

WESTERN AUSTRALIA
LEGISLATIVE COUNCIL
AMENDMENTS AND SCHEDULES
Supplementary Notice Paper No. 155
Issue No. 6
WEDNESDAY, 16 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)

Minister for Regional Development representing the Minister for Industrial Relations: To move –

44/2 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no day is fixed under subsection (1)(b) before the end of the period of 10 years beginning on assent day, this Act is repealed on the day after that period ends.

Minister for Regional Development representing the Minister for Industrial Relations: To move –

45/2 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no day is fixed under subsection (1)(b) before the end of the period of 10 years beginning on assent day, this Act is repealed on the day after that period ends.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

Minister for Regional Development representing the Minister for Industrial Relations: To move –

46/4 Page 4, line 16 — To delete the line and insert:

Category 1 crime — see section 31;

Minister for Regional Development representing the Minister for Industrial Relations: To move –

47/4 Page 7, lines 11 and 12 — To delete the lines and insert:

industrial manslaughter — see section 30A;

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

Minister for Regional Development representing the Minister for Industrial Relations:

48/12A Page 15, lines 4 to 9 — To oppose the clause.

Hon Nick Goiran: To move –

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

Clause 12B

Minister for Regional Development representing the Minister for Industrial Relations: To move –

49/12B Page 15, line 21 — To delete the line.

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 30

Minister for Regional Development representing the Minister for Industrial Relations: To move –
50/30 Page 34, after line 26 — To insert:

serious harm, in relation to an individual, means an illness or injury that —

- (a) endangers, or is likely to endanger, the individual’s life; or
- (b) results, or is likely to result, in permanent injury or harm to the individual’s health.

Part 2 Division 5 Subdivision 2 heading

Minister for Regional Development representing the Minister for Industrial Relations: To move –
51/P2D5H Page 35, line 1 — To delete the line and insert:

Subdivision 2 — Industrial manslaughter and other offences**Clause 30A**

Minister for Regional Development representing the Minister for Industrial Relations: To move –
52/30A Page 35, line 3 — To insert after “crime”:

(industrial manslaughter)

Minister for Regional Development representing the Minister for Industrial Relations: To move –
53/30A Page 35, line 12 — To insert after “of”:

, or serious harm to,

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.

Minister for Regional Development representing the Minister for Industrial Relations: To move –
54/30A Page 35, line 19 — To delete “an offence under section 30B(1).” and insert:

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

Minister for Regional Development representing the Minister for Industrial Relations: To move –
55/30A Page 35, line 20 — To insert after “crime”:

(industrial manslaughter)

Minister for Regional Development representing the Minister for Industrial Relations: To move –
56/30A Page 36, line 7 — To insert after “of”:

, or serious harm to,

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.

Minister for Regional Development representing the Minister for Industrial Relations: To move –
57/30A Page 36, line 12 — To delete “an offence under section 30B(3).” and insert:

a Category 1 crime, 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.

Minister for Regional Development representing the Minister for Industrial Relations:

58/30B Page 36, line 13 to page 37, line 10 — To oppose the clause.

Part 2 Division 5 Subdivision 3 heading

Minister for Regional Development representing the Minister for Industrial Relations: To move –
59/P2D3H Page 37, line 11 — To delete the line.

Clause 31

Minister for Regional Development representing the Minister for Industrial Relations:

60/31 Page 37, line 12 to page 38, line 14 — To oppose the clause.

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,

New Clause 31**Minister for Regional Development representing the Minister for Industrial Relations:** To move –

61/NC31 Page 38, after line 14 — To insert:

31. Failure to comply with health and safety duty causing death or serious harm — Category 1

- (1) A person commits a crime (a *Category 1 crime*) if —
- (a) the person has a health and safety duty; and
 - (b) the person fails to comply with that duty; and
 - (c) the failure causes the death of, or serious harm to, an individual.

Penalty for this subsection:

- (a) for an individual, if the crime is committed by the individual as a person conducting a business or undertaking —
 - (i) if the failure causes death, imprisonment for 10 years and a fine of \$2 500 000;
 - (ii) in any other case, imprisonment for 7 years and a fine of \$1 900 000;
- (b) for an individual, if paragraph (a) does not apply —
 - (i) if the failure causes death, imprisonment for 5 years and a fine of \$680 000;
 - (ii) in any other case, imprisonment for 3 years and a fine of \$560 000;
- (c) for a body corporate —
 - (i) if the failure causes death, a fine of \$5 000 000;
 - (ii) in any other case, a fine of \$4 200 000.

