



New South Wales

# Occupational Health and Safety Amendment (Workplace Deaths) Bill 2005

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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2005*



New South Wales

## **Occupational Health and Safety Amendment (Workplace Deaths) Bill 2005**

Act No , 2005

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An Act to amend the *Occupational Health and Safety Act 2000* to make it an offence for a person who owes a duty under Part 2 of that Act to engage in reckless conduct that causes death at a workplace; and to amend the *Criminal Appeal Act 1912* to provide for appeals in connection with a conviction for such an offence to the Court of Criminal Appeal.

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*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

*Chairman of Committees of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Occupational Health and Safety Amendment (Workplace Deaths) Act 2005*.

**2 Commencement**

This Act commences on the date of assent.

**3 Amendment of Occupational Health and Safety Act 2000 No 40**

The *Occupational Health and Safety Act 2000* is amended as set out in Schedule 1.

**4 Amendment of Criminal Appeal Act 1912 No 16**

The *Criminal Appeal Act 1912* is amended as set out in Schedule 2.

**5 Amendment of Occupational Health and Safety Regulation 2001**

The *Occupational Health and Safety Regulation 2001* is amended as set out in Schedule 3.

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## Schedule 1      Amendment of Occupational Health and Safety Act 2000

(Section 3)

### [1] Part 2A

Insert after Part 2:

### Part 2A Workplace deaths—offence

#### 32A Reckless conduct causing death at workplace by person with OHS duties

- (1) In this section:  
*conduct* includes acts or omissions.
- (2) A person:
  - (a) whose conduct causes the death of another person at any place of work, and
  - (b) who owes a duty under Part 2 with respect to the health or safety of that person when engaging in that conduct, and
  - (c) who is reckless as to the danger of death or serious injury to any person to whom that duty is owed that arises from that conduct,

is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—15,000 penalty units, or
- (b) in the case of an individual—imprisonment for 5 years or 1,500 penalty units, or both.

**Note.** Section 17 of the *Crimes (Sentencing Procedure) Act 1999* provides, at the enactment of this Act, that the value of a penalty unit is \$110. Accordingly, the above maximum penalties are as follows:

- (a) in the case of a corporation—\$1,650,000,
- (b) in the case of an individual—\$165,000 or imprisonment for 5 years, or both.

- (3) It is a defence to any proceedings against a person for that offence if the person proves that there was a reasonable excuse for the conduct.

**Note.** Section 28 provides general defences for any offence against the Act.

- (4) For the purposes of this section:
  - (a) a person's conduct causes death if it substantially contributes to the death, and
  - (b) the death of a person is taken to have been caused at a place of work if the person is injured at the place of work but dies elsewhere as a result of the injury, and
  - (c) it does not matter that the conduct that causes death did not occur at the place of work.
- (5) If a corporation owes a duty under Part 2 with respect to the health or safety of any person, any director or other person concerned in the management of the corporation is taken also to owe that duty for the purposes of subsection (2).
- (6) Section 26 (Offences by corporations—liability of directors and managers) does not apply to an offence against this section. However, this does not prevent a director or other person concerned in the management of a corporation from being prosecuted under this section for an offence committed by the director or other person.

**32B Prosecution for offences under this Part**

- (1) Proceedings for an offence against this Part may only be dealt with summarily before the Industrial Relations Commission in Court Session, despite anything to the contrary in section 105.
- (2) Proceedings for an offence against this Part may be instituted only with the written consent of a Minister of the Crown or by an inspector, despite anything to the contrary in section 106.
- (3) However, any person who would, but for subsection (2), be entitled to institute proceedings for an offence against this Part may make a written application to WorkCover for a statement of the reasons why proceedings for such an offence have not been instituted in respect of alleged conduct that may constitute such an offence. WorkCover is to provide a statement of those reasons to the applicant as soon as practicable after the application is made, unless the alleged conduct has been referred to the Director of Public Prosecutions for consideration of the institution of proceedings.
- (4) Section 197A (Appeals against acquittals in proceedings for offences against occupational health and safety legislation) of the *Industrial Relations Act 1996* does not apply to an offence against this Part.

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**[2] Schedule 3 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Occupational Health and Safety Amendment (Workplace Deaths) Act 2005*

**[3] Schedule 3, Part 5**

Insert after Part 4 of Schedule 3:

**Part 5 Provision relating to Occupational Health and Safety Amendment (Workplace Deaths) Act 2005**

**22 Law Reform Commission review of Occupational Health and Safety Amendment (Workplace Deaths) Act 2005**

- (1) The Law Reform Commission is to inquire into, and report on, the effectiveness of the provisions inserted into the *Occupational Health and Safety Act 2000* and the *Criminal Appeal Act 1912* by the *Occupational Health and Safety Amendment (Workplace Deaths) Act 2005* (***the relevant provisions***).
- (2) The Law Reform Commission in carrying out that inquiry, and making that report, is to have particular regard to:
  - (a) whether the relevant provisions are achieving their aims and objectives, and
  - (b) whether the relevant provisions are appropriate to achieve those aims and objectives, and
  - (c) the incidence and circumstances of workplace deaths in New South Wales since the enactment of the relevant provisions and whether the relevant provisions have contributed to a reduction in workplace deaths in New South Wales, and
  - (d) any deficiencies with the relevant provisions that have become apparent since their enactment, and
  - (e) provisions relating to workplace deaths in other Australian jurisdictions and their operation and effectiveness.
- (3) The Law Reform Commission in carrying out that inquiry, and making that report, is to:
  - (a) consult with unions, employees, employers and other interested stakeholders, and
  - (b) conduct public hearings.

- (4) The inquiry and report is to be undertaken under and in accordance with the *Law Reform Commission Act 1967*.
- (5) The inquiry is to commence before the expiration of the period of 3 years after the commencement of the relevant provisions.
- (6) The Attorney General is required to table or cause to be tabled in Parliament the report, and a detailed written response of the Government, within 3 months after the report is made by the Law Reform Commission.

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## Schedule 2      Amendment of Criminal Appeal Act 1912

(Section 4)

### Section 5AG

Insert after section 5AF:

#### **5AG      Appeal in certain criminal cases dealt with by Industrial Relations Commission in Court Session**

- (1) A person convicted of an offence under section 32A of the *Occupational Health and Safety Act 2000* and sentenced to any term of imprisonment by the Industrial Relations Commission in Court Session (including a sentence imposed on appeal) may appeal under this Act to the Court of Criminal Appeal against:
  - (a) the person's conviction, or
  - (b) the sentence passed on the person's conviction.
- (2) A person may not appeal under this section to the Court of Criminal Appeal unless the person has first exercised any right the person has to appeal to the Full Bench of the Industrial Relations Commission in Court Session under the *Industrial Relations Act 1996*.
- (3) The Court of Criminal Appeal, in proceedings before it on an appeal under this section, may confirm the determination made by the Industrial Relations Commission in Court Session or may order that the determination made by the Industrial Relations Commission in Court Session be vacated and make any determination that the Industrial Relations Commission in Court Session could have made on the evidence heard on appeal.
- (4) This section has effect despite section 179 (Finality of decisions) of the *Industrial Relations Act 1996*.



## **Schedule 3 Amendment of Occupational Health and Safety Regulation 2001**

(Section 5)

### **Clause 358 Application of Act to mines: references to WorkCover**

Insert before clause 358 (1) (a):

(a1) section 32B (3) (Reasons for non-prosecution of offence),