



New South Wales

Occupational Health and Safety Amendment (Prosecutions) Bill 2003

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Occupational Health and Safety Act 2000* (the *Principal Act*) to enable any Minister of the Crown to consent to a prosecution for an offence under that Act or under the former *Occupational Health and Safety Act 1983* (the *former Act*) and to extend the effect of the amendments to current proceedings. The amendments will extend to proceedings relating to the death of miners at Gretley Colliery.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 is a formal provision that gives effect to the amendments to the *Occupational Health and Safety Act 2000* set out in Schedule 1.

Schedule 1 Amendments

Currently, proceedings for an offence under the Principal Act or regulations under that Act (and any continuing proceedings for offences against the former Act or regulations under that Act) may be instituted only with the consent of the Minister or the consent of an officer prescribed by the regulations or by an inspector or (in certain circumstances) the secretary of an industrial organisation of employees. The Principal Act is administered by the Minister for Commerce and, in part, by the Minister for Mineral Resources. Another Minister may act for such a Minister if a formal acting appointment is made or that Minister is “unavailable”.

Schedule 1 [1] enables any Minister to consent to the institution of proceedings for an offence. This resolves any uncertainty arising out of the administration of the Act or the unavailability of the relevant Minister and enables another Minister to act for the relevant Minister. **Schedule 1 [2]** makes a consequential amendment.

Schedule 1 [3] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [4] extends the operation of the provisions amended by the proposed Act to proceedings for offences under the Principal Act and the former Act, or regulations under those Acts, that were or are instituted before, on or after the commencement of the amendments, whether or not proceedings are pending on that commencement. It also provides for references to the Minister in the provisions relating to the commencement of prosecutions under the former Act to be construed as references to any Minister of the Crown and validates the institution of existing proceedings if they were consented to by a Minister of the Crown.

The amendments also provide for proceedings for offences under the Principal Act or the former Act, or regulations under those Acts, which were previously terminated merely because the proceedings were incorrectly instituted to be able to be recommenced if those proceedings would have been taken to have been valid under the Principal Act, as amended by the proposed Act. The proceedings may be recommenced, relying on the original processes, even if the time for commencing proceedings has expired or the manner of commencing proceedings has changed. Things done in the terminated proceedings are taken to have been done in any recommenced proceedings.