

## CHANGES TO NSW WORK HEALTH AND SAFETY LEGISLATION

Members are advised that on 27 June 2025, the NSW Parliament passed the Industrial Relations and Other Legislation Amendment (Workplace Protections) Bill 2025 (NSW) (**Workplace Protections Bill**).

The Workplace Protections Bill introduces significant changes to industrial relations and work health and safety laws in NSW including those relevant to exercise of a right of entry and prosecutions brought under the *Work Health and Safety Act 2011* (NSW) (**WHS Act**).

These amendments have major implications for employers across the construction industry, particularly those involved in large-scale construction projects.

### Changes to right of entry laws

WHS entry permit holders in NSW may exercise a right to enter the workplace for the purpose of inquiring into a suspected contravention of the WHS Act that relates to, or affects, a relevant worker.

The WHS Act includes a list of rights that may be exercised by a WHS entry permit holder whilst at the workplace including a right to inspect any work system or consult with the relevant workers in relation to the suspected contravention.

The Workplace Protections Bill will add to this list the right to:

- take measurements or conduct tests directly relevant to the suspected contravention;
- take photos and videos directly relevant to the suspected contravention.

It is important to note that, unless an exception applies, the WHS Act prohibits usage or disclosure of relevant collected information or documentation for a purpose that is not related to the inquiry or rectifying the suspected contravention.

The new laws will also allow a WHS entry permit holder who is already on-site investigating a suspected breach to exercise their rights in relation to another contravention they reasonably suspect whilst at the workplace.

This means that that WHS entry permit holders will no longer be required to re-enter a site to investigate any further suspected contraventions which they notice whilst on site.

### Altered prosecutorial powers under the WHS Act

Existing requirements for Unions to bring prosecutions under the WHS Act will be streamlined under the new laws. The current process will be altered so that registered employee organisation may bring proceedings for any offence under the Act after it has consulted with the regulator about its intention to bring the proceedings and the regulator has declined to bring proceedings.

The new laws also allow courts to order a portion of a fine or other penalty be paid to the relevant registered organisation.

Members with any questions regarding the contents of the new laws may contact MBA NSW Workplace Relations department on [industrial@mbansw.asn.au](mailto:industrial@mbansw.asn.au) or 02 8586 3555.