment of s 222 (Proceeding for alleged contravention)**

Section 222(4), from 'finalised,'—

*omit, insert—*

finalised—

- (a) the regulator must immediately notify the WHS prosecutor; and
- (b) the WHS prosecutor must take all reasonable steps to have the proceedings discontinued as soon as possible.

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**41 Amendment of s 223 (Which decisions are reviewable)**

Section 223(1)—

*insert—*

*Note—*

See, however, section 102D(5) in relation to particular decisions that are taken not to be reviewable decisions under this section.

**42 Amendment of s 230 (Prosecutions)**

(1) Section 230(1)—

*omit, insert—*

(1) Subject to subsection (4), proceedings for an offence against this Act may only be taken by—

(a) the WHS prosecutor; or

(b) for a category 3 offence—an inspector with the written authorisation of the WHS prosecutor, either generally or in a particular case.

(2) Section 230(3)—

*omit, insert—*

(3) In deciding whether to bring a prosecution for an offence under this Act, the WHS prosecutor must have regard to any guidelines issued under the *Director of Public Prosecutions Act 1984*, section 11.

**43 Amendment of s 231 (Procedure if prosecution is not brought)**

Section 231, ‘regulator’—

*omit, insert—*

WHS prosecutor

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**44 Amendment of s 232 (Limitation period for prosecutions)**

Section 232(1)(a), ‘regulator’—

*omit, insert—*

WHS prosecutor

**45 Amendment of s 236 (Adverse publicity orders)**

Section 236, ‘regulator’—

*omit, insert—*

WHS prosecutor

**46 Amendment of s 254 (When is a provision a WHS civil penalty provision)**

Section 254(1), ‘part 7’—

*omit, insert—*

part 5, division 7A or part 7

**47 Amendment of s 259 (Proceeding for a contravention of a WHS civil penalty provision)**

Section 259(2), ‘part 7’—

*omit, insert—*

part 5, division 7A, part 7

**48 Replacement of s 260 (Proceeding may be taken by the regulator or an inspector)**

Section 260—

*omit, insert—*

**260 Proceeding may be taken by WHS prosecutor**

Proceedings for a contravention of a WHS civil penalty provision may only be taken by the WHS prosecutor.



**49 Amendment of s 261 (Limitation period for WHS civil penalty proceedings)**

Section 261, ‘the regulator’—

*omit, insert—*

the WHS prosecutor

**50 Insertion of new pt 16, div 5**

Part 16—

*insert—*

**Division 5 Transitional provisions for  
Work Health and Safety  
and Other Legislation  
Amendment Act 2017**

**312 Definitions for division**

In this division—

*amending Act* means the *Work Health and Safety and Other Legislation Amendment Act 2017*.

*pre-amended*, in relation to a provision of this Act, means the provision as in force from time to time before the commencement.

**313 Existing proceedings**

- (1) This section applies to the following proceedings started before the commencement—
  - (a) a proceeding for an offence against this Act started by—
    - (i) the regulator; or
    - (ii) for a category 1 offence or category 2 offence—an inspector under section 230(1)(b) of the pre-amended Act;

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- (b) a proceeding for a contravention of a WHS civil penalty provision;
  - (c) an appeal against a decision made on a proceeding mentioned in paragraph (a) or (b).
- (2) If, immediately before the commencement, the proceeding had not been finally dealt with, on the commencement the WHS prosecutor becomes a party to the proceeding in place of—
- (a) the regulator; or
  - (b) for a proceeding mentioned in subsection (1)(a)(ii) or a proceeding mentioned in subsection (1)(b) taken by an inspector under section 260(b) of the pre-amended Act—the inspector.
- (3) Schedule 2, section 47 applies to the regulator in relation to the proceeding.

### **314 Appealing decisions made on proceedings decided before commencement**

- (1) This section applies to a decision of a court in a proceeding for a contravention of a WHS civil penalty provision made before the commencement if, immediately before the commencement, an appeal against the decision has not been started.
- (2) From the commencement, the WHS prosecutor is taken to have been a party to the proceeding for the purposes of appealing against the decision.

