safe work australia

EXPLANATORY MEMORANDUM – MODEL WORK HEALTH AND SAFETY LEGISLATION AMENDMENT 2022

Outline

The *Model Work Health and Safety Legislation Amendment 2022* has been developed in response to WHS Ministers' agreement on the Decision Regulation Impact Statement (the Decision RIS) for the 2018 Review of the Model WHS laws (the 2018 Review).

Background

In 2018 Safe Work Australia commissioned an independent review of the model WHS laws which examined and reported on their content and operation. While the 2018 Review found that the laws were largely operating as intended, 34 recommendations were made to address particular aspects of the model WHS laws.

To assess the impacts of the recommendations and possible alternatives, a Consultation Regulation Impact Statement was released for stakeholders to give feedback on the recommendations. Based on those submissions, the Decision RIS was prepared and provided to WHS Ministers. The purpose of the Decision RIS was to draw evidence-based conclusions about the most efficient and effective regulatory approach.

Part 1 – Preliminary

Clause 1 – Short title

1. The model provisions are the *Model Work Health and Safety Legislation Amendment 2022*.

Part 2 – Amendment of the Model Law

Clause 2 – Model Law amended

2. Part 2 amends the model WHS Act.

Clause 3 – Amendment of s 31 (Gross negligence or reckless conduct—Category 1)

3. Clause 3 amends s 31(1)(c) by including an alternative fault element of gross negligence, in addition to the existing fault element of recklessness. This gives effect to recommendation 23a of the 2018 Review. For a fault element of gross negligence, there is no requirement for the prosecution to prove the person had an intent to disregard a risk of death or serious injury or illness.

4. Clause 3(3) amends s 31 by inserting a jurisdictional note in the Appendix that allows a jurisdiction to replace the term 'gross negligence' with another term consistent with the law of that jurisdiction.

Clause 4 – Amendment of s 52 (Negotiations for agreement for work group)

5. Clause 4 amends s 52(1)(b) by substituting 'will' with 'are proposed to'. Section 52 of the model Act deals with the processes for establishing work groups that facilitate representation by health and safety representatives (HSRs) in relation to work health and safety matters. This amendment will provide greater clarity for PCBUs about which workers

they are required to negotiate with in relation to the formation of work groups. It confirms that negotiations must be with the workers who are proposed to form the work group.

Clause 5 – Amendment of s 72 (Obligation to train health and safety representatives)

6. Clause 5(1) omits the current wording in s 72(1)(c) and replaces it with 'chosen by the health and safety representative.' The amendment removes the requirement for an HSR to consult with the PCBU when choosing an HSR training course. It will avoid the risk of a delay in HSRs being able to exercise their powers under the model WHS laws due to a disagreement with the PCBU on the choice of training. Any training course must still be one approved by the regulator and be one that the HSR is entitled to attend under the Regulations.

7. Clause 5(2) amends s 72(5) to remove the reference to s 72(1)(c). As an HSR is no longer required to consult with the PCBU on the choice of training course there is no need for an inspector to be appointed if agreement cannot be reached between the HSR and the PCBU. An inspector may still be appointed to resolve a disagreement on the cost of a course or time off to attend training. Clause 5 gives effect to recommendation 7b of the 2018 Review.

Clause 6 – Amendment of s 117 (Entry to inquiry into suspected contraventions)

8. Clause 6, together with clauses 7, 8, 17, 21 and 22, gives effect to recommendation 15 of the 2018 Review to retain the previous wording of s 117 of the model WHS Act and remove the 24-hour notice period for WHS entry permit holders. None of the model law jurisdictions had amended their WHS Acts to implement the 24-hour notice requirement.

9. This clause repeals ss 117(3) to (8) which were inserted in 2016 to require a minimum 24-hour notice period for WHS entry permit holders. Newly re-inserted s 119 now deals with the notice requirements for entry under s 117.

Clause 7 – Insertion of new s 119

10. Clause 7, together with clauses 6, 8, 17, 21 and 22, gives effect to recommendation 15 of the 2018 Review to retain the previous wording of s 117 of the model WHS Act.

11. This clause restores s 119 to the Act, which had been repealed in 2016. Section 119 requires a WHS entry permit holder to provide notice to the relevant PCBU and the person with management or control of the workplace as soon as practicable after entering a workplace under s 117 to inquire into a suspected contravention. The contents of the notice must comply with the regulations.

