

# **Model Work Health and Safety Bill**

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Committee

This is a consolidated version of the *Model Work Health and Safety Bill*. This Bill is a national model law and is intended to provide the basis for nationally consistent work health and safety laws. This Bill does not, by itself, have any legal effect.

# **Model Work Health and Safety Bill**

## **Contents**

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	<i>Page</i>
<b>Part 1              Preliminary</b>	<b>1</b>
<b>Division 1        Introduction</b>	<b>1</b>
1      Citation	1
2      Commencement	1
<b>Division 2        Object</b>	<b>1</b>
3      Object	1
<b>Division 3       Interpretation</b>	<b>3</b>
<b>Subdivision 1      Definitions</b>	<b>3</b>
4      Definitions	3
<b>Subdivision 2      Other important terms</b>	<b>10</b>
5      Meaning of <i>person conducting a business or undertaking</i>	10
6      Meaning of <i>supply</i>	11
7      Meaning of <i>worker</i>	12
8      Meaning of <i>workplace</i>	13
9      Examples and notes	13
<b>Division 4       Application of Act</b>	<b>13</b>
10     Act binds the Crown	14
11     Extraterritorial application	14
12     Scope	14
<b>Part 2              Health and safety duties</b>	<b>15</b>
<b>Division 1        Introductory</b>	<b>15</b>
<b>Subdivision 1      Principles that apply to duties</b>	<b>15</b>
13     Principles that apply to duties	15
14     Duties not transferrable	15
15     Person may have more than 1 duty	15
16     More than 1 person can have a duty	15
17     Management of risks	16
<b>Subdivision 2      What is reasonably practicable</b>	<b>16</b>

---

	<i>Page</i>
18 What is <i>reasonably practicable</i> in ensuring health and safety	16
<b>Division 2 Primary duty of care</b>	<b>17</b>
19 Primary duty of care	17
<b>Division 3 Further duties of persons conducting businesses or undertakings</b>	<b>19</b>
20 Duty of persons conducting businesses or undertakings involving management or control of workplaces	19
21 Duty of persons conducting businesses or undertakings involving management or control of fixtures, fittings or plant at workplaces	20
22 Duties of persons conducting businesses or undertakings that design plant, substances or structures	20
23 Duties of persons conducting businesses or undertakings that manufacture plant, substances or structures	23
24 Duties of persons conducting businesses or undertakings that import plant, substances or structures	25
25 Duties of persons conducting businesses or undertakings that supply plant, substances or structures	28
26 Duty of persons conducting businesses or undertakings that install, construct or commission plant or structures	30
<b>Division 4 Duty of officers, workers and other persons</b>	<b>31</b>
27 Duty of officers	31
28 Duties of workers	34
29 Duties of other persons at the workplace	34
<b>Division 5 Offences and penalties</b>	<b>35</b>
30 Health and safety duty	35
30A Industrial manslaughter	35
31 Gross negligence or reckless conduct—Category 1	35
32 Failure to comply with health and safety duty—Category 2	36
33 Failure to comply with health and safety duty—Category 3	36
34 Exceptions	37
<b>Part 3 Incident notification</b>	<b>38</b>
34A Definition	38
35 What is a <i>notifiable incident</i>	38
35A What is a <i>notifiable extended absence</i>	38
35B What is a <i>notifiable suicide</i>	39
36 What is a <i>serious injury or illness</i>	40
37 What is a <i>dangerous incident</i>	42
37A What is a <i>violent incident</i>	44
38 Duty to notify of notifiable incidents, notifiable extended absences and notifiable suicides	45

	<i>Page</i>
39 Duty to preserve incident site and evidence	46
39A Person conducting business or undertaking and person with management or control of workplace to notify each other of certain matters	47
<b>Part 4 Authorisations</b>	<b>49</b>
40 Meaning of <i>authorised</i>	49
41 Requirements for authorisation of workplaces	49
42 Requirements for authorisation of plant or substance	49
43 Requirements for authorisation of work	50
44 Requirements for prescribed qualifications or experience	50
45 Requirement to comply with conditions of authorisation	51
<b>Part 5 Consultation, representation and participation</b>	<b>52</b>
<b>Division 1 Consultation, co-operation and co-ordination between duty holders</b>	<b>52</b>
46 Duty to consult with other duty holders	52
<b>Division 2 Consultation with workers</b>	<b>52</b>
47 Duty to consult workers	52
48 Nature of consultation	53
49 When consultation is required	53
<b>Division 3 Health and safety representatives</b>	<b>54</b>
<b>Subdivision 1 Request for election of health and safety representatives</b>	<b>54</b>
50 Request for election of health and safety representative	54
<b>Subdivision 2 Determination of work groups</b>	<b>55</b>
51 Determination of work groups	55
52 Negotiations for agreement for work group	55
53 Notice to workers	56
54 Failure of negotiations	57
<b>Subdivision 3 Multiple-business work groups</b>	<b>58</b>
55 Determination of work groups of multiple businesses	58
56 Negotiation of agreement for work groups of multiple businesses	59
57 Notice to workers	60
58 Withdrawal from negotiations or agreement involving multiple businesses	60
59 Effect of Subdivision on other arrangements	61
<b>Subdivision 4 Election of health and safety representatives</b>	<b>61</b>
60 Eligibility to be elected	61

	<i>Page</i>
61 Procedure for election of health and safety representatives	61
62 Eligibility to vote	62
63 When election not required	62
64 Term of office of health and safety representative	62
65 Disqualification of health and safety representatives	63
66 Immunity of health and safety representatives	64
67 Deputy health and safety representatives	64
<b>Subdivision 5 Powers and functions of health and safety representatives</b>	<b>65</b>
68 Powers and functions of health and safety representatives	65
69 Powers and functions generally limited to the particular work group	68
<b>Subdivision 6 Obligations of person conducting business or undertaking to health and safety representatives</b>	<b>69</b>
70 General obligations of person conducting business or undertaking	69
71 Exceptions from obligations under section 70(1)	71
72 Obligation to train health and safety representatives	73
73 Obligation to share costs if multiple businesses or undertakings	74
74 List of health and safety representatives	75
<b>Division 4 Health and safety committees</b>	<b>76</b>
75 Health and safety committees	76
76 Constitution of committee	76
77 Functions of committee	77
78 Meetings of committee	78
79 Duties of person conducting business or undertaking	78
<b>Division 5 Issue resolution</b>	<b>79</b>
80 Parties to an issue	79
81 Resolution of health and safety issues	80
82 Referral of issue to regulator for resolution by inspector	80
<b>Division 6 Right to cease or direct cessation of unsafe work</b>	<b>81</b>
83 Definition of <i>cease work under this Division</i>	81
84 Right of worker to cease unsafe work	81
85 Health and safety representative may direct that unsafe work cease	82
86 Worker to notify if ceases work	83
87 Alternative work	83
88 Continuity of engagement of worker	84
89 Request to regulator to appoint inspector to assist	84
<b>Division 7 Provisional improvement notices</b>	<b>84</b>
90 Provisional improvement notices	84

	<i>Page</i>
91 Provisional improvement notice to be in writing	85
92 Contents of provisional improvement notice	86
93 Provisional improvement notice may include recommendations to remedy contravention	86
94 Minor changes to provisional improvement notice	87
95 Issue of provisional improvement notice	87
96 Health and safety representative may cancel notice	87
97 Display of provisional improvement notice	87
98 Formal irregularities or defects in notice	88
99 Offence to contravene a provisional improvement notice	88
100 Request for review of provisional improvement notice	88
101 Regulator to appoint inspector to review notice	89
102 Decision of inspector on review of provisional improvement notice	89
<b>Division 8 Part not to apply to prisoners</b>	<b>90</b>
103 Part does not apply to prisoners	90
<b>Part 6 Discriminatory, coercive and misleading conduct</b>	<b>91</b>
<b>Division 1 Prohibition of discriminatory, coercive or misleading conduct</b>	<b>91</b>
104 Prohibition of discriminatory conduct	91
105 What is <i>discriminatory conduct</i>	91
106 What is a <i>prohibited reason</i>	92
107 Prohibition of requesting, instructing, inducing, encouraging, authorising or assisting discriminatory conduct	94
108 Prohibition of coercion or inducement	94
109 Misrepresentation	96
<b>Division 2 Criminal proceedings in relation to discriminatory conduct</b>	<b>96</b>
110 Proof of discriminatory conduct	96
111 Order for compensation or reinstatement	97
<b>Division 3 Civil proceedings in relation to discriminatory or coercive conduct</b>	<b>98</b>
112 Civil proceedings in relation to engaging in or inducing discriminatory or coercive conduct	98
113 Procedure for civil actions for discriminatory conduct	99
<b>Division 4 General</b>	<b>100</b>
114 General provisions relating to orders	100
115 Prohibition of multiple actions	101

	<i>Page</i>
<b>Part 7            Workplace entry by WHS entry permit holders</b>	<b>102</b>
<b>Division 1        Introductory</b>	<b>102</b>
116 Definitions	102
<b>Division 2        Entry to inquire into suspected contraventions</b>	<b>103</b>
117 Entry to inquire into suspected contraventions	103
118 Rights that may be exercised while at workplace	103
119 Notice of entry	105
120 Entry to inspect employee records or information held by another person	105
<b>Division 3        Entry to consult and advise workers</b>	<b>106</b>
121 Entry to consult and advise workers	106
122 Notice of entry	107
<b>Division 4        Requirements for WHS entry permit holders</b>	<b>107</b>
123 Contravening WHS entry permit conditions	107
124 WHS entry permit holder must also hold permit under other law	107
125 WHS entry permit to be available for inspection	108
126 When right may be exercised	108
127 Where the right may be exercised	108
128 Work health and safety requirements	108
129 Residential premises	109
130 WHS entry permit holder not required to disclose names of workers	109
<b>Division 5        WHS entry permits</b>	<b>110</b>
131 Application for WHS entry permit	110
132 Consideration of application	110
133 Eligibility criteria	110
134 Issue of WHS entry permit	111
135 Conditions on WHS entry permit	111
136 Term of WHS entry permit	111
137 Expiry of WHS entry permit	111
138 Application to revoke WHS entry permit	112
139 Authorising authority must permit WHS entry permit holder to show cause	114
140 Determination of application	115
<b>Division 6        Dealing with disputes</b>	<b>115</b>
141 Application for assistance of inspector to resolve dispute	115
142 Authorising authority may deal with a dispute about a right of entry under this Act	116
143 Contravening order made to deal with dispute	117
<b>Division 7        Prohibitions</b>	<b>117</b>

	<i>Page</i>
144 Person must not refuse or delay entry of WHS entry permit holder	117
145 Person must not hinder or obstruct WHS entry permit holder	118
146 WHS entry permit holder must not delay, hinder or obstruct any person or disrupt work at workplace	118
147 Misrepresentations about things authorised by this Part	118
148 Unauthorised use or disclosure of information or documents	119
<b>Division 8 General</b>	<b>121</b>
149 Return of WHS entry permits	121
150 Union to provide information to authorising authority	121
151 Register of WHS entry permit holders	122
<b>Part 8 The regulator</b>	<b>123</b>
<b>Division 1 Functions of regulator</b>	<b>123</b>
152 Functions of regulator	123
153 Powers of regulator	124
154 Delegation by regulator	124
<b>Division 2 Powers of regulator to obtain information</b>	<b>124</b>
155 Powers of regulator to obtain information	124
<b>Part 9 Securing compliance</b>	<b>127</b>
<b>Division 1 Appointment of inspectors</b>	<b>127</b>
156 Appointment of inspectors	127
157 Identity cards	127
158 Accountability of inspectors	128
159 Suspension and ending of appointment of inspectors	128
<b>Division 2 Functions and powers of inspectors</b>	<b>128</b>
160 Functions and powers of inspectors	128
161 Conditions on inspectors' compliance powers	129
162 Inspectors subject to regulator's directions	129
<b>Division 3 Powers relating to entry</b>	<b>130</b>
<b>Subdivision 1 General powers of entry</b>	<b>130</b>
163 Powers of entry	130
164 Notification of entry	130
165 General powers on entry	131
166 Persons assisting inspectors	132
<b>Subdivision 2 Search warrants</b>	<b>133</b>
167 Search warrants	133