### **315 Application of s 232(1) to offences allegedly committed before commencement**

- (1) This section applies to an offence against this Act allegedly committed before the commencement, if a proceeding for the offence had not been

started before the commencement.

- (2) If the offence first came to the notice of the regulator before the commencement, section 232(1), as in force immediately before the commencement, continues to apply to the offence.
- (3) Subject to subsection (2), section 232(1) as in force on the commencement applies to the offence.

### **316 Requests made to the regulator under s 231**

- (1) This section applies to a request made to the regulator under section 231 of the pre-amended Act before the commencement.
- (2) Section 231 as in force on the commencement applies in relation to the request as if it had been made to the WHS prosecutor.

### **317 Adverse publicity orders made before commencement**

- (1) This section applies to an adverse publicity order made before the commencement under section 236 of the pre-amended Act.
- (2) If the period mentioned in section 236(1)(b) ends after the commencement, that section is taken to require evidence of compliance with the order to be given to the WHS prosecutor in place of the regulator.

### **318 Application of s 261 to alleged contraventions of WHS civil penalty provisions before commencement**

- (1) This section applies to a contravention of a WHS civil penalty provision allegedly committed before the commencement, if a proceeding for the

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contravention had not been started before the commencement.

- (2) If the contravention first came to the notice of the regulator before the commencement, section 261 as in force immediately before the commencement continues to apply to the contravention.
- (3) Subject to subsection (2), section 261 as in force on the commencement applies to the contravention.

### **319 Review proceedings for decisions mentioned in sch 2A, items 4–12**

- (1) This section applies to a reviewable decision mentioned in schedule 2A, items 4 to 12 made before the commencement.
- (2) If an application for external review of the decision was made but not decided before the commencement, the review may continue to be decided by QCAT under the QCAT Act as if the amending Act had not commenced.
- (3) Subject to subsection (2), schedule 2A as in force on the commencement applies in relation to the decision.

### **320 Appeal against review decisions mentioned in sch 2A, items 4–12**

- (1) This section applies to a decision made by QCAT on an external review of a reviewable decision mentioned in schedule 2A, items 4 to 12—
  - (a) before the commencement, if—
    - (i) an appeal against QCAT’s decision was started but not completed under the QCAT Act before the commencement;  
or

- 
- (ii) the period for starting an appeal against the decision started but had not ended before the commencement; or
  - (b) after the commencement under section 319.
- (2) The QCAT Act continues to apply to an appeal against QCAT's decision as if the amending Act had not commenced.

**51 Insertion of new sch 2, pt 4**

Schedule 2—

*insert—*

**Part 4                   WHS prosecutor**

**Division 1           Office of the WHS  
prosecutor**

**25 Establishment**

There must be a Work Health and Safety Prosecutor (the *WHS prosecutor*).

**26 WHS prosecutor represents the State**

- (1) The WHS prosecutor represents the State.
- (2) Without limiting subsection (1), the WHS prosecutor has the status, privileges and immunities of the State.

**Division 2           Functions and powers**

**27 Functions of WHS prosecutor**

The functions of the WHS prosecutor are—

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- (a) to conduct and defend proceedings under this Act before a court or tribunal; and
- (b) to advise the regulator on matters relating to this Act; and
- (c) any other function given to the WHS prosecutor under this or another Act.

## **28 Powers**

- (1) The WHS prosecutor has the powers given under this Act.
- (2) Also, the WHS prosecutor has the power to do all things necessary or convenient to be done in performing his or her functions.

## **29 Not under Ministerial control**

In performing the functions and exercising the powers of the WHS prosecutor, the WHS prosecutor is not under the control or direction of the Minister.

## **30 Delegation**

The WHS prosecutor may delegate the WHS prosecutor's functions and powers under this Act to an appropriately qualified member of the WHS prosecutor's staff.

