



New South Wales

Work Health and Safety Amendment Bill 2018

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to provide that certain members of the NSW Police Force who are involved in responding to active armed offender incidents do not commit offences under Division 5 of Part 2 of the *Work Health and Safety Act 2011* (the *Act*) for failures to comply with health and safety duties in connection with responding to such incidents, and
- (b) to make miscellaneous amendments to the Act as a result of a statutory review of the Act tabled in Parliament on 22 June 2017.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Work Health and Safety Act 2011 No 10—police responses to active armed offender incidents

Schedule 1 provides that a member of the NSW Police Force does not commit an offence under Division 5 of Part 2 of the *Work Health and Safety Act 2011* for a failure to comply with a health and safety duty that occurs while:

- (a) the member is responding to a particular active armed offender incident, or
- (b) the member is in command of, or is otherwise authorising actions by or providing directions to, other members of the NSW Police Force who are responding to a particular active armed offender incident, or
- (c) the member is receiving information from, or providing information to, other members of the NSW Police Force for the purposes of assisting them in responding to a particular active armed offender incident, or
- (d) the member is participating with other members of the NSW Police Force in preparing or planning for responding to a particular active armed offender incident.

A member of the NSW Police Force will be regarded as responding to a particular active armed offender incident if:

- (a) a person armed with an offensive weapon or instrument (the *offender*) is attacking or has attacked, or is attempting to attack or has attempted to attack, another person (the *victim*), and
- (b) the member reasonably believes (or one or more other members of the NSW Police Force who are commanding, authorising actions by or directing the member reasonably believe) that the offender will do any of the following unless prevented from doing so:
 - (i) continue attacking, or attempting to attack, the victim,
 - (ii) attack, or attempt to attack, the victim again,
 - (iii) attack, or attempt to attack, another person apart from the victim, and
- (c) the member is acting (whether or not in combination with, or at the command or direction of, other members of the NSW Police Force) to prevent the offender from doing so.

Schedule 2 Amendment of Work Health and Safety Act 2011 No 10—statutory review

Schedule 2 [3] extends the power of the regulator under the Act to require the provision of information, evidence and documents so that the power applies to persons and matters outside New South Wales. (See recommendation 1 of the review.)

Schedule 2 [6] removes facsimile transmission as a means by which an inspector may issue certain notices under the Act. **Schedule 2 [1]** removes facsimile transmission as an example of the means by which a person may give written notice of a notifiable incident to the regulator. (See recommendation 2 of the review.)

Schedule 2 [4] corrects a cross-reference. (See recommendation 3 of the review.)

Schedule 2 [5] permits an inspector to record questions asked, and answers given, orally under Part 9 (Securing compliance) of the Act. **Schedule 2 [2]** extends this power to permit the recording of evidence given orally following the regulator's issue of a notice requiring the evidence to be so given. (See recommendation 4 of the review.)

Schedule 2 [7] makes it clear that the Act's provisions with respect to prosecutions do not affect the Attorney General's ability to prosecute offences against the Act. (See recommendation 5 of the review.)

Schedule 2 [8] enables the regulator, or a designated member of the regulator's staff, to certify in writing certain matters and provides that, in proceedings under the Act, such a certificate is prima facie evidence of those matters. (See recommendation 7 of the review.)



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New South Wales

Work Health and Safety Amendment Bill 2018

No. , 2018

A Bill for

An Act to amend the *Work Health and Safety Act 2011* to provide for police responses to active armed offender incidents and to make miscellaneous amendments to that Act as a result of a statutory review of that Act.

The Legislature of New South Wales enacts:

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1 Name of Act

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This Act is the *Work Health and Safety Amendment Act 2018*.