	<i>Page</i>
168 Announcement before entry on warrant	134
169 Copy of warrant to be given to person with management or control of place	134
<b>Subdivision 3 Limitation on entry powers</b>	<b>135</b>
170 Places used for residential purposes	135
<b>Subdivision 4 Specific powers on entry</b>	<b>136</b>
171 Power to require production of documents and answers to questions	136
172 Abrogation of privilege against self-incrimination	138
173 Warning to be given	139
174 Powers to copy and retain documents	140
175 Power to seize evidence etc.	141
176 Inspector's power to seize dangerous workplaces and things	141
177 Powers supporting seizure	142
178 Receipt for seized things	143
179 Forfeiture of seized things	144
180 Return of seized things	146
181 Access to seized things	146
<b>Division 4 Damage and compensation</b>	<b>147</b>
182 Damage etc. to be minimised	147
183 Inspector to give notice of damage	147
184 Compensation	147
<b>Division 5 Other matters</b>	<b>148</b>
185 Power to require name and address	148
186 Inspector may take affidavits	149
187 Attendance of inspector at coronial inquests	149
<b>Division 6 Offences in relation to inspectors</b>	<b>150</b>
188 Offence to hinder or obstruct inspector	150
189 Offence to impersonate inspector	150
190 Offence to assault, threaten or intimidate inspector	150
<b>Part 10 Enforcement measures</b>	<b>151</b>
<b>Division 1 Improvement notices</b>	<b>151</b>
191 Issue of improvement notices	151
192 Contents of improvement notices	151
193 Compliance with improvement notice	152
194 Extension of time for compliance with improvement notices	152
<b>Division 2 Prohibition notices</b>	<b>153</b>
195 Power to issue prohibition notice	153

	<i>Page</i>
196 Contents of prohibition notice	153
197 Compliance with prohibition notice	154
<b>Division 2A Prohibited asbestos notices</b>	<b>155</b>
197A Definitions	155
197B Issue of prohibited asbestos notices	156
197C Contents of prohibited asbestos notices	156
197D Compliance with prohibited asbestos notice	157
197E Extension of time for compliance with prohibited asbestos notices	157
<b>Division 3 Non-disturbance notices</b>	<b>158</b>
198 Issue of non-disturbance notice	158
199 Contents of non-disturbance notice	158
200 Compliance with non-disturbance notice	159
201 Issue of subsequent notices	159
<b>Division 4 General requirements applying to notices</b>	<b>159</b>
202 Application of Division	159
203 Notice to be in writing	159
204 Directions in notices	160
205 Recommendations in notice	160
206 Changes to notice	160
207 Regulator may vary or cancel notice	161
208 Formal irregularities or defects in notice	161
209 Issue and giving of notice	161
210 Display of notice	162
<b>Division 5 Remedial action</b>	<b>162</b>
211 When regulator may carry out action	162
212 Power of the regulator to take other remedial action	163
213 Costs of remedial or other action	163
<b>Division 6 Injunctions</b>	<b>164</b>
214 Application of Division	164
215 Injunctions for noncompliance with notices	164
<b>Part 11 Enforceable undertakings</b>	<b>165</b>
216 Regulator may accept WHS undertakings	165
217 Notice of decision and reasons for decision	165
218 When a WHS undertaking is enforceable	165
219 Compliance with WHS undertaking	166
220 Contravention of WHS undertaking	166
221 Withdrawal or variation of WHS undertaking	167
222 Proceeding for alleged contravention	167

	<i>Page</i>
<b>Part 12        Review of decisions</b>	<b>169</b>
<b>Division 1      Reviewable decisions</b>	<b>169</b>
223 Which decisions are reviewable	169
<b>Division 2      Internal review</b>	<b>176</b>
224 Application for internal review	176
225 Internal reviewer	176
226 Decision of internal reviewer	177
227 Decision on internal review	177
228 Stays of reviewable decisions on internal review	178
<b>Division 3      External review</b>	<b>179</b>
229 Application for external review	179
<b>Part 13        Legal proceedings</b>	<b>180</b>
<b>Division 1      General matters</b>	<b>180</b>
230 Prosecutions	180
231 Procedure if prosecution is not brought	180
232 Limitation period for prosecutions	183
233 Multiple contraventions of health and safety duty provision	184
<b>Division 2      Sentencing for offences</b>	<b>185</b>
234 Application of this Division	185
235 Orders generally	185
236 Adverse publicity orders	185
237 Orders for restoration	187
238 Work health and safety project orders	187
239 Release on the giving of a court-ordered WHS undertaking	187
240 Injunctions	188
241 Training orders	189
242 Offence to fail to comply with order	189
<b>Division 3      Infringement notices</b>	<b>189</b>
243 Infringement notices	189
<b>Division 4      Offences by bodies corporate</b>	<b>189</b>
244 Definitions	189
244A Physical elements	190
244B Fault elements other than gross negligence	190
244BA Gross negligence	192
244C Mistake of fact	193
244D Failure to take reasonable precautions	193
<b>Division 5      The Crown</b>	<b>194</b>
245 Offences and the Crown	194

	<i>Page</i>
246 WHS civil penalty provisions and the Crown	195
247 Officers	195
248 Responsible agency for the Crown	195
<b>Division 6 Public authorities</b>	<b>198</b>
249 Application to public authorities that are bodies corporate	198
250 Proceedings against public authorities	198
251 Imputing conduct to public authorities	198
252 Officer of public authority	199
253 Proceedings against successors to public authorities	199
<b>Division 7 WHS civil penalty provisions</b>	<b>199</b>
254 When is a provision a WHS civil penalty provision	199
255 Proceedings for contravention of WHS civil penalty provision	200
256 Involvement in contravention treated in same way as actual contravention	200
257 Contravening a civil penalty provision is not an offence	201
258 Civil proceeding rules and procedure to apply	201
259 Proceeding for a contravention of a WHS civil penalty provision	201
260 Proceeding may be brought by the regulator or an inspector	202
261 Limitation period for WHS civil penalty proceedings	202
262 Recovery of a monetary penalty	202
263 Civil double jeopardy	202
264 Criminal proceedings during civil proceedings	203
265 Criminal proceedings after civil proceedings	203
266 Evidence given in proceedings for contravention of WHS civil penalty provision not admissible in criminal proceedings	203
<b>Division 8 Civil liability not affected by this Act</b>	<b>204</b>
267 Civil liability not affected by this Act	204
<b>Part 14 General</b>	<b>205</b>
<b>Division 1 General provisions</b>	<b>205</b>
268 Offence to give false or misleading information	205
269 Act does not affect legal professional privilege	206
270 Immunity from liability	206
271 Confidentiality of information	206
271A Additional ways that regulator may use and share information	208
272 No contracting out	209
272A No insurance or other indemnity against penalties	209
272B Liability of officers for offences by body corporate under s 272A	210
273 Person not to levy workers	210
<b>Division 2 Codes of practice</b>	<b>211</b>

	<i>Page</i>
274 Approved codes of practice	211
275 Use of codes of practice in proceedings	212
<b>Division 3 Regulation-making powers</b>	<b>213</b>
276 Regulation-making powers	213
<b>Schedule 1—Application of Act to dangerous goods and high risk plant</b>	<b>216</b>
<b>Schedule 2—The regulator and local tripartite consultation arrangements and other local arrangements</b>	<b>218</b>
<b>Schedule 3—Regulation-making powers</b>	<b>219</b>
1 Duties	219
2 Incidents	219
3 Plant, substances or structures	219
4 Protection and welfare of workers	220
5 Hazards and risks	220
6 Records and notices	221
7 Authorisations	221
8 Work groups	222
9 Health and safety committees and health and safety representatives	222
10 Issue resolution	222
11 WHS entry permits	222
12 Identity cards	223
13 Forfeiture	223
14 Review of decisions	223
<b>Schedule 4—Penalty amounts</b>	<b>225</b>
1 Maximum monetary penalties—categories 1–3	225
1A Maximum monetary penalties—industrial manslaughter	225
2 Maximum monetary penalties—tiers A–I	226
3 Maximum monetary penalty—WHS civil penalty tiers 1–4	227
4 Indexation of maximum penalty amounts	227
<b>APPENDIX</b>	<b>230</b>
<b>Jurisdictional Notes</b>	<b>230</b>

## **Part 1 Preliminary**

### **Division 1 Introduction**

#### **1 Citation**

This Act may be cited as the *Work Health and Safety Act 2010*.

**Note**

See the jurisdictional note in the Appendix.

#### **2 Commencement**

This Act commences on 1 January 2012.

**Note**

See the jurisdictional note in the Appendix.

### **Division 2 Object**

#### **3 Object**

- (1) The main object of this Act is to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by:
  - (a) protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work [or from specified types of substances or plant]; and

**Note**

See the jurisdictional note in the Appendix.

- (b) providing for fair and effective workplace representation, consultation, co-operation and issue resolution in relation to work health and safety; and
- (c) encouraging unions and employer organisations to take a constructive role in

Part 1 Preliminary

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promoting improvements in work health and safety practices, and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment; and

- (d) promoting the provision of advice, information, education and training in relation to work health and safety; and
  - (e) securing compliance with this Act through effective and appropriate compliance and enforcement measures; and
  - (f) ensuring appropriate scrutiny and review of actions taken by persons exercising powers and performing functions under this Act; and
  - (g) providing a framework for continuous improvement and progressively higher standards of work health and safety; and
  - (h) maintaining and strengthening the national harmonisation of laws relating to work health and safety and to facilitate a consistent national approach to work health and safety in this jurisdiction.
- (2) In furthering subsection (1)(a), regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work [or from specified types of substances or plant] as is reasonably practicable.

**Note**

See the jurisdictional note in the Appendix.

## Division 3 Interpretation

### Subdivision 1 Definitions

#### 4 Definitions

In this Act:

***approved code of practice*** means a code of practice approved under Part 14.

***asbestos***—see section 197A.

***asbestos containing material (ACM)***—see section 197A.

***authorised***, in Part 4—see section 40.

***authorised person***, in Part 13, Division 4—see section 244.

***authorising authority*** means:

**Note**

See the jurisdictional note in the Appendix.

***board of directors*** in Part 13, Division 4—see section 244.

***category 1 monetary penalty, category 2 monetary penalty*** and ***category 3 monetary penalty***, in relation to an offence, indicates the maximum monetary penalty a court may impose for the offence—see Schedule 4, clause 1 for the relevant maximum amounts.

***Category 1 offence***—see section 31.

***Category 2 offence***—see section 32.

***Category 3 offence***—see section 33.

***Commonwealth Criminal Code***, in Part 13, Division 4—see section 244.

***compliance powers*** means the functions and powers conferred on an inspector under this Act.

***condition*** includes limitation and restriction.

***construct*** includes assemble, erect, reconstruct, reassemble and re-erect.

***corresponding regulator*** means the holder of a public office, or a public authority, of the Commonwealth, or of a State, who or which is responsible for administering a corresponding WHS law.

***corresponding WHS law*** means:

**Note**

See the jurisdictional note in the Appendix.

***court*** means:

**Note**

See the jurisdictional note in the Appendix.

***dangerous incident***, in Part 3—see section 37

***demolition*** includes deconstruction.

***design***, in relation to plant, a substance or a structure includes:

(a) design of part of the plant, substance or structure; and

(b) redesign or modify a design.

***disclose***, in relation to information, includes divulge or communicate to any person or publish.

***discriminatory conduct***, in Part 6—see section 105.

Part 1 Preliminary

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**document** includes record.