# **Division 3            Appointment of WHS                                  prosecutor and related                                  matters**

## **31 Appointment**

- (1) The WHS prosecutor is appointed by the

Governor in Council on the recommendation of the Minister.

- (2) The Minister may recommend a person for appointment only if—
  - (a) the person is a lawyer who has been admitted to practise for at least 5 years; and
  - (b) the Minister is satisfied the person has demonstrated qualities of leadership, management and innovation in a senior government or private sector role.

### **32 WHS prosecutor appointed under this Act**

The WHS prosecutor is appointed under this Act and not under the *Public Service Act 2008*.

### **33 Term of office**

Subject to this division, the WHS prosecutor—

- (a) holds office for not more than 5 years, as stated in the WHS prosecutor's instrument of appointment; and
- (b) is eligible for reappointment on the ending of the WHS prosecutor's term of appointment.

### **34 Conditions of appointment**

- (1) The WHS prosecutor is to be paid the remuneration and allowances decided by the Governor in Council.
- (2) The WHS prosecutor holds office on the terms and conditions decided by the Governor in Council, to the extent the terms and conditions are not provided for by this Act.

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### **35 Preservation of rights of WHS prosecutor**

- (1) This section applies if a public service officer is appointed as the WHS prosecutor.
- (2) The person keeps all rights accrued or accruing to the person as a public service officer as if service as the WHS prosecutor were a continuation of service as a public service officer.
- (3) At the end of the person's term of office or on resignation as the WHS prosecutor, the person's service as the WHS prosecutor is taken to be service of a like nature in the public service for deciding the person's rights as a public service officer.

### **36 Other employment limited**

Other than under this Act, the WHS prosecutor must not, without the Minister's consent, engage in any work relating to—

- (a) a person conducting a business or undertaking who has been charged with an offence under this Act; or
- (b) consultancy on work health and safety matters with a person conducting a business or undertaking.

### **37 WHS prosecutor's previous involvement does not prevent or limit performance of functions**

- (1) This section applies to a person appointed as the WHS prosecutor if—
  - (a) before the appointment, the person was involved in a matter in the practice of the person's profession; and



- (b) at the time of the appointment, the matter has not been finally decided or otherwise dealt with.
- (2) The involvement does not prevent the person from, or limit the person in, performing the person's functions as WHS prosecutor.
- (3) However, the person must not—
  - (a) disclose information given to the person in his or her professional capacity in relation to the matter before the person's appointment as WHS prosecutor, other than to—
    - (i) the person for whom the WHS prosecutor was acting in the matter in the practice of the WHS prosecutor's profession; or
    - (ii) a legal representative of that person; or
    - (iii) a person authorised by the person or legal representative mentioned in subparagraph (i) or (ii) to receive the information; or
  - (b) act personally in relation to the matter.

### **38 Vacancy in office**

- (1) The office of the WHS prosecutor becomes vacant if the WHS prosecutor—
  - (a) resigns office by signed notice to the Minister giving at least 1 month's notice; or
  - (b) is convicted of an indictable offence; or
  - (c) is an insolvent under administration under the Corporations Act, section 9; or
  - (d) is removed from office by the Governor in Council under subsection (3).
- (2) Also, if the WHS prosecutor is suspended by the

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Minister under subsection (5), the office is vacant during the period of suspension.

- (3) The Governor in Council may, at any time, remove the WHS prosecutor from office on the recommendation of the Minister.
- (4) The Minister may recommend the WHS prosecutor's removal if the Minister is satisfied the WHS prosecutor—
  - (a) has been guilty of misconduct; or
  - (b) is incapable of performing his or her duties; or
  - (c) has neglected his or her duties or performed them incompetently.
- (5) The Minister may suspend the WHS prosecutor for up to 60 days by signed notice to the WHS prosecutor if—
  - (a) there is an allegation of misconduct against the WHS prosecutor; or
  - (b) the Minister is satisfied a matter has arisen in relation to the WHS prosecutor that may be grounds for removal under this section.

