

LEGISLATIVE COUNCIL

**WORKPLACE SAFETY LEGISLATION AMENDMENT (WORKPLACE
MANSLAUGHTER AND OTHER MATTERS) BILL 2019**

(Amendments and New Clauses to be proposed in Committee by Mr RICH-PHILLIPS)

NEW CLAUSES

1. Insert the following New Clauses to follow the heading to Division 1 of Part 2—

"2A Definitions

In section 5(1) of the **Occupational Health and Safety Act 2004**, at the foot of the definition of *officer* insert—

"Note

See also section 6(3) and (4)."

2B Act binds the Crown

After section 6(2) of the **Occupational Health and Safety Act 2004** insert—

"(3) In circumstances where a provision of this Act or the regulations refers to an officer of a body corporate, and that provision applies in relation to the Crown, the reference to an officer is taken to be a reference to a person—

- (a) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the Crown; or
- (b) who has the capacity to affect significantly the Crown's financial standing.

(4) Without limiting subsection (3), nothing prevents any of the following persons from being a person referred to as an officer in accordance with that subsection—

- (a) the Premier;
- (b) a Minister;
- (c) a public service body Head;
- (d) a person who has the functions of a public service body Head."."

2. Clause 3, line 13, omit "certain".
3. Clause 3, line 21, omit "other than—" and insert ";".
4. Clause 3, lines 22 to 27, omit all words and expressions on these lines.
5. Clause 3, page 5, line 21, omit "." and insert "; and".

6. Clause 3, page 5, after line 21 insert—
- "(e) regard must be had to—
- (i) steps taken and things provided by the body corporate to prevent or minimise the risk of death, serious injury or serious illness; and
- (ii) whether any person acted contrary to the steps and things referred to in subparagraph (i).
- (3) In a prosecution for an offence against section 39G(2), or an offence against section 39G(1) that is alleged to have been committed by an officer of a body corporate, in determining whether that person's conduct is *negligent* for the purposes of this Part, regard must be had to—
- (a) what the person knew about the matter concerned; and
- (b) the extent of the person's ability, as an officer, to make, or participate in the making of, decisions that affect the body corporate in relation to the matter concerned; and
- (c) whether the breach of the applicable duty to which the offence relates is also attributable to an act or omission of any other person; and
- (d) any other relevant matter."
7. Clause 3, page 6, line 29, after "person" insert "(other than a person exempted under subsection (1A))".
8. Clause 3, page 7, after line 5 insert—
- "(1A) A person is exempted for the purposes of subsection (1)(b) if they are—
- (a) a relative of the person who owes them the applicable duty; or
- (b) the spouse or domestic partner of the person who owes them the applicable duty.
- (1B) No person is exempted for the purposes of subsection (1)(b) in circumstances where the person who owes the applicable duty is not a natural person."
9. Clause 3, page 7, line 12, after "person" insert "(other than a person exempted under subsection (2A))".
10. Clause 3, page 7, after line 14 insert—
- "(2A) A person is exempted for the purposes of subsection (2)(b) if they are—
- (a) a relative of the officer; or
- (b) the officer's spouse or domestic partner."
11. Clause 3, page 7, line 29, omit ""."
12. Clause 3, page 7, after line 29 insert—

"(5) In this section—

domestic partner has the same meaning as in the **Family Violence Protection Act 2008**;

relative has the same meaning as in the **Family Violence Protection Act 2008**."."

NEW CLAUSE

13. Insert the following New Clause to follow clause 3—

"3A Power to require production of documents and answers to questions

(1) In section 100(3)(b) of the **Occupational Health and Safety Act 2004**, for "her." **substitute** "her; and".

(2) After section 100(3)(b) of the **Occupational Health and Safety Act 2004** **insert**—

"(c) must inform the person that he or she may refuse or fail to provide a document if providing the document would tend to incriminate him or her."."

14. Clause 6, line 23, before "In" insert "(1)".

15. Clause 6, page 11, after line 2 insert—

"(2) In section 144(3)(c) of the **Occupational Health and Safety Act 2004**, after "corporate" **insert** "(or, if the provision contravened was section 39G(1), whether the death to which the contravention relates)".

(3) After section 144(5) of the **Occupational Health and Safety Act 2004** **insert**—

"(6) An officer of a body corporate (other than a body corporate representing the Crown) is not liable to be prosecuted under this section in relation to a contravention of section 39G(1) that caused the death of—

(a) a relative of the officer; or

(b) the officer's spouse or domestic partner.

(7) In this section—

domestic partner has the same meaning as in the **Family Violence Protection Act 2008**;

relative has the same meaning as in the **Family Violence Protection Act 2008**."."

16. Clause 7, line 5, before "For" insert "(1)".

17. Clause 7, after line 20 insert—

"(2) After section 145(5) of the **Occupational Health and Safety Act 2004** **insert**—

"(6) An officer of a partnership or unincorporated body or association is not liable to be prosecuted under this section in relation to a contravention of section 39G(1) that caused the death of—

- (a) a relative of the officer; or
- (b) the officer's spouse or domestic partner.

(7) In this section—

domestic partner has the same meaning as in the **Family Violence Protection Act 2008**;

relative has the same meaning as in the **Family Violence Protection Act 2008**."."

NEW CLAUSE

18. Insert the following New Clause to follow clause 7—

"7A Protection against self-incrimination

Section 154(2)(a) of the **Occupational Health and Safety Act 2004** is **repealed**."

AMENDMENT OF LONG TITLE

19. Long title, after "manslaughter" insert ", to make further provision in relation to officers of the Crown, to make further provision in relation to the privilege against self-incrimination".