**employee record**, in relation to an employee, has the same meaning as it has in the *Privacy Act 1988* of the Commonwealth.

**employer organisation** means an organisation of employers.

**engage in conduct** means doing an act or omitting to do an act.

**Fair Work Act** means the *Fair Work Act 2009* of the Commonwealth.

**handling** includes transport.

**health** means physical and psychological health.

**health and safety duty**—see section 30.

**health and safety representative**, in relation to a worker, means the health and safety representative elected under Part 5 for the work group of which the worker is a member.

**import** means to bring into the jurisdiction from outside Australia.

**industrial manslaughter monetary penalty** means:

**Note**

See the jurisdictional note in the Appendix.

**inspector** means an inspector appointed under Part 9.

**internal reviewer** means:

- (a) the regulator; or

Part 1 Preliminary

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- (b) a person appointed by the regulator under section 225.

***local authority*** means:

**Note**

See the jurisdictional note in the Appendix.

***notifiable extended absence***—see section 35A.

***notifiable incident***—see section 35.

***notifiable suicide***—see section 35B.

***officer*** means:

- (a) an officer within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth other than a partner in a partnership; or
- (b) an officer of the Crown within the meaning of section 247; or
- (c) an officer of a public authority within the meaning of section 252,

other than an elected member of a local authority acting in that capacity.

***official of a union***, in Part 7—see section 116.

***person conducting a business or undertaking***—  
see section 5.

***personal information*** has the same meaning as it has in the *Privacy Act 1988* of the Commonwealth.

***physical element***, in Part 13, Division 4—see section 244.

***plant*** includes:

Part 1 Preliminary

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- (a) any machinery, equipment, appliance, container, implement and tool; and
- (b) any component of any of those things; and
- (c) anything fitted or connected to any of those things.

*prohibited reason*, in Part 6—see section 106.

**public authority** means:

**Note**

See the jurisdictional note in the Appendix.

*reasonably practicable*, in relation to a duty to ensure health and safety—see section 18.

**regulator** means:

**Note**

See the jurisdictional note in the Appendix.

*relevant occurrence*—see section 34A.

*relevant person conducting a business or undertaking*, in Part 7—see section 116.

*relevant State or Territory industrial law*, in Part 7—see section 116.

*relevant union*, in Part 7—see section 116.

*relevant worker*, in Part 7—see section 116

*representative*, in relation to a worker, means:

- (a) the health and safety representative for the worker; or
- (b) a union representing the worker; or
- (c) any other person the worker authorises to represent him or her.

Part 1 Preliminary

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***serious injury or illness***, in Part 3—see section 36.

***State*** includes Territory.

***State or Territory industrial law*** has the same meaning as it has in the Fair Work Act.

***structure*** means anything that is constructed, whether fixed or moveable, temporary or permanent, and includes:

- (a) buildings, masts, towers, framework, pipelines, transport infrastructure and underground works (shafts or tunnels); and
- (b) any component of a structure; and
- (c) part of a structure.

***substance*** means any natural or artificial substance, whether in the form of a solid, liquid, gas or vapour.

***supply***—see section 6.

***this Act*** includes the regulations.

**Note**

See the jurisdictional note in the Appendix.

***tier A monetary penalty, tier B monetary penalty, tier C monetary penalty, tier D monetary penalty, tier E monetary penalty, tier F monetary penalty, tier G monetary penalty, tier H monetary penalty and tier I monetary penalty***, in relation to an offence, indicates the maximum monetary penalty a court may impose for the offence—see Schedule 4, clause 2 for the relevant maximum amounts.

***union*** means:

Part 1 Preliminary

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- (a) an employee organisation that is registered, or taken to be registered, under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth; or
- (b) an association of employees or independent contractors, or both, that is registered or recognised as such an association (however described) under a State or Territory industrial law.

**violent incident**, in Part 3—see section 37A.

**volunteer** means a person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses).

**WHS civil penalty provision tier 1, WHS civil penalty provision tier 2, WHS civil penalty provision tier 3 and WHS civil penalty provision tier 4**, in relation to a contravention of a provision of this Act, indicates the maximum monetary penalty a court may impose for the contravention—see Schedule 4, clause 3 for the relevant maximum amounts.

**WHS entry permit** means a WHS entry permit issued under Part 7.

**WHS entry permit holder** means a person who holds a WHS entry permit.

**WHS undertaking** means an undertaking given under section 216(1).

**work group** means a work group determined under Part 5.

**worker**—see section 7.

*workplace*—see section 8.

## **Subdivision 2 Other important terms**

### **5 Meaning of *person conducting a business or undertaking***

- (1) For the purposes of this Act, a person conducts a business or undertaking:
  - (a) whether the person conducts the business or undertaking alone or with others; and
  - (b) whether or not the business or undertaking is conducted for profit or gain.
- (2) A business or undertaking conducted by a person includes a business or undertaking conducted by a partnership or an unincorporated association.
- (3) If a business or undertaking is conducted by a partnership (other than an incorporated partnership), a reference in this Act to a person conducting the business or undertaking is to be read as a reference to each partner in the partnership.
- (4) A person does not conduct a business or undertaking to the extent that the person is engaged solely as a worker in, or as an officer of, that business or undertaking.
- (5) An elected member of a local authority does not in that capacity conduct a business or undertaking.
- (6) The regulations may specify the circumstances in which a person may be taken not to be a person who conducts a business or undertaking for the purposes of this Act or any provision of this Act.

- (7) A volunteer association does not conduct a business or undertaking for the purposes of this Act.
- (8) In this section, ***volunteer association*** means a group of volunteers working together for 1 or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association.

## 6 Meaning of *supply*

- (1) A ***supply*** of a thing includes a supply and a resupply of the thing by way of sale, exchange, lease, hire or hire-purchase, whether as principal or agent.
- (2) A supply of a thing occurs on the passing of possession of the thing to the person or an agent of the person to be supplied.
- (3) A supply of a thing does not include:
  - (a) the return of possession of a thing to the owner of the thing at the end of a lease or other agreement; or
  - (b) a prescribed supply.
- (4) A financier is taken not to supply plant, a substance or a structure for the purposes of this Act if:
  - (a) the financier has, in the course of the financier's business as a financier, acquired ownership of, or another right in, the plant, substance or structure on behalf of a customer of the financier; and

Part 1 Preliminary

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- (b) the action by the financier, that would be a supply but for this subsection, is taken by the financier for, or on behalf of, that customer.
- (5) If subsection (4) applies, the person (other than the financier) who had possession of the plant, substance or structure immediately before the financier's customer obtained possession of the plant, substance or structure is taken for the purposes of this Act to have supplied the plant, substance or structure to the financier's customer.

**7 Meaning of *worker***

- (1) A person is a *worker* if the person carries out work in any capacity for a person conducting a business or undertaking, including work as:
  - (a) an employee; or
  - (b) a contractor or subcontractor; or
  - (c) an employee of a contractor or subcontractor; or
  - (d) an employee of a labour hire company who has been assigned to work in the person's business or undertaking; or
  - (e) an outworker; or
  - (f) an apprentice or trainee; or
  - (g) a student gaining work experience; or
  - (h) a volunteer; or
  - (i) a person of a prescribed class.
- (2) For the purposes of this Act, a police officer is:
  - (a) a worker; and

- (b) at work throughout the time when the officer is on duty or lawfully performing the functions of a police officer, but not otherwise.
- (3) The person conducting the business or undertaking is also a *worker* if the person is an individual who carries out work in that business or undertaking.

**Note**

See the jurisdictional notes in the Appendix.

## **8 Meaning of *workplace***

- (1) A workplace is a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work.
- (2) In this section, *place* includes:
  - (a) a vehicle, vessel, aircraft or other mobile structure; and
  - (b) any waters and any installation on land, on the bed of any waters or floating on any waters.

## **9 Examples and notes**

- (1) An example at the foot of a provision forms part of this Act.
- (2) A note at the foot of a provision forms part of this Act.

**Note**

See the jurisdictional notes in the Appendix.

## **Division 4 Application of Act**

## **10 Act binds the Crown**

- (1) This Act binds the Crown in right of this jurisdiction and, in so far as the legislative power of the Parliament of this jurisdiction permits, the Crown in all its other capacities.

**Note**

See the jurisdictional notes in the Appendix.

- (2) The Crown is liable for an offence against this Act.

- (3) Without limiting subsection (1), the Crown is liable for a contravention of a WHS civil penalty provision.

## **11 Extraterritorial application**

**Note**

See the jurisdictional note in the Appendix.

## **12 Scope**

**Note**

See the jurisdictional notes in the Appendix.

## **Part 2 Health and safety duties**

### **Division 1 Introductory**

#### **Subdivision 1 Principles that apply to duties**

##### **13 Principles that apply to duties**

This Subdivision sets out the principles that apply to all duties that persons have under this Act.

###### **Note**

The principles will apply to duties under this Part and other Parts of this Act such as duties relating to incident notification and consultation.

##### **14 Duties not transferable**

A duty cannot be transferred to another person.

##### **15 Person may have more than 1 duty**

A person can have more than 1 duty by virtue of being in more than 1 class of duty holder.

##### **16 More than 1 person can have a duty**

- (1) More than 1 person can concurrently have the same duty.
- (2) Each duty holder must comply with that duty to the standard required by this Act even if another duty holder has the same duty.
- (3) If more than 1 person has a duty for the same matter, each person:
  - (a) retains responsibility for the person's duty in relation to the matter; and
  - (b) must discharge the person's duty to the extent to which the person has the capacity to influence and control the matter or would

have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

### **17 Management of risks**

A duty imposed on a person to ensure health and safety requires the person:

- (a) to eliminate risks to health and safety, so far as is reasonably practicable; and
- (b) if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable.

#### **Subdivision 2 What is reasonably practicable**

### **18 What is *reasonably practicable* in ensuring health and safety**

In this Act, *reasonably practicable*, in relation to a duty to ensure health and safety, means that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters including:

- (a) the likelihood of the hazard or the risk concerned occurring; and
- (b) the degree of harm that might result from the hazard or the risk; and
- (c) what the person concerned knows, or ought reasonably to know, about:
  - (i) the hazard or the risk; and
  - (ii) ways of eliminating or minimising the risk; and

- (d) the availability and suitability of ways to eliminate or minimise the risk; and
- (e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

## **Division 2 Primary duty of care**

### **19 Primary duty of care**

- (1) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of:
  - (a) workers engaged, or caused to be engaged by the person; and
  - (b) workers whose activities in carrying out work are influenced or directed by the person,while the workers are at work in the business or undertaking.
- (2) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.
- (3) Without limiting subsections (1) and (2), a person conducting a business or undertaking must ensure, so far as is reasonably practicable:
  - (a) the provision and maintenance of a work environment without risks to health and safety; and

Part 2 Health and safety duties

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- (b) the provision and maintenance of safe plant and structures; and
- (c) the provision and maintenance of safe systems of work; and
- (d) the safe use, handling and storage of plant, structures and substances; and
- (e) the provision of adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking, including ensuring access to those facilities; and
- (f) the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking; and
- (g) that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking.

(4) If:

- (a) a worker occupies accommodation that is owned by or under the management or control of the person conducting the business or undertaking; and
  - (b) the occupancy is necessary for the purposes of the worker's engagement because other accommodation is not reasonably available,
- the person conducting the business or undertaking must, so far as is reasonably practicable, maintain

the premises so that the worker occupying the premises is not exposed to risks to health and safety.

- (5) A self-employed person must ensure, so far as is reasonably practicable, his or her own health and safety while at work.

**Note**

A self-employed person is also a person conducting a business or undertaking for the purposes of this section.