### **39 Acting WHS prosecutor**

- (1) If there is a vacancy in the office of the WHS prosecutor or the WHS prosecutor is absent or for any other reason is unable to perform the functions of the office, the Minister may appoint a person to act as the WHS prosecutor for a period of not more than 6 months.
- (2) A person can not be appointed to act as the WHS prosecutor unless the Minister could recommend the person be appointed as WHS prosecutor under section 31.
- (3) A person appointed to act as the WHS prosecutor

may be appointed to act as WHS prosecutor for a further period—

- (a) if the appointment is continuous on 1 or more of the person's previous appointments as acting WHS prosecutor and the total period of continuous appointments is not more than 6 months—by the Minister; or
  - (b) otherwise—by the Governor in Council.
- (4) The Governor in Council may, at any time, cancel the appointment of a person to act as the WHS prosecutor.

#### **40 Not a statutory body for particular Acts**

To remove any doubt, it is declared that the WHS prosecutor is not a statutory body for the *Statutory Bodies Financial Arrangements Act 1982* or the *Financial Accountability Act 2009*.

### **Division 4 Office and staff**

#### **41 Establishment**

- (1) The Office of the WHS Prosecutor is established.
- (2) The office consists of the WHS prosecutor and the WHS prosecutor's staff.

#### **42 Function**

The office's function is to help the WHS prosecutor perform his or her functions.

#### **43 Staff**

The WHS prosecutor's staff are employed under the *Public Service Act 2008*.

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#### **44 Control of office**

- (1) The WHS prosecutor controls the office.
- (2) Subsection (1) does not prevent the attachment of the office 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**

#### **45 Definition for division**

In this division—

*information* includes a document.

#### **46 WHS prosecutor may ask regulator for information**

- (1) The WHS prosecutor may ask the regulator for information relevant to the performance of a function of the WHS prosecutor.
- (2) The regulator must take reasonable steps to provide the information.

#### **47 Regulator's duty to disclose information to WHS prosecutor**

- (1) This section applies in relation to a proceeding for—
  - (a) an offence under this Act; or
  - (b) a contravention of a WHS civil penalty provision.
- (2) The regulator has a duty to disclose to the WHS prosecutor all information relevant to the proceeding, including knowledge of a matter

relevant to the proceeding, in the possession or control of the regulator.

- (3) The duty continues until the proceeding is finally decided or otherwise ends.

## **Division 6            Miscellaneous**

### **48 Guidelines**

- (1) The WHS prosecutor must issue, and publish on the WHS prosecutor's website, general guidelines in relation to the prosecution of offences under this Act.
- (2) Also, the WHS prosecutor may issue written guidelines to any of the following persons—
  - (a) staff of the WHS prosecutor;
  - (b) the regulator;
  - (c) public service employees employed in the department undertaking work relevant to the WHS prosecutor's functions under this Act.
- (3) Guidelines issued under subsection (2)—
  - (a) must be consistent with this Act; and
  - (b) may include the following matters—
    - (i) procedures for the referral of matters by the regulator to the WHS prosecutor;
    - (ii) principles and procedures for the conduct of proceedings for offences under this Act, including procedures relating to the roles of the WHS prosecutor and the regulator.
- (4) Subsection (3)(b) does not limit the matters for which guidelines may be issued under subsection

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- (2).
- (5) A guideline must not be issued in relation to a particular case.

#### **49 Annual report**

- (1) As soon as practicable after the close of each financial year but not later than 4 months after the close, the WHS prosecutor must give the Minister a report on the performance of the WHS prosecutor's functions during that year.
- (2) The report must include a copy of each guideline made under section 48 in force during the financial year.
- (3) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after the Minister receives it.

