

## Model Work Health and Safety Bill - 23 June 2011

### Corrections to Bill and changes to jurisdictional notes

Section	Amendment
4	<p>insert the following definition:</p> <p><b>"engage in conduct</b> means doing an act or omitting to do an act."</p> <p><b>corresponding WHS law</b></p> <p>In the jurisdictional note, after the first sentence insert:</p> <p>"A jurisdiction may extend the operation of a provision that applies to a corresponding WHS law to specified laws of the jurisdiction. This should be dealt with separately in the provision or regulations under the provision."</p>
7	<p><b>Omit</b> the jurisdictional note at the foot of section 7(2)</p> <p><b>Insert</b> a new jurisdictional note at the foot of section 7 as follows:</p> <p><b>"Note</b> See the jurisdictional notes in the Appendix."</p> <p>Insert the following into the jurisdictional note for section 7 in the Appendix before the note for section 7(2):</p> <p>"A jurisdiction may amend section 7(1) to add additional classes of persons to the list of "workers". For example, the Commonwealth may add members of the defence forces and cadets. Statutory office holders and members of statutory or public authorities could also be added. Jurisdictions may also specify classes of persons who are to be taken to be carrying out work for a business or undertaking and persons who are to be taken to be the employer of specified classes of persons. For example the classes of persons specified by a jurisdiction may include police officers, defence force members and cadets (in the case of the Commonwealth), statutory office holders and members of statutory or public authorities."</p>
8(2)	in paragraph (a) of the definition of <b>place</b> , before "vehicle" insert "a".
20(1)(a)	after "purposes" <b>insert</b> "of".
21(1)(a)	after "purposes" <b>insert</b> "of".
22(5)	Insert comma after "carry out" (as per cl 23 (5)).
28(d)	for "cooperate" <b>substitute</b> "co-operate"
36	before "any other injury or illness" insert "includes".
52(3)	<b>omit</b> paragraph (d). Not needed in this provision. <b>Omit</b> "; and" at the end of paragraph (c) and <b>insert</b> full stop.
56(2), 57(1) and 57(2)	For "The persons conducting the businesses or undertakings" substitute "A person conducting a business or undertaking".
68(2)	In the Note for "Part 5" (where twice occurring) <b>substitute</b> "this Part".
70(3)	omit "such pay as" and insert "the pay that"
71(4)	omit "if" at the end of the chapeau and insert "if" at the start of paragraph (a).
72(4)	omit "such pay as" and insert "the pay that"
73(1)(b),	omit "mentioned" and insert "referred to"

<b>104(2), 112(4) and 196(2)</b>	
<b>75(2)</b>	In the Note for "Part 5" <b>substitute</b> "this Part".
<b>77(c)</b>	omit "such other functions as are" and insert "any other functions".
<b>79</b>	In subclause (1) omit "such time as" and insert "the time that" In subclause (2) omit "such pay as" and insert "the pay that"
<b>95</b>	For the heading to the clause <b>substitute</b> "Issue of provisional improvement notice".
<b>98</b>	Omit "merely" and insert "only"
<b>104(2)</b>	In the Note for "Part 6" <b>substitute</b> "this Part".
<b>107</b>	In the Note for "Part 6" <b>substitute</b> "this Part".
<b>108(1)</b>	In the Note for "Part 6" <b>substitute</b> "this Part".
<b>110</b>	<p>Omit clause 110 and insert--</p> <p>"110 Proof of discriminatory conduct (1) This section applies if in proceedings for an offence of contravening section 104 or 107, the prosecution-- (a) proves that the discriminatory conduct was engaged in; and (b) proves that a circumstance referred to in section 106(a) to (j) existed at the time the discriminatory conduct was engaged in; and (c) adduces evidence that the discriminatory conduct was engaged in for a prohibited reason. (2) The reason alleged for the discriminatory conduct is presumed to be the dominant reason for that conduct unless the accused proves, on the balance of probabilities, that the reason was not the dominant reason for the conduct.</p> <p>(3) To avoid doubt, the burden of proof on the accused under subsection (2) is a legal burden of proof." Note See the jurisdictional note in the Appendix.</p> <p>Insert the following jurisdictional note in the Appendix for section 110:</p> <p>A jurisdiction may omit subsection (1)(c) and substitute the following for subsection (2): (2) If it is alleged that the discriminatory conduct was engaged in for a prohibited reason, that reason is presumed to be the dominant reason for that conduct unless the accused proves on the balance of probabilities, that the reason was not the dominant reason for the conduct."</p>
<b>111</b>	In paragraph (a) for "such" <b>substitute</b> "the" and for "as" <b>substitute</b> "that".
<b>112</b>	<p>Heading should refer to "proceedings" (plural).</p> <p>In subclause (3): In paragraph (b) for "such" <b>substitute</b> "the" and for "as" <b>substitute</b> "that". Insert "or" between paragraphs (a), (b), (c) and (d)..</p>
<b>113</b>	<p>In subsection (2) omit "proved" and insert "alleged".</p> <p>in subsection (3) <b>omit</b> "in respect of a" and insert "in relation to"..</p>
<b>123</b>	For "The WHS" substitute "A WHS".
<b>133</b>	<b>insert</b> full stop at end of paragraph (c)(ii) in place of semi-colon.