**Division 3      Further duties of persons conducting businesses or undertakings**

**20 Duty of persons conducting businesses or undertakings involving management or control of workplaces**

- (1) In this section, *person with management or control of a workplace* means a person conducting a business or undertaking to the extent that the business or undertaking involves the management or control, in whole or in part, of the workplace but does not include:
- (a) the occupier of a residence, unless the residence is occupied for the purposes of, or as part of, the conduct of a business or undertaking; or
  - (b) a prescribed person.
- (2) The person with management or control of a workplace must ensure, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace and anything arising from the workplace are without risks to the health and safety of any person.

**21 Duty of persons conducting businesses or undertakings involving management or control of fixtures, fittings or plant at workplaces**

- (1) In this section, *person with management or control of fixtures, fittings or plant at a workplace* means a person conducting a business or undertaking to the extent that the business or undertaking involves the management or control of fixtures, fittings or plant, in whole or in part, at a workplace, but does not include:
- (a) the occupier of a residence, unless the residence is occupied for the purposes of, or as part of, the conduct of a business or undertaking; or
  - (b) a prescribed person.
- (2) The person with management or control of fixtures, fittings or plant at a workplace must ensure, so far as is reasonably practicable, that the fixtures, fittings and plant are without risks to the health and safety of any person.

**22 Duties of persons conducting businesses or undertakings that design plant, substances or structures**

- (1) This section applies to a person (the *designer*) who conducts a business or undertaking that designs:
- (a) plant that is to be used, or could reasonably be expected to be used, as, or at, a workplace; or
  - (b) a substance that is to be used, or could reasonably be expected to be used, at a workplace; or

Part 2 Health and safety duties

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- (c) a structure that is to be used, or could reasonably be expected to be used, as, or at, a workplace.
- (2) The designer must ensure, so far as is reasonably practicable, that the plant, substance or structure is designed to be without risks to the health and safety of persons:
  - (a) who, at a workplace, use the plant, substance or structure for a purpose for which it was designed; or
  - (b) who handle the substance at a workplace; or
  - (c) who store the plant or substance at a workplace; or
  - (d) who construct the structure at a workplace; or
  - (e) who carry out any reasonably foreseeable activity at a workplace in relation to:
    - (i) the manufacture, assembly or use of the plant for a purpose for which it was designed, or the proper storage, decommissioning, dismantling or disposal of the plant; or
    - (ii) the manufacture or use of the substance for a purpose for which it was designed or the proper handling, storage or disposal of the substance; or
    - (iii) the manufacture, assembly or use of the structure for a purpose for which it was designed or the proper demolition or disposal of the structure; or

Part 2 Health and safety duties

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**Example**

Inspection, operation, cleaning, maintenance or repair of plant.

- (f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance or structure at the workplace or whose health or safety may be affected by a use or activity referred to in paragraph (a), (b), (c), (d) or (e).
- (3) The designer must carry out, or arrange the carrying out of, any calculations, analysis, testing or examination that may be necessary for the performance of the duty imposed by subsection (2).
- (4) The designer must give adequate information to each person who is provided with the design for the purpose of giving effect to it concerning:
  - (a) each purpose for which the plant, substance or structure was designed; and
  - (b) the results of any calculations, analysis, testing or examination referred to in subsection (3), including, in relation to a substance, any hazardous properties of the substance identified by testing; and
  - (c) any conditions necessary to ensure that the plant, substance or structure is without risks to health and safety when used for a purpose for which it was designed or when carrying out any activity referred to in subsection (2)(a) to (e).
- (5) The designer, on request, must, so far as is reasonably practicable, give current relevant

information on the matters referred to in subsection (4) to a person who carries out, or is to carry out, any of the activities referred to in subsection (2)(a) to (e).

**23 Duties of persons conducting businesses or undertakings that manufacture plant, substances or structures**

- (1) This section applies to a person (the *manufacturer*) who conducts a business or undertaking that manufactures:
  - (a) plant that is to be used, or could reasonably be expected to be used, as, or at, a workplace; or
  - (b) a substance that is to be used, or could reasonably be expected to be used, at a workplace; or
  - (c) a structure that is to be used, or could reasonably be expected to be used, as, or at, a workplace.
- (2) The manufacturer must ensure, so far as is reasonably practicable, that the plant, substance or structure is manufactured to be without risks to the health and safety of persons:
  - (a) who, at a workplace, use the plant, substance or structure for a purpose for which it was designed or manufactured; or
  - (b) who handle the substance at a workplace; or
  - (c) who store the plant or substance at a workplace; or
  - (d) who construct the structure at a workplace; or

Part 2 Health and safety duties

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- (e) who carry out any reasonably foreseeable activity at a workplace in relation to:
  - (i) the assembly or use of the plant for a purpose for which it was designed or manufactured or the proper storage, decommissioning, dismantling or disposal of the plant; or
  - (ii) the use of the substance for a purpose for which it was designed or manufactured or the proper handling, storage or disposal of the substance; or
  - (iii) the assembly or use of the structure for a purpose for which it was designed or manufactured or the proper demolition or disposal of the structure; or

**Example**

Inspection, operation, cleaning, maintenance or repair of plant.

- (f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance or structure at the workplace or whose health or safety may be affected by a use or activity referred to in paragraph (a), (b), (c), (d) or (e).
- (3) The manufacturer must carry out, or arrange the carrying out of, any calculations, analysis, testing or examination that may be necessary for the performance of the duty imposed by subsection (2).
- (4) The manufacturer must give adequate information to each person to whom the manufacturer provides the plant, substance or structure concerning:

Part 2 Health and safety duties

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- (a) each purpose for which the plant, substance or structure was designed or manufactured; and
  - (b) the results of any calculations, analysis, testing or examination referred to in subsection (3), including, in relation to a substance, any hazardous properties of the substance identified by testing; and
  - (c) any conditions necessary to ensure that the plant, substance or structure is without risks to health and safety when used for a purpose for which it was designed or manufactured or when carrying out any activity referred to in subsection (2)(a) to (e).
- (5) The manufacturer, on request, must, so far as is reasonably practicable, give current relevant information on the matters referred to in subsection (4) to a person who carries out, or is to carry out, any of the activities referred to in subsection (2)(a) to (e).

**24 Duties of persons conducting businesses or undertakings that import plant, substances or structures**

- (1) This section applies to a person (the *importer*) who conducts a business or undertaking that imports:
  - (a) plant that is to be used, or could reasonably be expected to be used, as, or at, a workplace; or
  - (b) a substance that is to be used, or could reasonably be expected to be used, at a workplace; or

Part 2 Health and safety duties

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- (c) a structure that is to be used, or could reasonably be expected to be used, as, or at, a workplace.
- (2) The importer must ensure, so far as is reasonably practicable, that the plant, substance or structure is without risks to the health and safety of persons:
  - (a) who, at a workplace, use the plant, substance or structure for a purpose for which it was designed or manufactured; or
  - (b) who handle the substance at a workplace; or
  - (c) who store the plant or substance at a workplace; or
  - (d) who construct the structure at a workplace; or
  - (e) who carry out any reasonably foreseeable activity at a workplace in relation to:
    - (i) the assembly or use of the plant for a purpose for which it was designed or manufactured or the proper storage, decommissioning, dismantling or disposal of the plant; or
    - (ii) the use of the substance for a purpose for which it was designed or manufactured or the proper handling, storage or disposal of the substance; or
    - (iii) the assembly or use of the structure for a purpose for which it was designed or manufactured or the proper demolition or disposal of the structure; or

**Example**

Inspection, operation, cleaning, maintenance or repair of plant.

- (f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance or structure at the workplace or whose health or safety may be affected by a use or activity referred to in paragraph (a), (b), (c), (d) or (e).

(3) The importer must:

- (a) carry out, or arrange the carrying out of, any calculations, analysis, testing or examination that may be necessary for the performance of the duty imposed by subsection (2); or
- (b) ensure that the calculations, analysis, testing or examination have been carried out.

(4) The importer must give adequate information to each person to whom the importer provides the plant, substance or structure concerning:

- (a) each purpose for which the plant, substance or structure was designed or manufactured; and
- (b) the results of any calculations, analysis, testing or examination referred to in subsection (3), including, in relation to a substance, any hazardous properties of the substance identified by testing; and
- (c) any conditions necessary to ensure that the plant, substance or structure is without risks to health and safety when used for a purpose for which it was designed or manufactured or

when carrying out any activity referred to in subsection (2)(a) to (e).

- (5) The importer, on request, must, so far as is reasonably practicable, give current relevant information on the matters referred to in subsection (4) to a person who carries out, or is to carry out, any of the activities referred to in subsection (2)(a) to (e).

**25 Duties of persons conducting businesses or undertakings that supply plant, substances or structures**

- (1) This section applies to a person (the *supplier*) who conducts a business or undertaking that supplies:
- (a) plant that is to be used, or could reasonably be expected to be used, as, or at, a workplace; or
  - (b) a substance that is to be used, or could reasonably be expected to be used, at a workplace; or
  - (c) a structure that is to be used, or could reasonably be expected to be used, as, or at, a workplace.
- (2) The supplier must ensure, so far as is reasonably practicable, that the plant, substance or structure is without risks to the health and safety of persons:
- (a) who, at a workplace, use the plant or substance or structure for a purpose for which it was designed or manufactured; or
  - (b) who handle the substance at a workplace; or
  - (c) who store the plant or substance at a workplace; or

Part 2 Health and safety duties

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- (d) who construct the structure at a workplace; or
- (e) who carry out any reasonably foreseeable activity at a workplace in relation to:
  - (i) the assembly or use of the plant for a purpose for which it was designed or manufactured or the proper storage, decommissioning, dismantling or disposal of the plant; or
  - (ii) the use of the substance for a purpose for which it was designed or manufactured or the proper handling, storage or disposal of the substance; or
  - (iii) the assembly or use of the structure for a purpose for which it was designed or manufactured or the proper demolition or disposal of the structure; or

**Example**

Inspection, storage, operation, cleaning, maintenance or repair of plant.

- (f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance or structure at the workplace or whose health or safety may be affected by a use or activity referred to in paragraph (a), (b), (c), (d) or (e).

(3) The supplier must:

- (a) carry out, or arrange the carrying out of, any calculations, analysis, testing or examination that may be necessary for the performance of the duty imposed by subsection (2); or

- (b) ensure that the calculations, analysis, testing or examination have been carried out.
- (4) The supplier must give adequate information to each person to whom the supplier supplies the plant, substance or structure concerning:
  - (a) each purpose for which the plant, substance or structure was designed or manufactured; and
  - (b) the results of any calculations, analysis, testing or examination referred to in subsection (3), including, in relation to a substance, any hazardous properties of the substance identified by testing; and
  - (c) any conditions necessary to ensure that the plant, substance or structure is without risks to health and safety when used for a purpose for which it was designed or manufactured or when carrying out any activity referred to in subsection (2)(a) to (e).
- (5) The supplier, on request, must, so far as is reasonably practicable, give current relevant information on the matters referred to in subsection (4) to a person who carries out, or is to carry out, any of the activities referred to in subsection (2)(a) to (e).

**26 Duty of persons conducting businesses or undertakings that install, construct or commission plant or structures**

- (1) This section applies to a person who conducts a business or undertaking that installs, constructs or commissions plant or a structure that is to be used,

Part 2 Health and safety duties

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or could reasonably be expected to be used, as, or at, a workplace.

- (2) The person must ensure, so far as is reasonably practicable, that the way in which the plant or structure is installed, constructed or commissioned ensures that the plant or structure is without risks to the health and safety of persons:
  - (a) who install or construct the plant or structure at a workplace; or
  - (b) who use the plant or structure at a workplace for a purpose for which it was installed, constructed or commissioned; or
  - (c) who carry out any reasonably foreseeable activity at a workplace in relation to the proper use, decommissioning or dismantling of the plant or demolition or disposal of the structure; or
  - (d) who are at or in the vicinity of a workplace and whose health or safety may be affected by a use or activity referred to in paragraph (a), (b) or (c).