#### **52 Amendment of sch 2A (Reviewable decisions)**

Schedule 2A, items 4 to 12, 'QCAT'—

*omit, insert*—

commission

#### **53 Amendment of sch 5 (Dictionary)**

- (1) Schedule 5, definition *relevant union*—

*omit.*

- (2) Schedule 5—

*insert*—

*dispute*, for part 5, division 7A, see section 102A.

*information*, for schedule 2, part 4, division 5, see schedule 2, section 45.

*relevant union*—

(a) for a WHS matter, for part 5, division 7A, see section 102A; or

(b) for part 7, see section 116.

**WHS matter**, for part 5, division 7A, see section 102A.

**WHS prosecutor** see schedule 2, section 25.

## **Part 3**                      **Amendments of other legislation**

### **Division 1**                      **Amendment of Electrical Safety Act 2002**

#### **54**      **Act amended**

This division amends the *Electrical Safety Act 2002*.

#### **55**      **Insertion of new pt 2B**

After part 2A—

*insert—*

### **Part 2B**                      **Industrial manslaughter**

#### **48L Definitions for part**

(1) In this part—

**conduct** means an act or omission to perform an act.

**executive officer**, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is

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given the name of executive officer.

*senior officer*, of a person conducting a business or undertaking, means—

- (a) if the person is a corporation—an executive officer of the corporation; or
  - (b) otherwise—the holder of an executive position (however described) in relation to the person who makes, or takes part in making, decisions affecting all, or a substantial part, of the person's functions.
- (2) For this part, a person's conduct *causes* death if it substantially contributes to the death.
  - (3) For this part, a reference to a worker carrying out work for a business or undertaking includes a reference to a worker who is at a workplace to carry out work for the business or undertaking, including during a work break.

#### **48M Exceptions**

- (1) A volunteer does not commit an offence under this part.
- (2) Despite section 40F(2), a senior officer of an unincorporated association (other than a volunteer) may commit an offence under this part.
- (3) The Criminal Code, section 23 does not apply to an offence under this part.

#### **48N Industrial manslaughter—person conducting business or undertaking**

- (1) A person conducting a business or undertaking commits an offence if—
  - (a) a worker—



- (i) dies in the course of carrying out work for the business or undertaking; or
- (ii) is injured in the course of carrying out work for the business or undertaking and later dies; and
- (b) the person's conduct causes the death of the worker; and
- (c) the person is negligent about causing the death of the worker by the conduct.

Maximum penalty—

- (a) for an individual—20 years imprisonment; or
- (b) for a body corporate—100,000 penalty units.

*Note—*

See section 188 or 190B in relation to imputing to a body corporate or public authority particular conduct of employees, agents or officers of the body corporate or public authority.

- (2) An offence against subsection (1) is a crime.

#### **480 Industrial manslaughter—senior officer**

- (1) A senior officer of a person conducting a business or undertaking commits an offence if—
  - (a) a worker—
    - (i) dies in the course of carrying out work for the business or undertaking; or
    - (ii) is injured in the course of carrying out work for the business or undertaking and later dies; and
  - (b) the senior officer's conduct causes the death of the worker; and

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(c) the senior officer is negligent about causing the death of the worker by the conduct.

Maximum penalty—20 years imprisonment.

(2) An offence against subsection (1) is a crime.

**56 Amendment of s 49 (Regulator may accept an electrical safety undertaking)**

Section 49(2)—

*omit, insert—*

(2) An electrical safety undertaking can not be accepted for a contravention or alleged contravention that is—

(a) a category 1 offence; or

(b) a category 2 offence, if the person's failure to comply with an electrical safety duty results in the death of an individual; or

(c) an offence against part 2B.

