



Work Health and Safety (Savings and Transitional) Regulation 2011

under the

Work Health and Safety Act 2011

The Administrator, with the advice of the Executive Council, has made the following Regulation under the *Work Health and Safety Act 2011*.

GREG PEARCE, MP
Minister for Finance and Services

Explanatory note

The object of this Regulation is to provide transitional arrangements for the prosecution after the repeal of the *Occupational Health and Safety Act 2000* (*the OHS Act*) of offences committed under that Act before its repeal.

The transitional arrangements are as follows:

- (a) offences will continue to be prosecuted in accordance with the requirements of the OHS Act except as provided by paragraphs (b) and (c),
- (b) proceedings for offences that are commenced after the commencement of the *Work Health and Safety Act 2011* are to be taken in the Local Court or the District Court in its summary jurisdiction, or on indictment in the case of proceedings for an offence under section 32A (Reckless conduct causing death at workplace by person with OHS duties),
- (c) for offences committed on or after 7 June 2011 where proceedings have already been commenced in the Industrial Court, the Industrial Court proceedings will be discontinued and the proceedings then dealt with summarily before the District Court or (in the case of proceedings under section 32A) on indictment.

This Regulation is made under the *Work Health and Safety Act 2011*, including clause 1 of Schedule 4.

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely, matters of a savings or transitional nature.

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1 Name of Regulation

This Regulation is the *Work Health and Safety (Savings and Transitional) Regulation 2011*.

2 Commencement

This Regulation commences on the commencement of the WHS Act.

3 Definitions

In this Regulation:

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

OHS offence means an offence against a provision of the OHS Act or the regulations under that Act.

WHS Act means the *Work Health and Safety Act 2011*.

4 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before the repeal of the OHS Act are to be dealt with after the repeal of the OHS Act as if that Act had not been repealed, except as otherwise provided by this Regulation.

5 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.

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Clause 6 Work Health and Safety (Savings and Transitional) Regulation 2011

6 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.

7 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.