Summary conviction penalty for this subsection:

- (a) for an individual, if the crime is committed by the individual as a person conducting a business or undertaking —
 - (i) if the failure causes death, imprisonment for 5 years and a fine of \$1 400 000;
 - (ii) in any other case, imprisonment for 3 years and a fine of \$880 000;
 - (b) for an individual, if paragraph (a) does not apply —
 - (i) if the failure causes death, imprisonment for 2 years and a fine of \$450 000;
 - (ii) in any other case, a fine of \$340 000;
 - (c) for a body corporate —
 - (i) if the failure causes death, a fine of \$3 400 000;
 - (ii) in any other case, a fine of \$2 600 000.
- (2) An officer of a person (the *PCBU*) commits a crime (a *Category 1 crime*) if —
- (a) the PCBU has a health and safety duty as a person conducting a business or undertaking; and

- (b) the PCBU fails to comply with that duty; and
- (c) the failure causes the death of, or serious harm to, an individual; and
- (d) the PCBU's conduct that constitutes the failure —
 - (i) is attributable to any neglect on the part of the officer; or
 - (ii) is engaged in with the officer's consent or connivance.

Penalty for this subsection:

- (a) if the failure causes death, imprisonment for 10 years and a fine of \$2 500 000;
- (b) in any other case, imprisonment for 7 years and a fine of \$1 900 000.

Summary conviction penalty for this subsection:

- (a) if the failure causes death, imprisonment for 5 years and a fine of \$1 400 000;
- (b) in any other case, imprisonment for 3 years and a fine of \$880 000.

- (3) A person charged with a Category 1 crime may be convicted of a Category 2 offence or a Category 3 offence.

New Clause 31

Hon Colin Tincknell: To move –

83/NC31 Page 38, after line 14 — To insert:

31. Failure to comply with health and safety duty causing death or serious harm — Category 1

- (1) A person commits a crime (a *Category 1 crime*) if —
 - (a) the person has a health and safety duty; and
 - (b) the person fails to comply with that duty in circumstances of gross negligence; and
 - (c) the failure causes the death of, or serious harm to, an individual.

Penalty for this subsection:

- (a) for an individual, if the crime is committed by the individual as a person conducting a business or undertaking —
 - (i) if the failure causes death, imprisonment for 10 years and a fine of \$2 500 000;
 - (ii) in any other case, imprisonment for 5 years and a fine of \$680 000;
- (b) for an individual, if paragraph (a) does not apply, imprisonment for 3 years and a fine of \$560 000;
- (c) for a body corporate —
 - (i) if the failure causes death, a fine of \$5 000 000;
 - (ii) in any other case, a fine of \$4 200 000.

Summary conviction penalty for this subsection:

- (a) for an individual, if the crime is committed by the individual as a person conducting a business or undertaking —
 - (i) if the failure causes death, imprisonment for 5 years and a fine of \$1 400 000;

- (ii) in any other case, imprisonment for 3 years and a fine of \$880 000;
 - (b) for an individual, if paragraph (a) does not apply —
 - (i) if the failure causes death, imprisonment for 2 years and a fine of \$450 000;
 - (ii) in any other case, a fine of \$340 000;
 - (c) for a body corporate —
 - (i) if the failure causes death, a fine of \$3 400 000;
 - (ii) in any other case, a fine of \$2 600 000.
- (2) An officer of a person (the *PCBU*) commits a crime (a *Category 1 crime*) if —
- (a) the PCBU has a health and safety duty as a person conducting a business or undertaking; and
 - (b) the PCBU fails to comply with that duty; and
 - (c) the failure causes the death of, or serious harm to, an individual; and
 - (d) the PCBU’s conduct that constitutes the failure —
 - (i) is attributable to any neglect on the part of the officer; or
 - (ii) is engaged in with the officer’s consent or connivance.

Penalty for this subsection:

- (a) if the failure causes death, imprisonment for 10 years and a fine of \$2 500 000;
- (b) in any other case, imprisonment for 5 years and a fine of \$680 000.

Summary conviction penalty for this subsection:

- (a) if the failure causes death, imprisonment for 5 years and a fine of \$1 400 000;
- (b) in any other case, imprisonment for 3 years and a fine of \$880 000.

- (3) A person charged with a Category 1 crime may be convicted of a Category 2 offence or a Category 3 offence.

Clause 32

Minister for Regional Development representing the Minister for Industrial Relations: To move –
62/32 Page 38, line 16 — To delete “a Category 2 offence” and insert:

an offence (a *Category 2 offence*)

Clause 33

Minister for Regional Development representing the Minister for Industrial Relations: To move –
63/33 Page 39, line 2 — To delete “a Category 3 offence” and insert:

an offence (a *Category 3 offence*)

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 216**Minister for Regional Development representing the Minister for Industrial Relations:** To move –**64/216** Page 143, lines 11 and 12 — To delete “an industrial manslaughter offence or a Category 1 offence.” and insert:

industrial manslaughter or a Category 1 crime.

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 Rick Mazza:****84/230** Page 159, lines 9 to 23 — To oppose the clause.