Clause 8 – Amendment of s 120 (Entry to inspect employee records or information held by another person)

12. Clause 8, together with clauses 6, 7, 17, 21 and 22, gives effect to recommendation 15 of the 2018 Review to retain the previous wording of s 117 of the model WHS Act. This clause amends the reference to ss 117(1) and (2) in s 120(1) to refer instead to s 117 and is a technical drafting amendment.

Clause 9 – Amendment of s 155 (Powers of regulator to obtain information)

13. Clause 9(1) inserts a new s 155(2A) to provide that s 155 notices may be served using any of the methods set out in s 209. This gives effect to recommendation 16 of the 2018 Review. A s 155 notice is a notice issued by a regulator to require a person to give information or

evidence or provide documents in relation to a possible contravention of the Act or to assist in monitoring or enforcing compliance with the Act.

14. Clause 9(2) inserts a new s 155(3)(b) to require that a regulator must include in the notice, a statement that it is an offence to refuse or fail to comply with a requirement in a notice without reasonable excuse. The terms of this statement better reflect the precise terms of the offence in s 155(5) of the Act.

15. Clause 9(3) inserts a new s 155(8) which clarifies that a regulator can exercise their powers under s 155 extra-territorially and perform their functions outside their jurisdiction so that a notice may be served on a person who is outside the relevant State or where the information or documents in question are outside the State or relate to a matter that is happening outside the State. This gives effect to recommendation 18 of the 2018 Review.

Clause 10 – Amendment of s 171 (Powers to require production of documents and answers to questions)

16. Clause 10(1) clarifies that an inspector who enters a workplace under Division 3, may require things to be done as set out in s 171(1), while the inspector is at the workplace. These things relate to advising the inspector who has custody or access to documents, producing documents and answering questions.

17. Clause 10(2) repeals existing s 171(1)(b) that requires a person who has custody of, or access to, a document to produce the document to the inspector while the inspector is at the workplace or within a specified period and inserts new s 171(1)(b) to reflect the inspector's power to require a person to tell the inspector who has custody of or access to a document. New s 171(1)(b) will allow an inspector to require that the person identified as having custody of or access to the document, give the document to the inspector.

18. Clause 10(3) inserts a new ss 171(2A)-(2D). This gives effect to recommendation 17 of the 2018 Review. New s 171(2A) permits the inspector, within 30 days after the inspector has entered the workplace under this Division, or any other inspector within this timeframe, to give written notice to a person requiring the person to:

    - produce specified documents within a specified period,
    - give written answers to specified questions within a specified period, or
    - require the person to attend before the inspector at a specified time to answer questions including via audio or audiovisual link.

19. Section 171(2B) allows the person who is required to attend before the inspector in person under s 171(2A)(c)(i), to ask to attend before the inspector by audio or audiovisual link under s 171(2A)(c)(ii) instead. The inspector must agree to the request if it would be reasonable in the circumstances. It may be reasonable, for example, because the person will be in a geographically remote location at the time notified by the inspector for attendance or because the person is required to be in isolation because of exposure to COVID-19.

20. Section 171(2C) allows the person who is required to attend before the inspector via audio or audiovisual link under s 171(2A)(c)(ii), to ask to attend before the inspector in person under s 171(2A)(c)(i) instead. The inspector must agree to the request if it would be reasonable in the circumstances.

21. New s 171(2D) clarifies that a requirement under s 171(2A) may only relate to a document or question relevant to the purpose for which the inspector entered the workplace. Under s 164(2) of the Act, an inspector is required to give notice of the purpose for entry to

- the relevant PCBU at the workplace
- the person with management or control of the workplace, and
- any HSRs for workers carrying out work for the business or undertaking at the workplace.

22. Section 171(2E) provides that s 171 notices may be served using any of the methods set out in s 209. This gives effect to recommendation 16 of the 2018 Review.

23. Clause 10(4) amends s 171(3) to insert the wording ‘or (2A)(c)’ after ‘subsection (1)(c)’. This consequential amendment will extend the requirement to conduct an interview in private, if the inspector considers it appropriate or the person being interviewed so requests, to interviews conducted as a result of a requirement under s 171(2A)(c).

Clause 11 – Amendment of s 172 (Abrogation of privilege against self-incrimination)

24. Clause 11 amends s 172 by clarifying that 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.

25. A requirement for answering a question or providing information or a document may be made to a person in another jurisdiction, where s 172 of the corresponding WHS law may be different. This amendment clarifies that, where a requirement is made under the WHS law of a jurisdiction, it is s 172 of that WHS law that applies. For example, if the regulator in NSW issues a notice under s 155 of the NSW law to a person in the ACT, s 172 of the NSW law applies to the requirement.