137	Before "revoked" insert "earlier".
142(1)	<b>insert</b> "entry" after "WHS" so that it reads "WHS entry permit holder"
147(1)(b)	semi-colon should be comma
150(b)	<b>omit</b> "if" at the start of paragraph (b)
154	In the jurisdictional note in the Appendix insert after made "and may rely on its standard delegation provisions".
165(1)	For "Division" substitute "section 163".  Insert "all or" before "any of the following".
166(1)	For "section 165" substitute "section 163".
166(2)(a)	Replace "such" (where twice occurring) with "the" and replace "as" with "that".
168(2)	<b>Omit</b> need not" and <b>insert</b> "is not required to"
170(c)	For "sole purpose" <b>substitute</b> "purpose only".
171(6)	In the Note <b>substitute</b> "sections 172 and 173 for "section 172 and 173".
172	Replace the jurisdictional note with the following jurisdictional note A jurisdiction may adjust this provision as necessary to accord with the legal or legislative or human rights principles applying in its jurisdiction.
175(1)	For "this Part" substitute "section 163" as entry under search warrant is covered by 175(2) and (3).  Omit paragraph (b) as it replicates section 165(1)(e).
185	In subclause (2) <b>omit</b> "their" (where twice occurring) and <b>insert</b> "his or her".  <b>Omit</b> the jurisdictional note at the foot of section 185(4) <b>Insert</b> a new jurisdictional note at the foot of section 185 as follows:  "Note  See the jurisdictional notes in the Appendix."  <b>Insert</b> the following into the jurisdictional note for section 185 in the Appendix before the existing note for section 185  "A jurisdiction may amend section 185 to align it with its human rights charter or other legislative protocols.
192(1)(d)	<b>Omit</b> "the day before" and <b>insert</b> "the day by".
208	For "merely" <b>substitute</b> "only".
223	In column 2 of item 2, <b>omit</b> "of" after "decision" so that it reads "decision in relation to training"  In subsection (2)(f) <b>omit</b> "an article" and <b>insert</b> "a thing".
228	<b>insert</b> full-stop at the end of subsection (2).  Re-number section 228 as 229 (see notes for 229). At the end of the second jurisdictional note for section 228 (to be renumbered as 229) in the Appendix insert :

