



Work Health and Safety Amendment Act 2023

No. 9, 2023

**An Act to amend legislation relating to work health
and safety, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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No. 9, 2023

An Act to amend legislation relating to work health and safety, and for related purposes

[Assented to 21 March 2023]

The Parliament of Australia enacts:

1 Short title

This Act is the *Work Health and Safety Amendment Act 2023*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	21 September 2023

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Safe Work Australia Act 2008

1 After Part 7

Insert:

Part 7A—Information-gathering powers

66A Simplified outline of this Part

- | |
|---|
| <ul style="list-style-type: none">• The CEO may obtain information. |
|---|

66B CEO may obtain information

Scope

- (1) This section applies to a person if the CEO believes on reasonable grounds that the person has information that is relevant to the performance of the function of Safe Work Australia set out in item 4 of the table in section 6.

Request

- (2) The CEO may, by written notice given to the person, request the person to give to the CEO, within the period and in the manner and form specified in the notice, any such information.
- (3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.
- (4) A manner specified in a notice under subsection (2) must involve the use of a service to which paragraph 51(v) of the Constitution applies.

Compliance

- (5) A person may comply with a request under subsection (2).

- (6) Subsection (5) has effect despite anything in:
- (a) a law of the Commonwealth (other than this Act); or
 - (b) a law of a State or Territory.

Work Health and Safety Act 2011

2 Section 4 (paragraph (d) of the definition of *corresponding WHS law*)

Repeal the paragraph, substitute:

- (d) the *Work Health and Safety Act 2020* of Western Australia;

3 Section 31 (heading)

Omit “**Reckless conduct**”, substitute “**Negligence or reckless conduct**”.

4 Paragraph 31(1)(c)

Repeal the paragraph, substitute:

- (c) the person:
 - (i) engages in the conduct with negligence; or
 - (ii) is reckless as to the risk to an individual of death or serious injury or illness.

5 Paragraph 52(1)(b)

Omit “will”, substitute “are proposed to”.

6 Paragraph 72(1)(c)

Repeal the paragraph, substitute:

- (c) chosen by the health and safety representative.

7 Subsection 72(5)

Omit “as to the matters set out in subsections (1)(c) and (2)”, substitute “about a matter mentioned in subsection (2)”.

8 After subsection 155(2)

Insert:

- (2A) The notice may be served in any way that a notice may be issued or given under section 209.

9 Paragraph 155(3)(b)

Repeal the paragraph, substitute:

- (b) contain a statement to the effect that it is an offence to refuse or fail to comply with the requirement without reasonable excuse; and

10 Subsection 171(1)

After “may”, insert “, while the inspector is at the workplace”.

11 Paragraph 171(1)(b)

Repeal the paragraph, substitute:

- (b) require a person who has custody of, or access to, a document mentioned in paragraph (a) to produce the document to the inspector; or

12 After subsection 171(2)

Insert:

- (2A) Also, within 30 days after the day an inspector enters a workplace under this Division, the inspector or another inspector may give a written notice to a person:
 - (a) requiring the person, if the person has custody of, or access to, a specified document, to produce the document to the inspector within a specified period; or
 - (b) requiring the person to give written answers to specified questions within a specified period; or
 - (c) requiring the person to:
 - (i) attend before the inspector at a specified time and place and answer any questions put by the inspector; or
 - (ii) attend before the inspector at a specified time, by audiovisual link or audio link, and answer any questions put by the inspector.
- (2B) If a requirement is made of a person under subsection (2A)(c)(i) to attend before the inspector in person:
 - (a) the person may ask to attend before the inspector by audiovisual link or audio link instead; and
 - (b) the inspector must agree to the request if it would be reasonable in the circumstances.

- (2C) If a requirement is made of a person under subsection (2A)(c)(ii) to attend before the inspector by audiovisual link or audio link:
- (a) the person may ask to attend before the inspector in person instead; and
 - (b) the inspector must agree to the request if it would be reasonable in the circumstances.
- (2D) A requirement under subsection (2A) may only relate to a document or question relevant to the purpose for which the workplace was entered.
- (2E) A notice under subsection (2A) may be served in any way that a notice may be issued or given under section 209.

13 Subsection 171(3)

After “subsection (1)(c)”, insert “or (2A)(c)”.

14 At the end of section 172

Add:

- (3) To avoid doubt, this section does not apply to answering a question or providing information or a document in response to a requirement made under a corresponding WHS law.

15 Subsection 173(1)

After “this Part,”, insert “other than by a written notice under section 171(2A),”.

16 Paragraph 173(1)(b)

Repeal the paragraph, substitute:

- (b) warn the person it is an offence to refuse or fail to comply with the requirement without reasonable excuse; and

17 After subsection 173(1)

Insert:

- (1A) A written notice under section 171(2A) must:
 - (a) state that the notice is given under section 171(2A); and
 - (b) state the purpose of the entry to the workplace to which the notice relates; and

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- (c) contain a statement to the effect that it is an offence to refuse or fail to comply with a requirement in the notice without reasonable excuse; and
 - (d) contain a statement about the effect of sections 172 and 269; and
 - (e) if the notice requires the person to attend before an inspector—state that the person may attend with a legal practitioner or other representative.