Hon Alison Xamon: To move –

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

(3) and section 230A,

Minister for Regional Development representing the Minister for Industrial Relations: To move –

65/230 Page 159, lines 11 and 12 — To delete “, other than an industrial manslaughter offence under section 30A,”.

Hon Nick Goiran: To move –

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

Minister for Regional Development representing the Minister for Industrial Relations: To move –

66/230 Page 159, lines 21 to 23 — To delete the lines and insert:

- (3) Nothing in this section affects —
- (a) the ability of an authorised officer (as defined in the *Criminal Procedure Act 2004* section 80(1)) to commence or conduct a prosecution for an offence against this Act; or
 - (b) the functions of the DPP under the *Director of Public Prosecutions Act 1991*.

New Clause 230

Hon Rick Mazza: To move –

85/NC230 Page 159, after line 23 — To insert:

230. Prosecutions

- (1) Proceedings for an offence against this Act may only be brought by —
 - (a) the DPP; or
 - (b) a member of the DPP’s staff with the written authorisation of the DPP (either generally or in a particular case).
- (2) The regulator must issue, and publish on the regulator’s website, general guidelines for or in relation to the acceptance of WHS undertakings under this Act.
- (3) The DPP must issue, and publish on the DPP’s website, general guidelines for or in relation to the prosecution of offences under this Act.

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 231

Minister for Regional Development representing the Minister for Industrial Relations: To move –

- 67/231** Page 159, lines 27 and 28 — To delete “an industrial manslaughter offence, a Category 1 offence” and insert:

industrial manslaughter, a Category 1 crime

Hon Rick Mazza: To move –

- 86/231** Page 160, line 4 — To delete “regulator” and insert:

DPP

Hon Rick Mazza: To move –

- 87/231** Page 160, line 6 — To delete “regulator” and insert:

DPP

Hon Rick Mazza: To move –

- 88/231** Page 160, line 7 — To delete “regulator” and insert:

DPP

Minister for Regional Development representing the Minister for Industrial Relations: To move –

- 68/231** Page 160, line 17 to page 161, line 10 — To delete the lines.

Hon Rick Mazza: To move –

- 89/231** Page 160, line 17 to page 161, line 10 — To delete the lines.

Clause 232

Minister for Regional Development representing the Minister for Industrial Relations: To move –

- 66/232** Page 161, lines 15 and 16 — To delete “an industrial manslaughter offence under section 30A,” and insert:

industrial manslaughter or a Category 1 crime,

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).

Minister for Regional Development representing the Minister for Industrial Relations: To move –

70/232 Page 161, line 31 to page 162, line 4 — To delete the lines.

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 Rick Mazza: To move –

90/232 Page 162, lines 5 to 21 — To delete the lines.

Minister for Regional Development representing the Minister for Industrial Relations: To move –

71/232 Page 162, lines 5 to 10 — To delete the lines and insert:

- (3) Subsection (4) applies to proceedings (the *relevant proceedings*) against a person for a Category 1 crime, a Category 2 offence or a Category 3 offence in relation to any conduct (the *relevant conduct*).

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.

Minister for Regional Development representing the Minister for Industrial Relations: To move –

72/232 Page 162, lines 13 and 14 — To delete “an industrial manslaughter offence under section 30A” and insert:

industrial manslaughter

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*.

Minister for Regional Development representing the Minister for Industrial Relations: To move –

73/232 Page 162, lines 22 to 26 — To delete the lines and insert:

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

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 288**Minister for Regional Development representing the Minister for Industrial Relations:****74/288** Page 186, lines 7 to 21 — To oppose the clause.**New Clause 288****Minister for Regional Development representing the Minister for Industrial Relations:** To move –**75/NC288** Page 186, after line 21 — To insert:**288. Section 96A deleted**

Delete section 96A.

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 417**Minister for Regional Development representing the Minister for Industrial Relations:** To move –**76/417** Page 249, lines 10 and 11 — To delete the lines.**Minister for Regional Development representing the Minister for Industrial Relations:** To move –**77/417** Page 249, line 28 — To delete “health and safety”.**Minister for Regional Development representing the Minister for Industrial Relations:** To move –**78/417** Page 250, line 4 — To delete “health and safety”.**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

Minister for Regional Development representing the Minister for Industrial Relations:

79/S1 Page 253, lines 1 to 31 — To oppose the Schedule.

Hon Nick Goiran: To move –

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

Schedule 2

Minister for Regional Development representing the Minister for Industrial Relations: To move –

80/S2 Page 273, line 23 to page 274, line 10 — To delete the lines.

Long Title

Minister for Regional Development representing the Minister for Industrial Relations: To move –

81/LT Page 1, the 4th bullet point — To delete “and” the second time it occurs.

Minister for Regional Development representing the Minister for Industrial Relations: To move –

82/LT Page 1 — To delete the 5th bullet point.