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2 Commencement

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

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Schedule 1	Amendment of Work Health and Safety Act 2011	1
	No 10—police responses to active armed	2
	offender incidents	3
Section 34A		4
Insert after section 34:		5
34A	Exception for police responding to particular active armed offender incidents	6
(1)	A member of the NSW Police Force does not commit an offence under this Division for a failure to comply with a health and safety duty that occurs while:	7
	(a) the member is responding to a particular active armed offender incident,	8
	or	9
	(b) the member is in command of, or is otherwise authorising actions by or providing directions to, other members of the NSW Police Force who are responding to a particular active armed offender incident, or	10
	(c) the member is receiving information from, or providing information to, other members of the NSW Police Force for the purposes of assisting them in responding to a particular active armed offender incident, or	11
	(d) the member is participating with other members of the NSW Police Force in preparing or planning for responding to a particular active armed offender incident.	12
		13
(2)	A member of the NSW Police Force is <i>responding to a particular active armed offender incident</i> if:	14
	(a) a person armed with an offensive weapon or instrument (the <i>offender</i>) is attacking or has attacked, or is attempting to attack or has attempted to attack, another person (the <i>victim</i>), and	15
	(b) the member reasonably believes (or one or more other members of the NSW Police Force who are commanding, authorising actions by or directing the member reasonably believe) that the offender will do any of the following unless prevented from doing so:	16
	(i) continue attacking, or attempting to attack, the victim,	17
	(ii) attack, or attempt to attack, the victim again,	18
	(iii) attack, or attempt to attack, another person apart from the victim, and	19
	(c) the member is acting (whether or not in combination with, or at the command or direction of, other members of the NSW Police Force) to prevent the offender from doing so.	20
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(3)	To avoid doubt, this section does not affect the duties of the State or the Crown under this Part in connection with responding to a particular active armed offender incident.	22
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(4)	In this section:	25
	<i>offensive weapon or instrument</i> has the same meaning as in the <i>Crimes Act 1900</i> .	26
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Schedule 2	Amendment of Work Health and Safety Act 2011	1
	No 10—statutory review	2
[1]	Section 38 Duty to notify of notifiable incidents	3
	Omit “facsimile,” from the example to section 38 (3).	4
[2]	Section 155 Powers of regulator to obtain information	5
	Insert after section 155 (7):	6
	(8) The regulator has the same power to record questions, answers and evidence given orally under this section as an inspector has under section 185A in respect of questions and answers to questions given under Part 9.	7 8 9
[3]	Section 155A	10
	Insert after section 155:	11
	155A Extraterritorial application	12
	(1) A notice under section 155 may be served on a person in respect of a matter even though the person is outside the State or the matter occurs or is located outside the State, so long as the matter relates to the administration of this Act (including, but not limited to, investigation of, or enforcement action relating to, offences against this Act).	13 14 15 16 17
	(2) To avoid doubt, section 155 (5) applies to a requirement in a notice that is served in the manner referred to in subsection (1).	18 19
[4]	Section 166 Persons assisting inspectors	20
	Omit “section 165” from section 166 (1). Insert instead “section 163”.	21
[5]	Section 185A	22
	Insert after section 185:	23
	185A Recording of evidence	24
	(1) An inspector may cause any questions and answers to questions given under this Part to be recorded if the inspector has informed the person who is to be questioned that the recording is to be made.	25 26 27
	(2) A recording may be made using a sound recording device or an audio visual device.	28 29
	(3) A copy of any such recording must be provided by the inspector to the person who is questioned as soon as practicable after it is made.	30 31
	(4) A recording may be made under this section despite the provisions of any other law.	32 33
[6]	Section 209 Issue and giving of notice	34
	Omit “facsimile or” from section 209 (1) (a).	35
[7]	Section 230 Prosecutions	36
	Insert “the Attorney General or” before “the Director of Public Prosecutions” in section 230 (5).	37 38

[8] Section 233A	1
Insert after section 233:	2
233A Certificate evidence of certain matters	3
(1) A document signed by the regulator, or by a member of staff designated by the regulator for the purposes of this section, and certifying any one or more of the matters specified in subsection (2) is admissible in any proceedings under this Act and is prima facie evidence of the matters so certified.	4 5 6 7
(2) The following matters are specified for the purposes of subsection (1):	8
(a) that a person was or was not, at a specified time or during a specified period, an inspector,	9 10
(b) that a person was or was not, at a specified time or during a specified period, a member of staff of the regulator,	11 12
(c) that a specified function under this Act was delegated to a specified person during a specified period,	13 14
(d) that an inspector had, at a specified time or during a specified period, the written authorisation of the regulator to bring proceedings for an offence against this Act (either generally or in a particular case).	15 16 17
(3) For the purposes of the certification of a matter referred to in subsection (2) (a), the person who appointed the inspector concerned is taken to be a member of staff designated by the regulator (as referred to in subsection (1)).	18 19 20 21