**Division 4      Duty of officers, workers and other persons**

**27    Duty of officers**

- (1) If a person conducting a business or undertaking has a duty or obligation under this Act, an officer of the person conducting the business or undertaking must exercise due diligence to ensure that the person conducting the business or undertaking complies with that duty or obligation.
- (2) Subject to subsection (3), the maximum penalty applicable under Division 5 of this Part for an

Part 2 Health and safety duties

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offence relating to the duty of an officer under this section is the maximum penalty fixed for an officer of a person conducting a business or undertaking for that offence.

- (3) Despite anything to the contrary in section 33, if the duty or obligation of a person conducting a business or undertaking was imposed under a provision other than a provision of Division 2 or 3 of this Part or this Division, the maximum penalty under section 33 for an offence by an officer under section 33 in relation to the duty or obligation is the maximum penalty fixed under the provision creating the duty or obligation for an individual who fails to comply with the duty or obligation.
- (4) An officer of a person conducting a business or undertaking may be convicted or found guilty of an offence under this Act relating to a duty under this section whether or not the person conducting the business or undertaking has been convicted or found guilty of an offence under this Act relating to the duty or obligation.
- (5) In this section, ***due diligence*** includes taking reasonable steps:
  - (a) to acquire and keep up-to-date knowledge of work health and safety matters; and
  - (b) to gain an understanding of the nature of the operations of the business or undertaking of the person conducting the business or undertaking and generally of the hazards and risks associated with those operations; and
  - (c) to ensure that the person conducting the business or undertaking has available for use,

Part 2 Health and safety duties

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and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking; and

- (d) to ensure that the person conducting the business or undertaking has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information; and
- (e) to ensure that the person conducting the business or undertaking has, and implements, processes for complying with any duty or obligation of the person conducting the business or undertaking under this Act; and

**Examples**

For the purposes of paragraph (e), the duties or obligations under this Act of a person conducting a business or undertaking may include:

- reporting notifiable incidents, notifiable extended absences and notifiable suicides;
- consulting with workers;
- ensuring compliance with notices issued under this Act;
- ensuring the provision of training and instruction to workers about work health and safety;
- ensuring that health and safety representatives receive their entitlements to training.

- (f) to verify the provision and use of the resources and processes referred to in

paragraphs (c) to (e).

## **28 Duties of workers**

While at work, a worker must:

- (a) take reasonable care for his or her own health and safety; and
- (b) take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons; and
- (c) comply, so far as the worker is reasonably able, with any reasonable instruction that is given by the person conducting the business or undertaking to allow the person to comply with this Act; and
- (d) co-operate with any reasonable policy or procedure of the person conducting the business or undertaking relating to health or safety at the workplace that has been notified to workers.

## **29 Duties of other persons at the workplace**

A person at a workplace (whether or not the person has another duty under this Part) must:

- (a) take reasonable care for his or her own health and safety; and
- (b) take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons; and
- (c) comply, so far as the person is reasonably able, with any reasonable instruction that is given by the person conducting the business or undertaking to allow the person

conducting the business or undertaking to comply with this Act.

## **Division 5 Offences and penalties**

### **30 Health and safety duty**

In this Division, ***health and safety duty*** means a duty imposed under Division 2, 3 or 4 of this Part.

#### **30A Industrial manslaughter**

##### **Note**

See the jurisdictional note in the Appendix. The jurisdictional note recommends a maximum penalty:

For an individual—20 years imprisonment.

For a body corporate—industrial manslaughter monetary penalty.

### **31 Gross negligence or reckless conduct—Category 1**

- (1) A person commits a Category 1 offence if:
  - (a) the person has a health and safety duty; and
  - (b) the person, without reasonable excuse, engages in conduct that:
    - (i) exposes an individual, to whom the duty is owed, to a risk of death or serious injury or illness; or
    - (ii) if the person is an officer of a person conducting a business or undertaking—exposes an individual, to whom the person conducting a business or undertaking owes a health and safety duty, to a risk of death or serious injury or illness; and
  - (c) the person:

Part 2 Health and safety duties

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- (i) engages in the conduct with gross negligence; or
- (ii) is reckless as to the risk to an individual of death or serious injury or illness.

Maximum penalty:

For an individual—category 1 monetary penalty or 10 years imprisonment or both.

For a body corporate—category 1 monetary penalty.

**Note**

See the jurisdictional note in the Appendix.

- (2) The prosecution bears the burden of proving that the conduct was engaged in without reasonable excuse.

**32 Failure to comply with health and safety duty—Category 2**

A person commits a Category 2 offence if:

- (a) the person has a health and safety duty; and
- (b) the person fails to comply with that duty; and
- (c) the failure exposes an individual to a risk of death or serious injury or illness.

Maximum penalty: category 2 monetary penalty.

**33 Failure to comply with health and safety duty—Category 3**

A person commits a Category 3 offence if:

- (a) the person has a health and safety duty; and
- (b) the person fails to comply with that duty.

Maximum penalty: category 3 monetary penalty.

### **34 Exceptions**

- (1) A volunteer does not commit an offence under this Division for a failure to comply with a health and safety duty, except a duty under section 28 or 29.
- (2) An unincorporated association does not commit an offence under this Act, and is not liable for a civil penalty under this Act, for a failure to comply with a duty or obligation imposed on the unincorporated association under this Act.
- (3) However:
  - (a) an officer of an unincorporated association (other than a volunteer) may be liable for a failure to comply with a duty under section 27; and
  - (b) a member of an unincorporated association may be liable for failure to comply with a duty under section 28 or 29.

## Part 3 Incident notification

### 34A Definition

In this Act:

***relevant occurrence*** means the following:

- (a) a notifiable incident;
- (b) a notifiable extended absence;
- (c) a notifiable suicide.

### 35 What is a ***notifiable incident***

In this Act, ***notifiable incident*** means any of the following arising from the conduct of a business or undertaking:

- (a) the death of a person;
- (b) a serious injury or illness of a person;
- (c) a dangerous incident;
- (d) a violent incident.

### 35A What is a ***notifiable extended absence***

In this Act, ***notifiable extended absence*** of a worker means an absence that is reasonably attributable to a physical or psychological injury or illness arising from the conduct of a business or undertaking where:

- (a) the worker has been absent from work for 15 or more consecutive days; or
- (b) the worker anticipates, on the basis of a medical practitioner's opinion, being absent from work for 15 consecutive days or more, and notifies the person

conducting the business or undertaking of the anticipated absence.

**35B What is a *notifiable suicide***

- (1) In this Act, ***notifiable suicide*** means a death by suicide, or suspected suicide, or an attempted, or suspected attempted, suicide:
  - (a) of a worker:
    - (i) that occurs at a time when the worker is not on leave and would ordinarily be working; or
    - (ii) that occurs at, or in the immediate vicinity of, the worker's workplace or another workplace managed or controlled by the same person conducting the business or undertaking for which the worker works; or
    - (iii) that occurs in relevant accommodation; or
    - (iv) that makes use of 1 or more things available to the worker because of the worker's work or at the worker's workplace; or
    - (v) that occurs when the worker is wearing the worker's usual work uniform at a time or in a place the worker would not ordinarily be expected to wear the uniform; or
    - (vi) who had or has a psychological injury or illness arising from the conduct of the business or undertaking; or

Part 3 Incident notification

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- (vii) who is, or has been, exposed to frequent, prolonged or severe psychosocial hazards because of the worker's work or at the worker's workplace; or
  - (viii) that occurs in circumstances where the person conducting the business or undertaking for which the worker works has notice of a link with the worker's work or workplace, or is otherwise aware of a link with the worker's work or workplace; or
- (b) of a person other than a worker that takes place at a workplace where suicide is a reasonably foreseeable risk due to the nature of the workplace and the presence of 1 or more physical hazards that could be used in a suicide.
- (2) In this section:

***relevant accommodation*** means the following:

- (a) accommodation owned by, or under the management or control of, the person conducting the business or undertaking for which the worker works;
- (b) accommodation otherwise supplied or paid for, whether directly or indirectly, by the person conducting the business or undertaking for which the worker works.

**36 What is a *serious injury or illness***

- (1) In this Part, ***serious injury or illness***, in relation to a person, means:

Part 3 Incident notification

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- (a) an injury or illness that would ordinarily require the person to have immediate treatment as an in-patient of a hospital, whether or not treatment is available or sought; or
- (b) any of the following injuries or illnesses that would ordinarily require the person to have immediate treatment, whether or not treatment is available or sought:
  - (i) the amputation of a body part;
  - (ii) a serious eye injury;
  - (iii) a serious burn;
  - (iv) the separation of skin from an underlying tissue, such as degloving or scalping;
  - (v) a spinal injury, including a fracture of 1 or more vertebrae;
  - (vi) a fracture of the pelvis, the skull or other facial bones;
  - (vii) another serious bone fracture;
  - (viii) a serious crush injury;
  - (ix) the loss of a bodily function;
  - (x) serious lacerations; or
- (c) a serious brain injury or illness resulting from:
  - (i) a significant blow, knock or other shock to the person's head, whether or not immediate treatment is sought; or

Part 3 Incident notification

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- (ii) repeated blows, knocks or other shocks to the person's head; or
  - (d) an injury or illness for which the person seeks treatment from a relevant registered health professional within 48 hours after exposure to a substance; or
  - (e) an injury or illness prescribed by the regulations.
- (2) The regulations may prescribe an injury or illness, or class of injury or illness, as an injury or illness that is not a serious injury or illness for the purposes of this Part.
- (3) In this section:

***relevant registered health professional*** means a person registered under the *Health Practitioner Regulation National Law* in any of the following health professions—

- (a) medical;
- (b) nursing;
- (c) paramedicine.

**Note**

See the jurisdictional note in the Appendix.

### 37 What is a *dangerous incident*

- (1) In this Part, ***dangerous incident*** means any of the following incidents, in relation to a workplace, that immediately or imminently exposes a person to a serious risk to the person's health or safety:
- (a) an uncontrolled escape, spillage or leakage of a substance;

Part 3 Incident notification

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- (b) an uncontrolled fire, implosion, or explosion, including an electrical explosion or an arc flash explosion;
  - (c) an uncontrolled escape of gas or steam;
  - (d) an uncontrolled escape of a pressurised substance;
  - (e) an electric shock;
  - (f) the fall or release from a height of a thing;
  - (g) the collapse, overturning, failure or malfunction of, or damage to, plant that is required to be authorised for use in accordance with the regulations;
  - (h) a mobile plant incident;
  - (i) the collapse or partial collapse of a structure;
  - (j) the collapse or failure of an excavation or of any shoring supporting an excavation;
  - (k) the inrush of water, mud or gas in workings, in an underground excavation or tunnel;
  - (l) the interruption of the main system of ventilation in an underground excavation or tunnel;
  - (m) a serious fall;
  - (n) another incident prescribed by the regulations.
- (2) The regulations may prescribe an incident, or class of incident, as an incident that is not a dangerous incident for the purposes of this Part.
- (3) In this section:

Part 3 Incident notification

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***mobile plant*** means plant designed to move or be moved, either autonomously or under the direct or remote control of an operator.

***mobile plant incident*** means an incident in which:

- (a) mobile plant overturns or partially overturns; or
- (b) mobile plant collides with a person or thing; or
- (c) a person is pinned to the ground or another thing by mobile plant; or
- (d) a person is ejected from mobile plant; or
- (e) mobile plant malfunctions; or
- (f) mobile plant, ordinarily controlled directly or remotely by an operator, moves while not under control.

***serious fall*** means a person falling:

- (a) from 1 level to a lower level; or
- (b) into a hole, trench, pit or void; or
- (c) into a body of water; or
- (d) onto a dangerous surface or object.

