



New South Wales

Work Health and Safety Amendment Act 2013 No 109

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Work Health and Safety Amendment Act 2013 No 109

Act No 109, 2013

An Act to amend the *Work Health and Safety Act 2011* to make further provision for proceedings for offences and for savings and transitional regulations. [Assented to 3 December 2013]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Work Health and Safety Amendment Act 2013*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Work Health and Safety Act 2011 No 10

[1] Section 230 Prosecutions

Insert after section 230 (1):

- (1A) Proceedings for an offence against this Act may also be brought by an Australian legal practitioner authorised in writing to represent a person who is authorised under this section to bring the proceedings.

[2] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Work Health and Safety Amendment Act 2013

[3] Schedule 4, clause 1 (6)

Insert after clause 1 (5):

- (6) Subclause (5) (b) and (c) do not apply, and are taken never to have applied, to or in respect of:
 - (a) Schedule 18B to the *Work Health and Safety Regulation 2011*, or
 - (b) any other provision of the *Work Health and Safety Regulation 2011* that does not specifically state that provisions of this Act are deemed to be amended in a specified manner (whether that provision was made before or after the commencement of this subclause).

[4] Schedule 4, Part 2A

Insert after Part 2:

Part 2A Prosecution of offences against OHS laws

9A Definitions

In this Part:

OHS Act means the *Occupational Health and Safety Act 2000*.

OHS laws means the OHS Act or the OHS Regulation.

OHS offence means an offence against a provision of the OHS laws.

OHS Regulation means the *Occupational Health and Safety Regulation 2001*.

WHS Act means this Act.

WHS laws means this Act or the WHS Regulation.

WHS Regulation means regulations under this Act.

9B General transitional arrangements for OHS offences

Proceedings for an OHS offence alleged to have been committed before the repeal of the OHS Act are to be dealt with after the repeal of the OHS Act as if that Act had not been repealed, except as otherwise provided by this Part.

9C Arrangements for proceedings commenced after WHS Act commencement

Proceedings for an OHS offence that are commenced after the commencement of the WHS Act are to be dealt with as follows:

- (a) proceedings are to be dealt with summarily before the Local Court or the District Court in its summary jurisdiction, except as provided by paragraph (b),
- (b) proceedings for an offence against section 32A (Reckless conduct causing death at workplace by person with OHS duties) of the OHS Act are to be taken on indictment.

9D Arrangements for offences committed on or after 7/6/11 and prosecuted in Industrial Court

Proceedings for an OHS offence alleged to have been committed on or after 7 June 2011 that were commenced in the Industrial Court before the commencement of the WHS Act but not finally determined by the Industrial Court before that commencement are discontinued in the Industrial Court on that commencement and are then to be dealt with:

- (a) summarily before the District Court in its summary jurisdiction, unless paragraph (b) applies, or
- (b) on indictment in the case of proceedings for an offence against section 32A of the OHS Act.

9E Requirements for workplace death offence prosecutions

Proceedings for an offence against section 32A of the OHS Act cannot be instituted after the commencement of the WHS Act except with the written consent of a Minister of the Crown (including such a consent given before the commencement of the WHS Act) or by an inspector under the WHS Act.

9F Enforceable undertakings for OHS offences

- (1) Part 11 (Enforceable undertakings) of the WHS Act extends to a contravention or alleged contravention of a provision of the OHS laws that occurred or is alleged to have occurred on or after 7 June 2011.
- (2) This clause does not apply to a contravention or alleged contravention of section 32A of the OHS Act.

9G Authority to prosecute for OHS offences

- (1) In addition to the persons authorised under section 106 of the OHS Act to institute proceedings for an OHS offence, proceedings for such an offence may be instituted by an Australian legal practitioner representing a person so authorised to institute the proceedings.
- (2) This clause extends to proceedings instituted before the commencement of this Part and before the commencement of the WHS Act.

9H Validation

- (1) Any act or omission that would have been valid had this Part been in force at the time of the act or omission is taken to be (and always to have been) valid.

- (2) To remove doubt, this clause extends to the commencement or institution of criminal proceedings (including the purported commencement or institution of criminal proceedings) and any act or omission in connection with criminal proceedings.

[5] Schedule 4, Part 5

Insert as Part 5 of Schedule 4:

Part 5 Provisions consequent on enactment of Work Health and Safety Amendment Act 2013

23 Definition

In this Part:

amending Act means the *Work Health and Safety Amendment Act 2013*.

24 Authority to prosecute

- (1) Section 230 (1A) as inserted by the amending Act extends to proceedings brought before the commencement of that Act.
- (2) Proceedings brought or purporting to have been brought before the commencement of section 230 (1A) that would have been validly brought had section 230 (1A) been in force at the time the proceedings were brought are taken to have been (and always to have been) validly brought.

25 Court decisions not affected

- (1) An amendment made by the amending Act does not affect any decision of a court made before the date of assent to that Act, except as provided by subclause (2).
- (2) A decision of a court made before the date of assent to the amending Act that would have been validly made had the amendments made by that Act been in force when the decision was made (and that would otherwise not have been valid) is validated.

26 Recommencement of terminated proceedings

- (1) Proceedings for an OHS offence that were terminated before the date of assent to the amending Act because they were not validly instituted may be recommenced whether or not the time for commencing the proceedings has expired if the proceedings would have been validly instituted if the amending Act had commenced before the proceedings were terminated.
- (2) Proceedings cannot be recommenced under this clause later than 6 months after the date of assent to the amending Act.
- (3) Terminated proceedings that were terminated in the District Court may be recommenced under this clause on the basis of the applications and other documents by which those proceedings were last commenced, and any thing done in the terminated proceedings (other than the termination of the proceedings) is taken to have been done in the recommenced proceedings.

(4) In this clause:

OHS offence means an offence against a provision of the *Occupational Health and Safety Act 2000* or the *Occupational Health and Safety Regulation 2001*.

proceedings includes purported proceedings.

terminated includes stayed, dismissed or not proceeded with for any other reason (including nullity).

[Second reading speech made in—
Legislative Assembly on 16 October 2013
Legislative Council on 30 October 2013]