Clause 12 – Amendment of s 173 (Warning to be given)

26. Clause 12(1) amends s 173(1) by inserting the words ‘other than by a written notice under section 171(2A)’. The new s 173(1A) sets out the required content for a warning that must accompany a written notice given under new s 171(2A).

27. Clause 12(2) omits the current wording of s 173(1)(b) and replaces it with a requirement for an inspector to warn the person it is an offence to refuse or fail to comply with a requirement to which this provision applies without reasonable excuse.

28. Clause 12(3) inserts a new s 173(1A) which details the requirements for a written notice under new s 171(2A). The written notice must:
    - state that the notice is given under s 171(2A);
    - state the purpose of the entry to the workplace to which the notice relates (this is the purpose that was notified under s 164(2));
    - 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;
    - contain a statement about the effect of s 172 on the abrogation of privilege against self-incrimination and s 269 which provides that the Act does not affect legal professional privilege; and
    - if the notice requires the person to attend before an inspector—state that the person may attend with a legal practitioner or other representative.

29. Clause 12(4) amends s 173(2) by inserting the words ‘or a notice with the statement mentioned in subsection (1A)(d)’. Section 173(2) makes clear that an individual does not commit an offence to refuse to answer a question or provide information or a document to an inspector on the grounds of self-incrimination if the warning about self-incrimination not being an excuse was not given. The amendment will extend the exception to the offence of

refusing to answer a question or provide information to the new s 171(2A) notice that requires the production of documents, or answers to questions (in the 30 days after entry to the workplace) if the statement regarding the abrogation of the privilege against self-incrimination is not included in the notice given to the individual as required.

Clause 13 – Amendment of s 231 (Procedure if prosecution is not brought)

30. Clause 13(1) omits and replaces s 231(1) and inserts new subsections (1A) and (1B). The new s 231(1)(a)(i) retains the right for a person to request a prosecution be brought if they reasonably consider that the occurrence of an act, matter or thing constitutes a Category 1 or 2 offence. New s 231(1)(a)(ii) allows a person to request a prosecution be brought if the person reasonably considers, from a coronial report or the proceedings at a coronial inquiry or inquest, that a Category 1 or 2 offence has been committed.

31. The new s 231(1B)(a) extends the time period within which a person can make a written request to the regulator that a prosecution be brought in relation to an occurrence of an act, matter or thing constituting a Category 1 or 2 offence. A person can now make a request between six and 18 months after that occurrence. This gives effect to recommendation 24 of the 2018 Review.

32. New s 231(1B)(b) provides a person has six months in which to make a written request to the regulator that a prosecution be brought after a coronial report was made or a coronial inquiry or inquest ended.

33. Clause 13(2) inserts a new s 231(2A) that requires the regulator to provide updates on the progress of an investigation to a person who has made a request that a prosecution be brought. The regulator must provide an update at least every three months after receiving the request. Once the investigation is complete, the regulator must also give the person a written notice stating whether a prosecution will be brought. If a decision is made not to prosecute, the regulator must also provide the reasons for this decision. This also gives effect to recommendation 24 of the 2018 Review.

34. Clause 13(3) amends s 231(3) to insert a reference to subsection (2A), in addition to the existing reference to subsection (2).

Clause 14 – Amendment of s 271 (Confidentiality of information)

35. Clause 14 omits the previous wording of s 271(3)(c), which had listed the circumstances in which the prohibition on disclosure, access or use of the information or document under s 271(2) did not apply to the regulator or a person authorised by the regulator, and instead inserts a reference to new s 271A.

36. New s 271A sets out a revised list of circumstances to which the prohibition in s 271(2) does not apply to the disclosure of the information, giving of access to the document or use of the information or document by the regulator or a person authorised by the regulator.

Clause 15 – Insertion of new s 271A (Additional ways that regulators may use and share information)

37. Clause 15 inserts a new s 271A, which sets out circumstances in which the regulator or person authorised by the regulator, may disclose the information or give access to a document to any other person, including a corresponding regulator, or otherwise use the information or document. This gives effect to recommendation 19 of the 2018 Review.

