

WESTERN AUSTRALIA
LEGISLATIVE COUNCIL
AMENDMENTS AND SCHEDULES
Supplementary Notice Paper No. 155
Issue No. 4
TUESDAY, 15 SEPTEMBER 2020

WORK HEALTH AND SAFETY BILL 2019 [155-2]

When in committee on the *Work Health and Safety Bill 2019*:

Clause 2

Hon Nick Goiran: To move –

12/2 Page 2, line 8 — To insert after “Royal Assent”:

(assent day)

Hon Nick Goiran: To move –

13/2 Page 2, after line 8 — To insert:

(aa) Part 14, other than Divisions 1 to 3 — on the day after assent day;

Hon Nick Goiran: To move –

14/2 Page 2, after line 9 — To insert:

(2) However, if no day is fixed under subsection (1)(b) before the end of the period of 10 years beginning on assent day, this Act is repealed on the day after that period ends.

Clause 4

Hon Nick Goiran: To move –

1/4 Page 7, line 12 — To delete “or an offence under section 30B”.

Hon Alison Xamon: To move –

38/4 Page 9, after line 25 — To insert:

- (ca) an authorised officer as defined in section 230A;

Clause 5

Hon Alison Xamon: To move –

36/5 Page 12, after line 15 — To insert:

- (7A) A strata company that is responsible for any common areas used only for residential purposes may be taken not to be a person conducting a business or undertaking in relation to those premises.
- (7B) Subsection (7A) does not apply if the strata company engages any worker as an employee.

Hon Alison Xamon: To move –

37/5 Page 12, after line 16 — To insert:

strata company means a body corporate established under section 14 of the *Strata Titles Act 1985* on registration of a strata titles scheme;

Clause 7

Hon Nick Goiran: To move –

15/7 Page 13, lines 29 and 30 — To delete the lines and insert:

- (h) a volunteer.

Clause 12A

Hon Nick Goiran: To move –

16/12A Page 15, line 6 — To delete “has effect only if the regulations provide that it”.

Clause 19

Hon Alison Xamon: To move –

39/19 Page 18, after line 26 — To insert:

- (da) in relation to the psychological health of workers who carry out work for the business or undertaking —
 - (i) the identification, assessment and elimination of risks to psychological health arising from work; and
 - (ii) the implementation of work practices, and the fostering of work cultures, that promote and support psychological health;
 and

Clause 26A

Hon Nick Goiran:

17/26A Page 30, line 1 to page 31, line 32 — To oppose the clause.

Clause 30A

Hon Nick Goiran: To move –

2/30A Page 35, line 19 — To delete “an offence under section 30B(1).” and insert:

a Category 1 offence, a Category 2 offence or a Category 3 offence.

Hon Nick Goiran: To move –

3/30A Page 36, line 12 — To delete “an offence under section 30B(3).” and insert:

a Category 1 offence, a Category 2 offence or a Category 3 offence.

Clause 30B

Hon Nick Goiran:

4/30B Page 36, line 13 to page 37, line 10 — To oppose the clause.

Clause 31

Hon Nick Goiran: To move –

5/31 Page 37, line 17 — To delete “serious harm to” and insert:

the death of, or serious harm to,

Clause 72

Hon Nick Goiran: To move –

18/72 Page 71, line 11 — To delete the line and insert:

- (c) subject to subsection (5), chosen by the health and safety representative, in consultation with the person conducting the business or undertaking.

Hon Nick Goiran: To move –

19/72 Page 72, line 6 — To delete “that subsection,” and insert:

subsections (1)(c) and (2),

Hon Nick Goiran: To move –

20/72 Page 72, lines 10 to 14 — To delete the lines and insert:

- (7) A person conducting a business or undertaking must allow a health and safety representative to attend a course decided by the inspector and pay the costs decided by the inspector under subsection (6).

Clause 223

Hon Alison Xamon: To move –

40/223 Page 146, after line 9, the Table after item 5 — To insert:

5A.	Section 155A(6)(b) (decision to withhold approval of legal practitioner on other reasonable grounds)	The witness.
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Clause 230

Hon Alison Xamon: To move –

41/230 Page 159, line 10 — To delete “(3),” and insert:

(3) and section 230A,

Hon Nick Goiran: To move –

6/230 Page 159, lines 11 and 12 — To delete “under section 30A”.

New Clause 230A

Hon Alison Xamon: To move –

42/NC230A Page 159, after line 23 — To insert:

230A. Prosecutions by authorised officers of unions

- (1) In this section —

authorised officer, in relation to a union, means a person who —

- (a) is, in relation to the union, an officer as defined in, as the case requires —
- (i) the *Fair Work (Registered Organisations) Act 2009* (Commonwealth) section 6; or
 - (ii) the *Industrial Relations Act 1979* section 7(1);

and

- (b) is authorised by the union to bring proceedings under this section (either generally or in a particular case).