**37A What is a *violent incident***

In this Part, ***violent incident*** means 1 or more of the following that exposes a person to a serious risk of psychological harm:

- (a) a sexual assault or suspected sexual assault;
- (b) a physical assault, including with bodily fluids;

Part 3 Incident notification

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- (c) deliberate deprivation of a person's liberty without lawful authority;
- (d) a threat of sexual or physical assault, or a threat to deprive a person of the person's liberty, where there is a reasonable belief that, at the time the threat is made, the person making the threat:
  - (i) intends to carry out the threat; and
  - (ii) has the means to carry out the threat.

**38 Duty to notify of notifiable incidents, notifiable extended absences and notifiable suicides**

- (1) A person conducting a business or undertaking must ensure that notice of a relevant occurrence is given to the regulator:
  - (a) for a notifiable incident or notifiable suicide—immediately after becoming aware of the incident or suicide; or
  - (b) for a notifiable extended absence—within 14 days after becoming aware of the extended absence.

Maximum penalty: tier D monetary penalty.

- (1A) A notification under subsection (1) is only required once in relation to the same event or set of circumstances.
- (2) The notice must be given in accordance with this section and by the fastest possible means.

**Note**

See the jurisdictional note in the Appendix.

- (3) The notice must be given:
  - (a) by telephone; or

Part 3 Incident notification

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(b) in writing.

**Example**

The written notice can be given by facsimile, email or other electronic means.

- (4) A person giving notice by telephone must:
  - (a) give the details of the relevant occurrence requested by the regulator; and
  - (b) if required by the regulator, give a written notice of the relevant occurrence within 48 hours of that requirement being made.
- (5) A written notice must be in a form, or contain the details, approved by the regulator.
- (6) If the regulator receives a notice by telephone and a written notice is not required, the regulator must give the person conducting the business or undertaking:
  - (a) details of the information received; or
  - (b) an acknowledgement of receiving the notice.
- (7) A person conducting a business or undertaking must keep a record of each relevant occurrence for at least 5 years from the day that notice of the relevant occurrence is given to the regulator under this section.

Maximum penalty: tier F monetary penalty.

**39 Duty to preserve incident site and evidence**

- (1) The person with management or control of a workplace at which there has been a relevant occurrence must, so far as is reasonably practicable, ensure that:

Part 3 Incident notification

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- (a) the site of the occurrence is preserved until released by an inspector; and
- (b) evidence of the occurrence, including electronic and digital records and witness details, is preserved.

Maximum penalty: tier D monetary penalty.

- (1A) To avoid doubt, an inspector may, for subsection (1)(a), release the whole site or a part of the site.
- (2) In this section, a reference to a site includes any plant, substance, structure or thing associated with the relevant occurrence.
- (3) This section does not prevent any action:
  - (a) to assist an injured person; or
  - (b) to remove a deceased person; or
  - (c) that is essential to make the site safe or to minimise the risk of a further relevant occurrence; or
  - (d) that is associated with a police investigation; or
  - (e) for which an inspector or the regulator has given permission.

**39A Person conducting business or undertaking and person with management or control of workplace to notify each other of certain matters**

- (1) A person with a duty under section 38 must, immediately after becoming aware of the relevant occurrence activating the duty, ensure a person with a corresponding duty under section 39 is notified of the relevant occurrence, so far as is reasonably practicable.

Model Work Health and Safety Bill

Part 3 Incident notification

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Maximum penalty: tier D monetary penalty.

- (2) A person with a duty under section 39 must, immediately after becoming aware of the relevant occurrence activating the duty, ensure a person with a corresponding duty under section 38 is notified of the relevant occurrence, so far as is reasonably practicable.

Maximum penalty: tier D monetary penalty.

## Part 4 Authorisations

### 40 Meaning of *authorised*

In this Part, ***authorised*** means authorised by a licence, permit, registration or other authority (however described) as required by the regulations.

### 41 Requirements for authorisation of workplaces

A person must not conduct a business or undertaking at a workplace or direct or allow a worker to carry out work at a workplace if:

- (a) the regulations require the workplace or workplaces in that class of workplace to be authorised; and
- (b) the workplace is not authorised in accordance with the regulations.

Maximum penalty: tier B monetary penalty.

### 42 Requirements for authorisation of plant or substance

- (1) A person must not use plant or a substance at a workplace if:
  - (a) the regulations require the plant or substance or its design to be authorised; and
  - (b) the plant or substance or its design is not authorised in accordance with the regulations.

Maximum penalty: tier C monetary penalty.

- (2) A person who conducts a business or undertaking must not direct or allow a worker to use the plant or substance at a workplace if:

Part 4 Authorisations

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- (a) the regulations require the plant or substance or its design to be authorised; and
- (b) the plant or substance or its design is not authorised in accordance with the regulations.

Maximum penalty: tier C monetary penalty.

**43 Requirements for authorisation of work**

- (1) A person must not carry out work at a workplace if:
  - (a) the regulations require the work, or class of work, to be carried out by, or on behalf of, a person who is authorised; and
  - (b) the person, or the person on whose behalf the work is carried out, is not authorised in accordance with the regulations.

Maximum penalty: tier C monetary penalty.

- (2) A person who conducts a business or undertaking must not direct or allow a worker to carry out work at a workplace if:
  - (a) the regulations require the work, or class of work, to be carried out by, or on behalf of, a person who is authorised; and
  - (b) the person, or the person on whose behalf the work is to be carried out, is not authorised in accordance with the regulations.

Maximum penalty: tier C monetary penalty.

**44 Requirements for prescribed qualifications or experience**

- (1) A person must not carry out work at a workplace if:

Part 4 Authorisations

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- (a) the regulations require the work, or class of work, to be carried out by, or under the supervision of, a person who has prescribed qualifications or experience; and
- (b) the person does not have the prescribed qualifications or experience or the work is not carried out under the supervision of a person who has the prescribed qualifications or experience.

Maximum penalty: tier C monetary penalty.

- (2) A person who conducts a business or undertaking must not direct or allow a worker to carry out work at a workplace if:

- (a) the regulations require the work, or class of work, to be carried out by, or under the supervision of, a person who has prescribed qualifications or experience; and
- (b) the worker does not have the prescribed qualifications or experience or the work is not carried out under the supervision of a person who has the prescribed qualifications or experience.

Maximum penalty: tier C monetary penalty.

**45 Requirement to comply with conditions of authorisation**

A person must comply with the conditions of any authorisation given to that person under the regulations.

Maximum penalty: tier C monetary penalty.

## **Part 5 Consultation, representation and participation**

### **Division 1 Consultation, co-operation and co-ordination between duty holders**

#### **46 Duty to consult with other duty holders**

If more than one person has a duty in relation to the same matter under this Act, each person with the duty must, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with all other persons who have a duty in relation to the same matter.

Maximum penalty: tier C monetary penalty.

### **Division 2 Consultation with workers**

#### **47 Duty to consult workers**

- (1) The person conducting a business or undertaking must, so far as is reasonably practicable, consult, in accordance with this Division and the regulations, with workers who carry out work for the business or undertaking who are, or are likely to be, directly affected by a matter relating to work health or safety.

Maximum penalty: tier C monetary penalty.

- (2) If the person conducting the business or undertaking and the workers have agreed to procedures for consultation, the consultation must be in accordance with those procedures.
- (3) The agreed procedures must not be inconsistent with section 48.

#### **48 Nature of consultation**

- (1) Consultation under this Division requires:
  - (a) that relevant information about the matter is shared with workers; and
  - (b) that workers be given a reasonable opportunity:
    - (i) to express their views and to raise work health or safety issues in relation to the matter; and
    - (ii) to contribute to the decision-making process relating to the matter; and
  - (c) that the views of workers are taken into account by the person conducting the business or undertaking; and
  - (d) that the workers consulted are advised of the outcome of the consultation in a timely manner.
- (2) If the workers are represented by a health and safety representative, the consultation must involve that representative.

#### **49 When consultation is required**

Consultation under this Division is required in relation to the following health and safety matters:

- (a) when identifying hazards and assessing risks to health and safety arising from the work carried out or to be carried out by the business or undertaking;
- (b) when making decisions about ways to eliminate or minimise those risks;

- (c) when making decisions about the adequacy of facilities for the welfare of workers;
- (d) when proposing changes that may affect the health or safety of workers;
- (e) when making decisions about the procedures for:
  - (i) consulting with workers; or
  - (ii) resolving work health or safety issues at the workplace; or
  - (iii) monitoring the health of workers; or
  - (iv) monitoring the conditions at any workplace under the management or control of the person conducting the business or undertaking; or
  - (v) providing information and training for workers; or
- (f) when carrying out any other activity prescribed by the regulations for the purposes of this section.

### **Division 3      Health and safety representatives**

#### **Subdivision 1 Request for election of health and safety representatives**

##### **50 Request for election of health and safety representative**

A worker who carries out work for a business or undertaking may ask the person conducting the business or undertaking to facilitate the conduct of an election for 1 or more health and safety

representatives to represent workers who carry out work for the business or undertaking.

## **Subdivision 2 Determination of work groups**

### **51 Determination of work groups**

- (1) If a request is made under section 50, the person conducting the business or undertaking must facilitate the determination of 1 or more work groups of workers.
- (2) The purpose of determining a work group is to facilitate the representation of workers in the work group by 1 or more health and safety representatives.
- (3) A work group may be determined for workers at 1 or more workplaces.

### **52 Negotiations for agreement for work group**

- (1) A work group is to be determined by negotiation and agreement between:
  - (a) the person conducting the business or undertaking; and
  - (b) the workers who are proposed to form the work group or their representatives.
- (2) The person conducting the business or undertaking must take all reasonable steps to commence negotiations with the workers within 14 days after a request is made under section 50.
- (3) The purpose of the negotiations is to determine:
  - (a) the number and composition of work groups to be represented by health and safety representatives; and

Part 5 Consultation, representation and participation

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- (b) the number of health and safety representatives and deputy health and safety representatives (if any) to be elected; and
  - (c) the workplace or workplaces to which the work groups will apply.
- (4) The parties to an agreement concerning the determination of a work group or groups may, at any time, negotiate a variation of the agreement.
- (5) The person conducting the business or undertaking must, if asked by a worker, negotiate with the worker's representative in negotiations under this section (including negotiations for a variation of an agreement) and must not exclude the representative from those negotiations.
- Maximum penalty: tier D monetary penalty.
- (6) The regulations may prescribe the matters that must be taken into account in negotiations for and determination of work groups and variations of agreements concerning work groups.

**53 Notice to workers**

- (1) The person conducting a business or undertaking involved in negotiations to determine a work group must, as soon as practicable after the negotiations are completed, notify the workers of the outcome of the negotiations and of any work groups determined by agreement.
- Maximum penalty: tier H monetary penalty.
- (2) The person conducting a business or undertaking involved in negotiations for the variation of an agreement concerning the determination of a work group or groups must, as soon as practicable after the negotiations are completed, notify the workers

of the outcome of the negotiations and of the variation (if any) to the agreement.

Maximum penalty: tier H monetary penalty.

#### **54 Failure of negotiations**

- (1) If there is a failure of negotiations (including negotiations concerning the variation of an agreement), any person who is or would be a party to the negotiations may ask the regulator to appoint an inspector for the purposes of this section.
- (2) An inspector appointed under subsection (1) may decide:
  - (a) the matters referred to in section 52(3), or any of those matters which is the subject of the proposed variation (as the case requires); or
  - (b) that work groups should not be determined or that the agreement should not be varied (as the case requires).
- (3) For the purposes of this section, there is a failure of negotiations if:
  - (a) the person conducting the business or undertaking has not taken all reasonable steps to commence negotiations with the workers and negotiations have not commenced within 14 days after—
    - (i) a request is made under section 50; or
    - (ii) a party to the agreement requests the variation of the agreement; or
  - (b) agreement cannot be reached on a matter relating to the determination of a work group

(or the variation of an agreement concerning a work group) within a reasonable time after negotiations commence.