	"An external review body is intended to be able to stay the decision that is the subject of the external review pending the decision on the external review."
<b>229</b>	<p>Section 229 is to be limited to internal reviews. A stay of a decision on an external review is to be dealt with by the external review body in accordance with a jurisdiction's own legislation.</p> <p>As section 229 is to apply only to internal reviews it should be moved to the end of Division 2 and renumbered as 228 and amended as follows:</p> <p><b>228 Stays of reviewable decisions on internal review</b></p> <ol style="list-style-type: none"> <li>(1) An application for an internal review of a reviewable decision (other than a decision to issue a prohibition notice or a non-disturbance notice) stays the operation of the decision.</li> <li>(2) If an application is made for an internal review of a decision to issue a prohibition notice or a non-disturbance notice, the reviewer may stay the operation of the decision.</li> <li>(3) The reviewer may make the decision to stay the operation of a decision on the reviewer's own initiative or on the application of the applicant for review.</li> <li>(4) The reviewer must make a decision on an application for a stay within one working day after the reviewer receives the application.</li> <li>(5) If the reviewer has not made a decision to stay a decision within the time set out in subsection (4), the reviewer is taken to have made a decision to grant a stay.</li> <li>(6) A stay of the operation of a decision pending a decision on an internal review continues until whichever of the following is the earlier: <ol style="list-style-type: none"> <li>(a) the end of the prescribed period for applying for an external review of the decision made on the internal review;</li> <li>(b) an application for external review is made.</li> </ol> </li> </ol> <p>Delete Heading to Division 4 of Part 12</p>
<b>232(1)(b)</b>	<p><b>omit</b> paragraph (b) and <b>insert:</b></p> <p>"(b) within 1 year after a coronial report was made or a coronial inquiry or inquest ended, if it appeared from the report or the proceedings at the inquiry or inquest that an offence had been committed against this Act;</p> <p>Replace the jurisdictional note to section 232 with the following :  "A jurisdiction may specify other types of official inquiries for the purposes of subsection (1)(b), as appropriate to that jurisdiction.</p>
<b>242(3)</b>	Should refer to "order or injunction".
<b>247(1)</b>	for "the business or undertaking" substitute "a business or undertaking".
<b>248(6)</b>	<b>omit</b> the full-stop at the end of paragraph (a) and <b>insert</b> "; and".
<b>250(1)</b>	<b>Omit</b> "instituted" and <b>insert</b> "brought".
<b>251(2)</b>	<b>omit</b> "had that knowledge or intention or was reckless" and <b>insert</b> "had the relevant knowledge, intention or recklessness",
<b>259(1)(a)</b>	<b>omit</b> "is"

<b>264(2)</b>	after "convicted" insert "or found guilty"
<b>267(c)</b>	<b>Omit</b> "taken" and <b>insert</b> "brought".
<b>270(1)</b>	<b>omit</b> "or criminal". Immunity is to be limited to civil liability.
<b>271(2)(b)</b>	Omit "or" from the end of the paragraph.
<b>274(5)</b>	<b>omit</b> "a" before "varying"
<b>276</b>	<p>In subsection (1) for "for or with respect to" <b>substitute</b> "in relation to".</p> <p>At the foot of section 276 for "jurisdictional note" substitute "jurisdictional notes".</p> <p>Add an additional jurisdictional note as follows:</p> <p>A jurisdiction can include a provision clarifying that the regulation-making powers do not limit the powers already provided in their interpretation legislation.</p>
<b>Schedule 3, clause 5</b>	<b>insert a</b> space before "and" at the end of paragraph (b).
<b>Schedule 3, clause 10</b>	<b>omit</b> full-stop at the end of paragraph (a) and <b>insert</b> "; and".
<b>Schedule 3, clause 14</b>	in paragraph (c) <b>omit</b> "regulation" and <b>insert</b> "regulations".
<b>Additional jurisdictional note 5 (restrict and absolute liability offences)</b>	After "subsections" insert "or include a general statement provision in the Bill"
<b>General</b>	<p>Replace all references to "in respect of" or "with respect to" with "in relation to"</p> <p>Replace references to "one" "two" and "four" with "1". "2" and "4" (except in clauses 46, 233(1) and 235).</p> <p>Replace references to "any thing" with "anything".</p>