

WESTERN AUSTRALIA
LEGISLATIVE COUNCIL
AMENDMENTS AND SCHEDULES
Supplementary Notice Paper No. 155
Issue No. 9
TUESDAY, 13 OCTOBER 2020

WORK HEALTH AND SAFETY BILL 2019 [155-2]

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

Clause 272A

Hon Rick Mazza: To move –

92/272A Page 177, line 21 — To delete “an offence against this Act.” and insert:

a crime under section 30A or a Category 1 offence.

Hon Rick Mazza: To move –

93/272A Page 177, line 25 — To delete “an offence against this Act; or” and insert:

a crime under section 30A or a Category 1 offence; or

Hon Rick Mazza: To move –

94/272A Page 177, lines 27 and 28 — To delete “an offence against this Act; or” and insert:

a crime under section 30A or a Category 1 offence; or

Hon Rick Mazza: To move –

95/272A Page 178, lines 2 and 3 — To delete “an offence against this Act; or” and insert:

a crime under section 30A or a Category 1 offence; or

Hon Rick Mazza: To move –

96/272A Page 178, line 5 — To delete “an offence against this Act.” and insert:

a crime under section 30A or a Category 1 offence.

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.

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

91/274 Page 179, after line 21 — To insert:

- (7) The Minister must make available on the WHS Department’s website, without charge, a copy of —
- (a) each code of practice that is currently approved; and
 - (b) unless doing so would infringe copyright, each document applied, adopted or incorporated (to any extent) by an approved code of practice.

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.



Postponed clauses:

Postponed Clause 7

Hon Nick Goiran: To move –

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

- (h) a volunteer.

Postponed 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*.

Postponed New Clause 230

[note: moved from floor of House — debate and new clause postponed — 24 September 2020]

Hon Nick Goiran:

Page 159, after line 23 — To insert:

230. Prosecutions

- (1) Proceedings for an offence under section 30A or section 31 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.

Postponed 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.

Postponed 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;

Postponed Clause 231

Minister for Regional Development representing the Minister for Industrial Relations: To move –
98/231 Page 159, lines 27 and 28 — To delete “an industrial manslaughter offence,” and insert:

industrial manslaughter,

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.

Postponed Clause 232

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

99/232 Page 161, lines 15 and 16 — To delete “an industrial manslaughter offence under section 30A,” and insert:

industrial manslaughter,

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

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

100/232 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 –

101/232 Page 162, lines 5 to 21 — To delete the lines and insert:

- (3) Subsections (4) and (4A) apply to proceedings (the *relevant proceedings*) against a person for a Category 1 offence, a Category 2 offence or a Category 3 offence in relation to any conduct (the *relevant conduct*).
- (4) The relevant proceedings may be brought after the end of the applicable limitation period in subsection (1) if —

- (a) either —
 - (i) the DPP has considered whether proceedings for industrial manslaughter should be brought against the person in relation to the relevant conduct or to any conduct that includes the relevant conduct, and has decided not to bring those proceedings; or
 - (ii) the DPP has discontinued proceedings for industrial manslaughter against the person in relation to the relevant conduct or to any conduct that includes the relevant conduct;
- and
- (b) the relevant proceedings are brought no later than 6 months after the day on which the DPP made that decision or discontinued those proceedings.

(4A) Despite section 230(1), the relevant proceedings may only be brought under subsection (4) by an authorised officer (as defined in the *Criminal Procedure Act 2004* section 80(1)).

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*.

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

102/232 Page 162, lines 22 to 26 — To delete the lines and insert:

- (5) A person may be convicted of an offence as provided for by section 30A(2) or (4) despite subsection (1) and section 10A(2) of *The Criminal Code*.

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.



Clauses to be recommitted:

Recommitted Clause 216

Minister for Regional Development representing the Minister for Industrial Relations: To move –
97/216 Page 143, line 11 — To delete “an industrial manslaughter offence” and insert:

industrial manslaughter