**57 Amendment of s 186 (Prosecutions)**

Section 186(1), after 'category 1 offence'—

*insert—*

or an offence against part 2B

**58 Amendment of s 186A (Procedure if prosecution is not brought)**

(1) Section 186A—

*insert—*

(1A) Also, a person may make a written request to the regulator that a prosecution be brought if—

- 
- (a) the person reasonably considers that an act or omission constitutes an offence against part 2B; and
  - (b) no prosecution has been brought in relation to the act or omission; and
  - (c) it has been at least 6 months since the act or omission happened.
- (2) Section 186A(2), after ‘a request’—  
*insert—*  
under subsection (1) or (1A)
- (3) Section 186A(3), after ‘a category 1 or category 2 offence’—  
*insert—*  
or an offence against part 2B

**59 Amendment of s 186B (Limitation period for prosecutions)**

Section 186B—

*insert—*

- (3) Subsection (1) does not apply to a proceeding for an offence against part 2B.

**60 Amendment of sch 2 (Dictionary)**

Schedule 2—

*insert—*

*causes*, for part 2B, see section 48L(2).

*conduct*, for part 2B, see section 48L(1).

*executive officer*, of a corporation, for part 2B, see section 48L(1).

*senior officer*, of a person conducting a business or undertaking, for part 2B, see section 48L(1).

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

### **61      Act amended**

This division amends the *Safety in Recreational Water Activities Act 2011*.

### **62      Insertion of new pt 2A**

After part 2—

*insert—*

## **Part 2A                      Industrial manslaughter**

### **25A Definitions for part**

(1) In this part—

***conduct*** means an act or omission to perform an act.

***executive officer***, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

***senior officer***, of a person conducting a business or undertaking, means—

- (a) if the person is a corporation—an executive officer of the corporation; or
- (b) otherwise—the holder of an executive position (however described) in relation to the person who makes, or takes part in making, decisions affecting all, or a substantial part, of the person's functions.

- (2) For this part, a person's conduct *causes* death if it substantially contributes to the death.
- (3) For this part, a reference to a worker carrying out work for a business or undertaking includes a reference to a worker who is at a place where recreational water activities are provided, or work is carried out, for the business or undertaking, including during a work break.

### **25B Exceptions**

- (1) A volunteer does not commit an offence under this part.
- (2) Despite section 25(2), a senior officer of an unincorporated association (other than a volunteer) may commit an offence under this part.
- (3) The Criminal Code, section 23 does not apply to an offence under this part.

### **25C Industrial manslaughter—person conducting business or undertaking**

- (1) A person conducting a business or undertaking that provides recreational water activities commits an offence if—
  - (a) a worker—
    - (i) dies in the course of carrying out work for the business or undertaking; or
    - (ii) is injured in the course of carrying out work for the business or undertaking and later dies; and
  - (b) the person's conduct causes the death of the worker; and
  - (c) the person is negligent about causing the death of the worker by the conduct.

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Maximum penalty—

- (a) for an individual—20 years imprisonment;  
or
- (b) for a body corporate—100,000 penalty units.

*Note—*

See the *Work Health and Safety Act 2011*, section 244 or 251, as applied by section 36 of this Act, in relation to the imputation to a body corporate or public authority of conduct of an employee, agent or officer of the body corporate or public authority.

- (2) An offence against subsection (1) is a crime.

### **25D Industrial manslaughter—senior officer**

- (1) A senior officer of a person conducting a business or undertaking that provides recreational water activities commits an offence if—
  - (a) a worker—
    - (i) dies in the course of carrying out work for the business or undertaking; or
    - (ii) is injured in the course of carrying out work for the business or undertaking and later dies; and
  - (b) the senior officer's conduct causes the death of the worker; and
  - (c) the senior officer is negligent about causing the death of the worker by the conduct.

Maximum penalty—20 years imprisonment.

- (2) An offence against subsection (1) is a crime.

## **63 Amendment of s 34 (Enforceable undertakings)**

Section 34—

*insert—*

- (c) a reference to a category 1 offence or category 2 offence were a reference to a category 1 offence or category 2 offence under this Act; and
- (d) a reference to an offence against part 2A were a reference to an offence against part 2A of this Act.