- (2) Proceedings for an offence against this Act, other than an industrial manslaughter offence under section 30A, may be brought by an authorised officer of a union (the *relevant union*) if the offence relates to 1 or both of the following —
- (a) 1 or more persons (including deceased persons) who were members of the relevant union at the time of the offence;
 - (b) a workplace at which, or a business or undertaking for which, 1 or more persons who were members of the relevant union at the time of the offence worked at that time.
- (3) In subsection (2)(a) and (b), references to the relevant union include a former union whose membership was (wholly or partly) taken over (directly or indirectly) by the relevant union.
- (4) Despite subsection (2), proceedings cannot be brought under this section for an offence unless —
- (a) the applicable limitation period in section 232(1) has ended without any proceedings for the offence having been brought under section 230; or
 - (b) the regulator has informed the relevant union that no proceedings for the offence will be brought under section 230.
- (5) Proceedings may be brought under this section for an offence after the end of the applicable limitation period in section 232(1) if they are brought within 6 months after the earlier of the following days —
- (a) the last day of the applicable limitation period in section 232(1);
 - (b) the day on which the regulator informs the relevant union that no proceedings for the offence will be brought under section 230.
- (6) If proceedings are brought under this section for an offence, the *Official Prosecutions (Accused's Costs) Act 1973* applies, with any necessary modifications, as if for the purposes of that Act —
- (a) the proceedings were an official prosecution; and
 - (b) the relevant union were a statutory body; and
 - (c) the authorised officer were a public official acting as the agent of the relevant union.
- (7) Section 270(2) applies in relation to a civil liability that would, but for section 270(1), have attached to an authorised officer of a union as if the reference to the State were to the union.

Clause 232

Hon Nick Goiran: To move –

7/232 Page 161, line 16 — To delete “under section 30A”.

Hon Alison Xamon: To move –

43/232 Page 161, after line 30 — To insert:

- (1A) Proceedings for an offence may be brought after the end of the applicable limitation period in subsection (1) in accordance with section 230A(5).

Hon Nick Goiran: To move –

8/232 Page 161, lines 31 and 32 — To delete “an industrial manslaughter offence under section 30B, or for a Category 1 offence,” and insert:

a Category 1 offence

Hon Nick Goiran: To move –

9/232 Page 162, lines 8 to 10 — To delete the lines and insert:

- (a) a Category 1 offence;
- (b) a Category 2 offence;
- (c) a Category 3 offence.

Hon Nick Goiran: To move –

10/232 Page 162, line 14 — To delete “under section 30A”.

Hon Nick Goiran: To move –

11/232 Page 162, lines 22 to 26 — To delete the lines and insert:

- (5) A person charged with an industrial manslaughter offence may, as provided for by section 30A(2) or (4), be convicted of a Category 1 offence, a Category 2 offence or a Category 3 offence despite subsection (1) and section 10A(2) of *The Criminal Code*.

Clause 272A

Hon Rick Mazza: To move –

31/272A Page 177, line 21 — To delete “an offence against this Act.” and insert:

a crime under section 30A.

Hon Rick Mazza: To move –

32/272A Page 177, line 25 — To delete “an offence against this Act; or” and insert:

a crime under section 30A; or

Hon Rick Mazza: To move –

33/272A Page 177, lines 27 and 28 — To delete “an offence against this Act; or” and insert:

a crime under section 30A; or

Hon Rick Mazza: To move –

34/272A Page 178, lines 2 and 3 — To delete “an offence against this Act; or” and insert:

a crime under section 30A; or

Hon Rick Mazza: To move –

35/272A Page 178, line 5 — To delete “an offence against this Act.” and insert:

a crime under section 30A.

Clause 274

Hon Nick Goiran: To move –

21/274 Page 179, lines 1 to 5 — To delete the lines.

Hon Nick Goiran: To move –

22/274 Page 179, lines 15 to 21 — To delete the lines and insert:

- (6) The regulator must ensure that a copy of each code of practice that is currently approved is available for inspection by members of the public without charge at the office of the regulator during normal business hours.

Clause 276

Hon Nick Goiran: To move –

23/276 Page 180, lines 13 to 17 — To delete the lines and insert:

- (1) The Governor may make regulations in relation to any matter or thing that —
- (a) is required or permitted by this Act to be prescribed; or
 - (b) is necessary or convenient to be prescribed to give effect to this Act.

Hon Nick Goiran: To move –

24/276 Page 180, lines 24 to 27 — To delete the lines.

Hon Nick Goiran: To move –

25/276 Page 180, line 28 to page 181, line 3 — To delete the lines.

Clause 277

Hon Nick Goiran: To move –

26/277 Page 181, line 24 — To delete the line and insert:

on which this section comes into operation; and

Hon Nick Goiran: To move –

27/277 Page 181, after line 32 — To insert:

- (3) If, in the Minister’s opinion, a House of Parliament will not sit during the period of 21 days after finalisation of the report, the Minister must send the report to the Clerk of the House.
- (4) When the report is sent to the Clerk of a House it is taken to have been laid before the House.
- (5) The laying of the report that is taken to have occurred under subsection (4) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk receives the report.

Clause 376

Hon Nick Goiran: To move –

28/376 Page 222, lines 1 to 6 — To delete the lines and insert:

- (3) Transitional regulations may provide that specified provisions of this Act, or any other enactment, do not apply to, or in relation to, a specified matter or thing.

Clause 420

Hon Nick Goiran: To move –

29/420 Page 250, after line 23 — To insert:

- (2) Subsection (3) applies if a code of practice referred to in subsection (1) incorporates by reference, as provided for by section 93(2) of MSIA or section 57(2) of OSHA, a document as the document may from time to time be amended.
- (3) The code of practice continues in effect under subsection (1) as if the document were incorporated as the document is in force immediately before commencement day.
- (4) Accordingly, if the document is amended on or after commencement day, the amendment has no effect for the purposes of the code of practice unless the code of practice is subsequently varied under section 274 to apply, adopt or incorporate the amendment.

Schedule 1

Hon Nick Goiran: To move –

30/S1 Page 253, lines 27 and 28 — To delete “or modifications”.