38. New s 271A(4) makes clear that the section does not limit the operation ss 271(3)(a), (b), (d), (e) or (f), which set out other exceptions to the prohibition on disclosure etc in s 271(2) in certain circumstances.

Clause 16 – Insertion of new ss 272A and 272B

39. Clause 16 gives effect to recommendation 26 of the 2018 Review to prohibit insurance and other indemnities against penalties under the Act. It inserts ss 272A and 272B into the Act.

40. New s 272A prohibits insurance and other similar arrangements that cover the costs of a monetary fine or penalty imposed on a person under the Act. Specifically, s 272A(1) prohibits a person:

    - entering an insurance contract or other arrangement
    - providing insurance or an indemnity, or
    - taking the benefit of an insurance contract, other arrangement or indemnity to cover all or part of a liability for a monetary penalty under the Act.

41. It is a defence if the person can show they had a reasonable excuse for entering the contract or arrangement, providing the insurance or indemnity, or taking the benefit of the contract, arrangement or indemnity. For example, a reasonable excuse may be that the person granted the indemnity under duress, or entered the insurance contract based on negligent legal advice that led them to reasonably believe the contract did not cover monetary penalties under the Act. Section 272A(2) provides that if criminal proceedings are brought against a person for a contravention of the provision, the evidential burden is on the person (the defendant) to show they had a reasonable excuse.

42. New s 272A(3) makes void any term of an insurance contract or other arrangement to the extent that it purports to cover a person for all or part of a liability for a monetary penalty under the Act. This is to ensure that a person cannot rely on a contract or agreement that has been entered contrary to s 272A(1) to cover a monetary penalty. Although such contracts may be held by a court to be void or unenforceable as contrary to public policy, this provision makes the legal status of such contracts or arrangements clear.

43. New s 272B contains an offence that applies to officers (as defined in clause 4) of a body corporate. The inclusion of a separate offence for officers of a body corporate is intended to ensure greater deterrence by targeting the conduct of relevant individuals (such as a director) that results in a body corporate contravening s 272A.

44. Under s 272B, an officer of a body corporate commits an offence if:
    - the body corporate contravenes new s 272A
    - the person is an officer of that body corporate, and
    - the person is involved in the body corporate's contravention

45. New s 272B(2) clarifies that an officer will be 'involved' in a contravention if they engage in one of the acts listed in paragraphs (a) to (d) of s 256(2). For example, if the person has aided or abetted the contravention or conspired with others to effect the contravention.

Clause 17 – Amendment of Appendix (Jurisdictional notes)

46. Subclause 17(1) inserts three jurisdictional notes. The jurisdictional note to s 31 provides that a jurisdiction may replace the term 'gross negligence' with another term consistent with the law of that jurisdiction.

47. The jurisdictional note to s 119 gives effect to recommendation 15 of the 2018 Review to retain the previous wording of s 117 of the model WHS Act.

48. The jurisdictional note to s 272A(3) directs jurisdictions to consider whether transitional arrangements may be required for existing contracts and other arrangements that are in force when new s 272A(3) commences. For example, if the effect of the amendment may involve an acquisition of property (because a right under a contract of insurance is being extinguished) a jurisdiction may need to consider only applying the prohibition to contracts entered into after commencement.

49. Clause 17(2) inserts additional wording to the jurisdictional note for s 172. It states that the intention of s 172(3) is to remove doubt that, if a requirement is made to answer a question, or provide information or a document under the WHS law of a jurisdiction, it is s 172 of that WHS law that applies.

Part 3 – Amendment of Model Regulations

Clause 18 – Model Regulations amended

50. Part 3 amends the model WHS Regulations.

Clause 19 – amendment of r 5 (Definitions)

51. Clause 19 amends reg 5(1) by inserting references to psychosocial hazard, which is defined by new reg 55A, and psychosocial risk which is defined by new reg 55B.

Clause 20 – Amendment of r 15 (References to standards)

52. Clause 20 omits and replaces the reg 15 note with 2 notes. The first note clarifies the circumstances in which a person is required to comply with an Australian Standard or an Australian/New Zealand Standard referred to in a specific regulation. The second note refers readers to the jurisdictional note to reg 15 in the Appendix to the Regulations. This gives effect to recommendation 31a if the 2018 Review.

Clause 21 – Amendment of r 28 (Additional requirements – entry under section 117)

53. Clause 21, together with clauses 6, 7, 8, 17 and 22, gives effect to recommendation 15 of the 2018 Review to retain the previous wording of s 117 of the model WHS Act.