#### **64 Amendment of s 36 (Legal proceedings)**

Section 36—

*insert—*

- (aa) a reference in the part to an offence against part 2A were a reference to an offence against part 2A of this Act; and

#### **65 Amendment of sch 2 (Dictionary)**

Schedule 2—

*insert—*

*causes*, for part 2A, see section 25A(2).

*conduct*, for part 2A, see section 25A(1).

*executive officer*, of a corporation, for part 2A, see section 25A(1).

*senior officer*, of a person conducting a business or undertaking, for part 2A, see section 25A(1).

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

#### **66 Regulation amended**

This division amends the *Work Health and Safety Regulation 2011*.

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**67 Replacement of s 21 (Training for health and safety representatives)**

Section 21—

*omit, insert—*

**21 Prescribed health and safety representative training**

- (1) The prescribed training for section 72(1) of the Act is the following courses of training in work health and safety approved by the regulator—
  - (a) an initial 5 day course of training;
  - (b) 1 day’s refresher training at least every 3 years, with the entitlement to the first refresher training commencing 3 years after the initial training.
- (2) A health and safety representative for a work group for a business or undertaking must complete the initial 5 day course of training within 6 months after the day the representative is elected as a health and safety representative for the work group.

**21A Approving courses of training in work health and safety**

- (1) The regulator may, in approving a course of training in work health and safety, have regard to any relevant matters including—
  - (a) the content and quality of the curriculum, including its relevance to the powers and functions of a health and safety representative; and
  - (b) the qualifications, knowledge and experience of the person who is to provide the course.
- (2) The regulator must notify the approved course of



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training on the regulator's website.

**68 Insertion of new ch 2A**

After chapter 2—

*insert—*

## **Chapter 2A Work health and safety officers**

### **31A Application for certificate of authority for appointment as work health and safety officer**

- (1) A person may apply to the regulator for a certificate of authority for appointment as a work health and safety officer.
- (2) The application must be in the approved form.

### **31B Deciding application**

- (1) The regulator may grant the application if satisfied that—
  - (a) no more than 3 months before the application was made—
    - (i) a registered training organisation has assessed the applicant as competent to perform the functions of a work health and safety officer; or
    - (ii) the applicant has successfully completed an approved work health and safety officer course; or
  - (b) the applicant has the qualifications or experience necessary to satisfactorily perform the functions of a work health and safety officer.
- (2) A certificate of authority for appointment as a

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work health and safety officer expires 5 years after the day the certificate is granted.

(3) In this section—

***approved work health and safety officer course*** means—

- (a) a Certificate IV in Work Health and Safety BSB41412; or
- (b) another work health and safety officer course approved by the regulator under section 31C.

### **31C Approving work health and safety officer courses**

(1) The regulator may approve—

- (a) a work health and safety officer course; or
- (b) a work health and safety officer recertification course.

(2) In approving a course under this section, the regulator must have regard to—

- (a) the content and quality of the curriculum, including its relevance to the functions of a work health and safety officer; and
- (b) the qualifications, knowledge and experience of the person who is to provide the course.

(3) The regulator must notify the approved course on the regulator's website.

## **69 Amendment of s 540 (Inquiry procedure)**

(1) Section 540(4)(b)—

*insert—*

- (ia) work health and safety officers at the facility; and
- (2) Section 540(4)(b)(ia) to (iii)—  
*renumber* as section 540(4)(b)(ii) to (iv).

**70 Insertion of new ch 13, pt 13.4**

Chapter 13—

*insert*—

**Part 13.4 Transitional provision  
for Work Health and  
Safety and Other  
Legislation  
Amendment Act 2017**

**787 Training requirements for health and safety  
representatives**

- (1) This section applies to a health and safety representative for a work group who held office immediately before the commencement.
- (2) Section 21(2) applies to the health and safety representative as if the reference in the section to 6 months after the day the representative is elected as a health and safety representative for a work group were a reference to 6 months after the commencement.

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