18 Subsection 173(2)

After “subsection (1)(c)”, insert “or a notice with the statement mentioned in subsection (1A)(d)”.

19 Subsection 231(1)

Repeal the subsection, substitute:

- (1) This section applies if:
 - (a) a person:
 - (i) reasonably considers that the occurrence of an act, matter or thing constitutes a Category 1 offence or a Category 2 offence; or
 - (ii) reasonably considers, from a coronial report or the proceedings at a coronial inquiry or inquest, that a Category 1 offence or a Category 2 offence has been committed; and
 - (b) no prosecution for the offence has been brought.
- (1A) The person may make a written request to the regulator that a prosecution be brought.
- (1B) The request may only be made:
 - (a) if subsection (1)(a)(i) applies—at least 6 months but not more than 18 months after the act, matter or thing occurs; or
 - (b) if subsection (1)(a)(ii) applies—within 6 months after the report is made or the inquiry or inquest ends.

Note: See section 232 in relation to the limitation period for prosecutions.

20 After subsection 231(2)

Insert:

- (2A) If, under subsection (2)(a)(i), the regulator advises the person that the investigation is not complete, the regulator must:
- (a) until the investigation is complete, give the person a written update about the investigation at least every 3 months; and
 - (b) when the investigation is complete, give the person a written notice stating:
 - (i) whether a prosecution will be brought; and
 - (ii) if a prosecution will not be brought—the reasons why.

21 Subsection 231(3)

After “advises the person”, insert “under subsection (2) or (2A)”.

22 Paragraph 271(3)(c)

Repeal the paragraph, substitute:

- (c) that is authorised under section 271A; or

23 Paragraph 271(3)(e)

After “a law”, insert “of the Commonwealth, a State or a Territory”.

24 After section 271

Insert:

271A Additional ways that regulator may use and share information

- (1) This section applies in relation to information or a document mentioned in section 271(1).
- (2) The regulator or a person authorised by the regulator may, in the circumstances stated in subsection (3):
 - (a) disclose the information, or the contents of or information contained in the document, to any other person including a corresponding regulator; or
 - (b) give access to the document to any other person including a corresponding regulator; or
 - (c) use the information or document.
- (3) The circumstances are that the regulator reasonably believes the disclosure, access or use:

-
- (a) is necessary for administering, or monitoring or enforcing compliance with, this Act; or
 - (b) is necessary for the administration or enforcement of another Act prescribed by the regulations; or
 - (c) is necessary for the administration or enforcement of another Act or law, if the disclosure, access or use is necessary to lessen or prevent a serious risk to public health or safety; or
 - (d) is necessary for the recognition of authorisations under a corresponding WHS law; or
 - (e) is required for the exercise of a power or function under a corresponding WHS law.
- (4) This section does not limit the operation of section 271(3)(a), (b), (d), (e) or (f) in relation to the disclosure of information, giving of access to a document or use of information or a document by the regulator or a person authorised by the regulator.
- (5) For the purposes of paragraphs (3)(b) and (c), **Act** means an Act of the Commonwealth, a State or a Territory.
- (6) For the purposes of paragraph (3)(c), **law** means a law of the Commonwealth, a State or a Territory.

25 After section 272

Insert:

272A No insurance or other indemnity against penalties

- (1) A person must not, without reasonable excuse:
- (a) enter into a contract of insurance or other arrangement under which the person, or another person, is purportedly covered for all or part of a liability for a monetary penalty under this Act; or
 - (b) provide insurance or a grant of indemnity for all or part of a liability for a monetary penalty under this Act; or
 - (c) take the benefit of a contract of insurance, arrangement or grant of indemnity mentioned in paragraph (a) or (b).

Penalty:

- (a) In the case of an individual—\$50 000.

- (b) In the case of a body corporate—\$250 000.
- (2) Subsection (1) places an evidential burden on the accused to show a reasonable excuse.
- (3) A term of a contract of insurance or other arrangement is void to the extent it purports to cover a person for all or part of a liability for a monetary penalty under this Act.

272B Liability of officers for offences by body corporate under s 272A

- (1) A person commits an offence against this section if:
 - (a) a body corporate contravenes section 272A; and
 - (b) the person is an officer of the body corporate; and
 - (c) the person is involved in the body corporate's contravention of section 272A.

Penalty: \$50 000.

- (2) For subsection (1)(c), section 256(2) applies as if a reference in that section to a civil penalty provision were a reference to section 272A.

*[Minister's second reading speech made in—
House of Representatives on 1 December 2022
Senate on 9 February 2023]*

(129/22)