54. This clause amends regulation 28 by omitting a reference to s 117 and replacing it with a reference to s 119. This is a consequential amendment to reflect that a WHS entry permit holder is no longer required to give 24 hours' notice of entry under s 117, but must give notice as soon as practicable after entry under s 119. This notice under section 119 must comply with the requirements in regulation 28.

Clause 22 – Omission of r 28A (Exemption certificate – entry without notice under s 117)

55. Clause 22, together with clause 6, 7, 8, 17 and 21, gives effect to recommendation 15 of the 2018 Review to retain the previous wording of s 117 of the model WHS Act.

56. This clause removes requirements relating to exemption certificates issued by an authorising authority. Section 117 no longer includes the power for an authorising authority

to issue an exemption certificate as a WHS entry permit holder is no longer required to give 24 hours' notice of entry.

Clause 23 – Insertion of new ch 3, pt 3.2, div 11 (Psychosocial risks)

57. Clause 23 inserts a new Division 11 in Part 3.2, which sets out regs 55A-55D relating to psychosocial risks. Clause 23 gives effect to recommendation 2 of the 2018 Review.

58. Regulation 55A sets out the meaning of a psychosocial hazard. Regulation 55A(b) clarifies that a hazard is a psychosocial hazard if it may cause psychological harm, whether or not it may also cause physical harm.

59. Regulation 55B defines a psychosocial risk as a risk to the health and safety of a worker or other person arising from a psychosocial hazard.

60. Regulation 55C specifies that a PCBU must manage psychosocial risks, as defined in reg 55B, in accordance with Part 3.1, other than reg 36 (which refers to the hierarchy of control measures). Some hazards (e.g. remote or isolated work) may create both physical and psychosocial risks. Where Part 3.1 of the Regulations (including reg 36) otherwise applies, such as the obligation on a PCBU under reg 48 to manage risks associated with remote or isolated work, this will require the PCBU to continue to apply the hierarchy of control in managing those risks to their workers' health and safety.

61. Regulation 55D(1) sets out the requirements for implementing control measures for psychosocial risks. Regulation 55D(2) provides that in determining the control measures to implement, the person must have regard to all relevant matters, and sets out a list of relevant matters which must be considered including:

    - the duration, frequency and severity of the exposure of workers and other persons to the psychosocial hazards – this recognises the risk of harm, and the potential severity of any subsequent injury or illness, increases with the frequency, duration and severity of exposure to psychosocial hazards and assists PCBUs to assess psychosocial risk and therefore identify what control measures are reasonably practicable

    - how the psychosocial hazards may interact or combine - this supports the need to holistically consider the interaction of any hazards present, including that they may interact or combine to create new, changed or higher risks

    - the design of work, including job demands and tasks – this assists PCBUs to identify key psychosocial risks arising from the design of work and implement control measures that eliminate hazards (e.g. high job demands or exposure to traumatic events) at the organisation or systems level

    - the systems of work, including how work is managed, organised and supported – this provides clarity on what is meant by a system of work and how systems may give rise to, or help control, psychosocial risks. It assists PCBUs to manage hazards such as job demands, low control and poor support

    - the design and layout, and environmental conditions, of the workplace, including provision of:

- safe means of entering and exiting the workplace, and
- facilities for the welfare of workers.

This requires PCBUs to consider controlling risks that may arise from the design, layout and environmental conditions of the workplace, and controlling risks through good design. For example, designing the workplace to ensure good visibility and provide safe access to welfare facilities

- the design and layout, and environmental conditions, of workers' accommodation – this clarifies that the above considerations for the workplace also apply to workers' accommodation. The term 'workers' accommodation' is defined in s 19 of the Act.
- the plant, substances and structures at the workplace – this supports the identification of risks that may arise from plant, substances and structures at the workplace. For example, not having the equipment or tools needed to perform work properly or safely., It recognises that plant substances and structures may create risks and can also be used to control psychosocial risks
- workplace interactions or behaviours – this requires PCBUs to identify harmful behaviours (e.g. violence; aggression; bullying; harassment; sexual harassment; conflict and poor workplace relationships) in the workplace and implement control measures to manage the related risks, and
- the information training, instruction and supervision provided to workers at the workplace - this supports the implementation of controls for hazards, such as poor support and a lack of role clarity, and ensures PCBUs provide the training, instruction and supervision necessary to support the implementation of other control measures such as bullying policies.