- (4) A decision under this section is taken to be an agreement under section 52.

### **Subdivision 3 Multiple-business work groups**

#### **55 Determination of work groups of multiple businesses**

- (1) Work groups may be determined for workers carrying out work for 2 or more persons conducting businesses or undertakings at 1 or more workplaces.
- (2) The particulars of the work groups are to be determined by negotiation and agreement, in accordance with section 56, between each of the persons conducting the businesses or undertakings and the workers.
- (3) The parties to an agreement concerning the determination of a work group or groups may, at any time, negotiate a variation of the agreement.
- (3) The determination of 1 or more work groups under this Subdivision does not:
  - (a) prevent the determination under this Subdivision or Subdivision 2 of any other work group of the workers concerned; or
  - (b) affect any work groups of those workers that have already been determined under this Subdivision or Subdivision 2.

**56 Negotiation of agreement for work groups of multiple businesses**

- (1) Negotiations concerning work groups under this Subdivision must be directed only at the following:
  - (a) the number and composition of work groups to be represented by health and safety representatives;
  - (b) the number of health and safety representatives and deputy health and safety representatives (if any) for each work group;
  - (c) the workplace or workplaces to which the work groups will apply;
  - (d) the businesses or undertakings to which the work groups will apply.
- (2) A person conducting a business or undertaking must, if asked by a worker, negotiate with the worker's representative in negotiations under this section (including negotiations for a variation of an agreement) and must not exclude the representative from those negotiations.

Maximum penalty: tier D monetary penalty.

- (3) If agreement cannot be reached on a matter relating to the determination of a work group (or a variation of an agreement) within a reasonable time after negotiations commence under this Subdivision, any party to the negotiations may ask the regulator to appoint an inspector to assist the negotiations in relation to that matter.
- (4) The regulations may prescribe the matters that must be taken into account in negotiations for and

determination of work groups and variations of agreements.

**57 Notice to workers**

- (1) A person conducting a business or undertaking involved in negotiations to determine a work group must, as soon as practicable after the negotiations are completed, notify the workers of the outcome of the negotiations and of any work groups determined by agreement.

Maximum penalty: tier H monetary penalty.

- (2) A person conducting a business or undertaking involved in negotiations for the variation of an agreement concerning the determination of a work group or groups must, as soon as practicable after the negotiations are completed, notify the workers of the outcome of the negotiations and of the variation (if any) to the agreement.

Maximum penalty: tier H monetary penalty.

**58 Withdrawal from negotiations or agreement involving multiple businesses**

- (1) A party to a negotiation for an agreement, or to an agreement, concerning a work group under this Subdivision may withdraw from the negotiation or agreement at any time by giving reasonable notice (in writing) to the other parties.
- (2) If a party withdraws from an agreement concerning a work group under this Subdivision:
  - (a) the other parties must negotiate a variation to the agreement in accordance with section 56; and

- (b) the withdrawal does not affect the validity of the agreement between the other parties in the meantime.

### **59 Effect of Subdivision on other arrangements**

To avoid doubt, nothing in this Subdivision affects the capacity of 2 or more persons conducting businesses or undertakings and their workers to enter into other agreements or make other arrangements, in addition to complying with this Part, concerning the representation of those workers.

## **Subdivision 4 Election of health and safety representatives**

### **60 Eligibility to be elected**

A worker is:

- (a) eligible to be elected as a health and safety representative for a work group only if he or she is a member of that work group; and
- (b) not eligible to be elected as a health and safety representative if he or she is disqualified under section 65 from being a health and safety representative.

### **61 Procedure for election of health and safety representatives**

- (1) The workers in a work group may determine how an election of a health and safety representative for the work group is to be conducted.
- (2) However, an election must comply with the procedures (if any) prescribed by the regulations.
- (3) If a majority of the workers in a work group so determine, the election may be conducted with the

assistance of a union or other person or organisation.

- (4) The person conducting the business or undertaking to which the work group relates must provide any resources, facilities and assistance that are reasonably necessary or are prescribed by the regulations to enable elections to be conducted.

Maximum penalty: tier D monetary penalty.

## **62 Eligibility to vote**

- (1) A health and safety representative for a work group is to be elected by members of that work group.
- (2) All workers in a work group are entitled to vote for the election of a health and safety representative for that work group.

## **63 When election not required**

If the number of candidates for election as a health and safety representative for a work group equals the number of vacancies, the election need not be conducted and each candidate is to be taken to have been elected as a health and safety representative for the work group.

## **64 Term of office of health and safety representative**

- (1) A health and safety representative for a work group holds office for 3 years.
- (2) However a person ceases to hold office as a health and safety representative for a work group if:
  - (a) the person resigns as a health and safety representative for the work group by written

notice given to the person conducting the relevant business or undertaking; or

- (b) the person ceases to be a worker in the work group for which he or she was elected as a health and safety representative; or
  - (c) the person is disqualified under section 65 from acting as a health and safety representative; or
  - (d) the person is removed from that position by a majority of the members of the work group in accordance with the regulations.
- (3) A health and safety representative is eligible for re-election.

## **65 Disqualification of health and safety representatives**

- (1) An application may be made to the [designated court or tribunal] to disqualify a health and safety representative on the ground that the representative has:
  - (a) exercised a power or performed a function as a health and safety representative for an improper purpose; or
  - (b) used or disclosed any information he or she acquired as a health and safety representative for a purpose other than in connection with the role of health and safety representative.
- (2) The following persons may make an application under this section:
  - (a) any person adversely affected by:
    - (i) the exercise of a power or the performance of a function referred to in subsection (1)(a); or

- (ii) the use or disclosure of information referred to in subsection (1)(b);
  - (b) the regulator.
- (3) If the [designated court or tribunal] is satisfied that a ground in subsection (1) is made out, the [designated court or tribunal] may disqualify the health and safety representative for a specified period or indefinitely.

**Note**

See the jurisdictional notes in the Appendix.

## **66 Immunity of health and safety representatives**

A health and safety representative is not personally liable for anything done or omitted to be done in good faith:

- (a) in exercising a power or performing a function under this Act; or
- (b) in the reasonable belief that the thing was done or omitted to be done in the exercise of a power or the performance of a function under this Act.

## **67 Deputy health and safety representatives**

- (1) Each deputy health and safety representative for a work group is to be elected in the same way as a health and safety representative for the work group.
- (2) If the health and safety representative for a work group ceases to hold office or is unable (because of absence or any other reason) to exercise the powers or perform the functions of a health and safety representative under this Act:

- (a) the powers and functions may be exercised or performed by a deputy health and safety representative for the work group; and
  - (b) this Act applies in relation to the deputy health and safety representative as if he or she were the health and safety representative.
- (3) Sections 64, 65, 66, 72 and 73 apply to deputy health and safety representatives in the same way as they apply to health and safety representatives.

#### **Subdivision 5 Powers and functions of health and safety representatives**

##### **68 Powers and functions of health and safety representatives**

- (1) The powers and functions of a health and safety representative for a work group are:
  - (a) to represent the workers in the work group in matters relating to work health and safety; and
  - (b) to monitor the measures taken by the person conducting the relevant business or undertaking or that person's representative in compliance with this Act in relation to workers in the work group; and
  - (c) to investigate complaints from members of the work group relating to work health and safety; and
  - (d) to inquire into anything that appears to be a risk to the health or safety of workers in the work group, arising from the conduct of the business or undertaking.

Part 5 Consultation, representation and participation

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- (2) In exercising a power or performing a function, the health and safety representative may:
  - (a) inspect the workplace or any part of the workplace at which a worker in the work group works:
    - (i) at any time after giving reasonable notice to the person conducting the business or undertaking at that workplace; and
    - (ii) at any time, without notice, in the event of an incident, or any situation involving a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard; and
  - (b) accompany an inspector during an inspection of the workplace or part of the workplace at which a worker in the work group works; and
  - (c) with the consent of a worker that the health and safety representative represents, be present at an interview concerning work health and safety between the worker and:
    - (i) an inspector; or
    - (ii) the person conducting the business or undertaking at that workplace or the person's representative; and
  - (d) with the consent of 1 or more workers that the health and safety representative represents, be present at an interview concerning work health and safety between a

Part 5 Consultation, representation and participation

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group of workers, which includes the workers who gave the consent, and:

- (i) an inspector; or
- (ii) the person conducting the business or undertaking at that workplace or the person's representative; and
- (e) request the establishment of a health and safety committee; and
- (f) receive information concerning the work health and safety of workers in the work group; and
- (g) whenever necessary, request the assistance of any person.

**Note**

A health and safety representative also has a power under Division 6 of this Part to direct work to cease in certain circumstances and under Division 7 of this Part to issue provisional improvement notices.

- (3) Despite subsection (2)(f), a health and safety representative is not entitled to have access to any personal or medical information concerning a worker without the worker's consent unless the information is in a form that:
  - (a) does not identify the worker; and
  - (b) could not reasonably be expected to lead to the identification of the worker.
- (3A) If a person assisting a health and safety representative under subsection (2)(g) requires access to the workplace to provide the assistance, the health and safety representative must give notice of the assistant's proposed entry to:

Part 5 Consultation, representation and participation

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- (a) the person conducting the business or undertaking for whom the representative's workgroup carries out the work at the workplace; and
- (b) the person with management or control of the workplace.

(3B) A notice under subsection (3A) must:

- (a) comply with the regulations; and
- (b) be given during the usual working hours at the workplace at least 24 hours, but not more than 14 days, before the assistant's entry.

(4) Nothing in this Act imposes or is taken to impose a duty on a health and safety representative in that capacity.

**69 Powers and functions generally limited to the particular work group**

(1) A health and safety representative for a work group may exercise powers and perform functions under this Act only in relation to matters that affect, or may affect, workers in that group.

(2) Subsection (1) does not apply if:

- (a) there is a serious risk to health or safety emanating from an immediate or imminent exposure to a hazard that affects or may affect a member of another work group; or
- (b) a member of another work group asks for the representative's assistance,

and the health and safety representative (and any deputy health and safety representative) for that other work group is found, after reasonable inquiry, to be unavailable.

- (3) In this section, ***another work group*** means another work group of workers carrying out work for a business or undertaking to which the work group that the health and safety representative represents relates.

**Subdivision 6 Obligations of person conducting business or undertaking to health and safety representatives**

**70 General obligations of person conducting business or undertaking**

- (1) The person conducting a business or undertaking must:
- (a) consult, so far as is reasonably practicable, on work health and safety matters with any health and safety representative for a work group of workers carrying out work for the business or undertaking; and
  - (b) confer with a health and safety representative for a work group, whenever reasonably requested by the representative, for the purpose of ensuring the health and safety of the workers in the work group; and
  - (c) allow any health and safety representative for the work group to have access to information that the person has relating to:
    - (i) hazards (including associated risks) at the workplace affecting workers in the work group; and
    - (ii) the health and safety of the workers in the work group; and

## Model Work Health and Safety Bill

### Part 5 Consultation, representation and participation

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- (d) with the consent of a worker that the health and safety representative represents, allow the health and safety representative to be present at an interview concerning work health and safety between the worker and:
  - (i) an inspector; or
  - (ii) the person conducting the business or undertaking at that workplace or the person's representative; and
- (e) with the consent of 1 or more workers that the health and safety representative represents, allow the health and safety representative to be present at an interview concerning work health and safety between a group of workers, which includes the workers who gave the consent, and:
  - (i) an inspector; or
  - (ii) the person conducting the business or undertaking at that workplace or the person's representative; and
- (f) provide any resources, facilities and assistance to a health and safety representative for the work group that are reasonably necessary or prescribed by the regulations to enable the representative to exercise his or her powers or perform his or her functions under this Act; and
- (g) allow a person assisting a health and safety representative for the work group to have access to the workplace if that is necessary to enable the assistance to be provided; and

- (h) permit a health and safety representative for the work group to accompany an inspector during an inspection of any part of the workplace where a worker in the work group works; and
- (i) provide any other assistance to the health and safety representative for the work group that may be required by the regulations.