62. The matters that a PCBU must consider under reg 55D(2) go towards identifying and assessing psychosocial hazards and risks, and implementing effective and reasonably practicable control measures, through consideration of:

    - key sources of psychosocial hazards (e.g. systems of work used)
    - the context of the work and the wide range of psychosocial risks (e.g. plant used)
    - the most effective and reliable control measures (e.g. the design of the work), and
    - the need to support the implementation and maintenance of control measures (e.g. training and supervision).

63. Consideration is not limited to matters as they currently exist and the PCBU must also have regard to what changes, if any, should be made to those matters. For example, a PCBU must consider existing plant, substances and structures in the workplace, but also consider whether different or additional plant, substances or structures should be in use in the workplace to manage psychosocial risks.

Clause 24 – Amendment of r 238 (Operation of amusement devices and passenger ropeways)

64. Clause 24 amends reg 238 to insert reg 238(3) to clarify that the instruction and training required by reg 238(1) must include instruction and training in how to carry out the daily checks required by reg 238(2)(a) and in how to operate the device without passengers as

required by reg 238(2)(b). The term ‘daily checks’ refers to the checks required to be carried out on the device on each day on which the device is to be operated noting that the device may not in fact be operated every day of the week.

Clause 25 – Amendment of r 242 (Log book and manuals for amusement devices)

65. Clause 25 amends reg 242 to give effect to recommendation 28 of the 2018 Review.

66. Clause 25(1) omits reg 242(1)(a) and replaces it with a new requirement for the log book for an amusement device to contain the details listed in reg 242(1A).

67. Clause 25(2) inserts new reg 242(1A) which contains a list of information that must be included in the log book of an amusement device. This includes details of the maintenance of the device, details about each operator of the device and details of any statutory notices issued in relation to the device. This ensures the log book contains sufficient information to show whether the ride is safe and whether the operator is competent to operate it.

68. A note to reg 242(1A) refers to reg 238(2)(c) which requires that, in addition to the information in reg 242(1A), the log book must include a record of the daily checks and operation of the amusement device without passengers.

69. Clause 25(3) replaces the phrase “the log book for the amusement device in which details concerning erection, storage, operation and maintenance of the amusement device are recorded” in reg 242(2)(a) with “the log book for the amusement device” to reflect the additional log book requirements in reg 242(1A).

70. Clause 25(4) inserts regs 242(3) and (4). Regulation 242(3) requires the person with management or control of an amusement device at a workplace to provide the log book for the amusement device to any person to whom the person relinquishes control of the device. This clause replaces the note to reg 242, which previously referred to reg 237(5) as requiring the log book be supplied to any person to whom the amusement device is relinquished. This is a consequential change to reflect the additional log book requirements in reg 242(1A).

71. Regulation 242(4) includes a new definition for ‘statutory notice’ for the purposes of reg 242. Statutory notices are defined as improvement notices (ss 191-194 of the Act), prohibition notices (ss 195-197 of the Act) and infringement notices (s 243 of the Act), as well as such notices issued in another jurisdiction under a corresponding WHS law. It does not include other notices under the Act or the regulations.

72. Clause 25(5) omits the note to reg 242, which previously referred to reg 237(5). It inserts a note referring to the jurisdictional notes in the Appendix.

Clause 26 – Amendment of r 702 (Confidentiality of information—exception relating administration or enforcement of other laws)

73. Clause 26(1) amends the heading to reg 702 by inserting the word ‘to’ and corrects a grammatical error.

74. Clause 26(2) amends reg 702 by omitting the reference to ‘section 271(3)(c)(ii)’ and replacing it with a reference to ‘section 271A(3)(b)’. This is a consequential amendment since s 271A(3)(b) now makes reference to ‘another Act prescribed by the regulations’.

Clause 27 – Amendment of Appendix (Jurisdictional notes)

75. A jurisdictional note to regulation 242(1A) allows for jurisdictions to introduce transitional provisions for the requirement to record the total number of hours that a device has ever been operated, as some amusement devices may have been in operation for some period of time before the commencement of these amendments and the information about the number of hours the device has already been in operation may not be recorded for those devices. A transitional provision could instead require that for such devices, the total number of hours from the commencement of the amendment be recorded.

76. A jurisdictional note to regulation 242(4) provides that a jurisdiction may replace the term 'infringement notice' with the relevant term used in that jurisdiction'. A jurisdiction may also add additional notices to ensure they must be recorded in the log book of an amusement device.