Maximum penalty: tier D monetary penalty.

- (2) The person conducting a business or undertaking must allow a health and safety representative to spend such time as is reasonably necessary to exercise his or her powers and perform his or her functions under this Act.

Maximum penalty: tier D monetary penalty.

- (3) Any time that a health and safety representative spends for the purposes of exercising his or her powers or performing his or her functions under this Act must be with the pay that he or she would otherwise be entitled to receive for performing his or her normal duties during that period.

## **71 Exceptions from obligations under section 70(1)**

- (1) This section applies despite section 70(1).
- (2) The person conducting a business or undertaking must not allow a health and safety representative to have access to any personal or medical information concerning a worker without the worker's consent unless the information is in a form that:
  - (a) does not identify the worker; and

## Model Work Health and Safety Bill

### Part 5 Consultation, representation and participation

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- (b) could not reasonably be expected to lead to the identification of the worker.

Maximum penalty: tier D monetary penalty.

- (3) The person conducting a business or undertaking is not required to give financial assistance to a health and safety representative for the purpose of the assistance referred to in section 70(1)(g).
- (4) The person conducting a business or undertaking is not required to allow a person assisting a health and safety representative for a work group to have access to the workplace:
  - (a) if the assistant has had his or her WHS entry permit revoked; or
  - (b) during any period that the assistant's WHS entry permit is suspended or the assistant is disqualified from holding a WHS entry permit.
- (5) The person conducting a business or undertaking may refuse on reasonable grounds to grant access to the workplace to a person assisting a health and safety representative for a work group.
- (5A) The reasonable grounds under subsection (5) include the failure of the health and safety representative to give notice under section 68(3A).
- (6) If access is refused to a person assisting a health and safety representative under subsection (5), the health and safety representative may ask the regulator to appoint an inspector to assist in resolving the matter.

## **72 Obligation to train health and safety representatives**

- (1) The person conducting a business or undertaking must, if requested by a health and safety representative for a work group for that business or undertaking, allow the health and safety representative to attend a course of training in work health and safety that is—
  - (a) approved by the regulator; and
  - (b) a course that the health and safety representative is entitled under the regulations to attend; and
  - (c) chosen by the health and safety representative.
- (2) The person conducting the business or undertaking must:
  - (a) as soon as practicable within the period of 3 months after the request is made, allow the health and safety representative time off work to attend the course of training; and
  - (b) pay the course fees and any other reasonable costs associated with the health and safety representative's attendance at the course of training.
- (3) If:
  - (a) a health and safety representative represents a work group of the workers of more than 1 business or undertaking; and
  - (b) the person conducting any of those businesses or undertakings has complied with this section in relation to the representative,

Part 5 Consultation, representation and participation

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each of the persons conducting those businesses or undertakings is to be taken to have complied with this section in relation to the representative.

- (4) Any time that a health and safety representative is given off work to attend the course of training must be with the pay that he or she would otherwise be entitled to receive for performing his or her normal duties during that period.
- (5) If agreement cannot be reached between the person conducting the business or undertaking and the health and safety representative within the time required by subsection (2) about a matter mentioned in subsection (2), either party may ask the regulator to appoint an inspector to decide the matter.
- (6) The inspector may decide the matter in accordance with this section.
- (7) A person conducting a business or undertaking must allow a health and safety representative to attend a course decided by the inspector and pay the costs decided by the inspector under subsection (6).

Maximum penalty: tier D monetary penalty.

**73 Obligation to share costs if multiple businesses or undertakings**

- (1) If a health and safety representative, or deputy health and safety representative (if any), represents a work group of workers carrying out work for 2 or more persons conducting businesses or undertakings:

- (a) the costs of the representative exercising powers and performing functions under this Act; and
  - (b) the costs referred to in section 72(2)(b), for which any of the persons conducting those businesses or undertakings are liable must be apportioned equally between each of those persons unless they agree otherwise.
- (2) An agreement to apportion the costs in another way may be varied at any time by negotiation and agreement between each of the persons conducting the businesses or undertakings.

#### **74 List of health and safety representatives**

A person conducting a business or undertaking must ensure that:

- (a) a list of each health and safety representative and deputy health and safety representative (if any) for each work group of workers carrying out work for the business or undertaking is prepared and kept up to date; and
  - (b) a copy of the up-to-date list is displayed:
    - (i) at the principal place of business of the business or undertaking; and
    - (ii) at any other workplace that is appropriate taking into account the constitution of the relevant work group or work groups,
- in a manner that is readily accessible to workers in the relevant work group or work groups.

Maximum penalty: tier H monetary penalty.

#### **Division 4     Health and safety committees**

##### **75    Health and safety committees**

- (1) The person conducting a business or undertaking at a workplace must establish a health and safety committee for the business or undertaking or part of the business or undertaking:
  - (a) within 2 months after being requested to do so by:
    - (i) a health and safety representative for a work group of workers carrying out work at that workplace; or
    - (ii) 5 or more workers at that workplace; or
  - (b) if required by the regulations to do so, within the time prescribed by the regulations.

Maximum penalty: tier F monetary penalty.

- (2) A person conducting a business or undertaking at a workplace may establish a health and safety committee for the workplace or part of the workplace on the person's own initiative.

##### **Note**

If a health and safety committee is not required to be established, other consultation procedures can be established for a workplace—see Division 2 of this Part.

##### **76    Constitution of committee**

- (1) Subject to subsections (2) to (4), the constitution of a health and safety committee may be agreed between the person conducting the business or undertaking and the workers at the workplace.

- (2) If there is a health and safety representative at a workplace, that representative, if he or she consents, is a member of the committee.
- (3) If there are 2 or more health and safety representatives at a workplace, those representatives may choose 1 or more of their number (who consent) to be members of the committee.
- (4) At least half of the members of the committee must be workers who are not nominated by the person conducting the business or undertaking.
- (5) If agreement is not reached under this section within a reasonable time, any party may ask the regulator to appoint an inspector to decide the matter.
- (6) An inspector appointed on a request under subsection (5) may decide the constitution of the health and safety committee or that the committee should not be established.
- (7) A decision of an inspector under this section is taken to be an agreement under this section between the parties.

## 77 Functions of committee

The functions of a health and safety committee are:

- (a) to facilitate co-operation between the person conducting a business or undertaking and workers in instigating, developing and carrying out measures designed to ensure the workers' health and safety at work; and
- (b) to assist in developing standards, rules and procedures relating to health and safety that

are to be followed or complied with at the workplace; and

- (c) any other functions prescribed by the regulations or agreed between the person conducting the business or undertaking and the committee.

## **78 Meetings of committee**

A health and safety committee must meet:

- (a) at least once every 3 months; and
- (b) at any reasonable time at the request of at least half of the members of the committee.

## **79 Duties of person conducting business or undertaking**

- (1) The person conducting a business or undertaking must allow each member of the health and safety committee to spend the time that is reasonably necessary to attend meetings of the committee or to carry out functions as a member of the committee.

Maximum penalty: tier D monetary penalty.

- (2) Any time that a member of a health and safety committee spends for the purposes set out in subsection (1) must be with the pay that he or she would otherwise be entitled to receive for performing his or her normal duties during that period.
- (3) The person conducting a business or undertaking must allow the health and safety committee for a workplace to have access to information that the person has relating to:

Part 5 Consultation, representation and participation

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- (a) hazards (including associated risks) at the workplace; and
- (b) the health and safety of the workers at the workplace.

Maximum penalty: tier D monetary penalty.

- (4) Despite subsection (3), the person conducting a business or undertaking must not allow the health and safety committee to have access to any personal or medical information concerning a worker without the worker's consent unless the information is in a form that:
  - (a) does not identify the worker; and
  - (b) could not reasonably be expected to lead to the identification of the worker.

Maximum penalty: tier D monetary penalty.

## **Division 5      Issue resolution**

### **80    Parties to an issue**

- (1) In this Division, *parties*, in relation to an issue, means the following:
  - (a) the person conducting the business or undertaking or the person's representative;
  - (b) if the issue involves more than 1 business or undertaking, the person conducting each business or undertaking or the person's representative;
  - (c) if the worker or workers affected by the issue are in a work group, the health and safety representative for that work group or his or her representative;

- (d) if the worker or workers affected by the issue are not in a work group, the worker or workers or their representative.
- (2) A person conducting a business or undertaking must ensure that the person's representative (if any) for the purposes of this Division:
  - (a) is not a health and safety representative; and
  - (b) has an appropriate level of seniority, and is sufficiently competent, to act as the person's representative.

## **81 Resolution of health and safety issues**

- (1) This section applies if a matter about work health and safety arises at a workplace or from the conduct of a business or undertaking and the matter is not resolved after discussion between the parties to the issue.
- (2) The parties must make reasonable efforts to achieve a timely, final and effective resolution of the issue in accordance with the relevant agreed procedure, or if there is no agreed procedure, the default procedure prescribed in the regulations.
- (3) A representative of a party to an issue may enter the workplace for the purpose of attending discussions with a view to resolving the issue.

## **82 Referral of issue to regulator for resolution by inspector**

- (1) This section applies if an issue has not been resolved after reasonable efforts have been made to achieve an effective resolution of the issue.

- (2) A party to the issue may ask the regulator to appoint an inspector to attend the workplace to assist in resolving the issue.
- (3) A request to the regulator under this section does not prevent:
  - (a) a worker from exercising the right under Division 6 of this Part to cease work; or
  - (b) a health and safety representative from issuing a provisional improvement notice or a direction under Division 6 of this Part to cease work.
- (4) On attending a workplace under this section, an inspector may exercise any of the inspector's compliance powers under this Act in relation to the workplace.

**Division 6      Right to cease or direct cessation of unsafe work**

**83 Definition of *cease work under this Division***

In this Division, *cease work under this Division* means:

- (a) to cease, or refuse, to carry out work under section 84; or
- (b) to cease work on a direction under section 85.

**84 Right of worker to cease unsafe work**

A worker may cease, or refuse to carry out, work if the worker has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety,

emanating from an immediate or imminent exposure to a hazard.

**85 Health and safety representative may direct that unsafe work cease**

- (1) A health and safety representative may direct a worker who is in a work group represented by the representative to cease work if the representative has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard.
- (2) However, the health and safety representative must not give a worker a direction to cease work unless the matter is not resolved after:
  - (a) consulting about the matter with the person conducting the business or undertaking for whom the workers are carrying out work; and
  - (b) attempting to resolve the matter as an issue under Division 5 of this Part.
- (3) The health and safety representative may direct the worker to cease work without carrying out that consultation or attempting to resolve the matter as an issue under Division 5 of this Part if the risk is so serious and immediate or imminent that it is not reasonable to consult before giving the direction.
- (4) The health and safety representative must carry out the consultation as soon as practicable after giving a direction under subsection (3).
- (5) The health and safety representative must inform the person conducting the business or undertaking

of any direction given by the health and safety representative to workers under this section.

- (6) A health and safety representative cannot give a direction under this section unless the representative has:
- (a) completed initial training prescribed by the regulations referred to in section 72(1)(b); or
  - (b) previously completed that training when acting as a health and safety representative for another work group; or
  - (c) completed training equivalent to that training under a corresponding WHS law.

#### **86 Worker to notify if ceases work**

A worker who ceases work under this Division must:

- (a) as soon as practicable, notify the person conducting the business or undertaking that the worker has ceased work under this Division unless the worker ceased work under a direction from a health and safety representative; and
- (b) remain available to carry out suitable alternative work.

#### **87 Alternative work**

If a worker ceases work under this Division, the person conducting the business or undertaking may direct the worker to carry out suitable alternative work at the same or another workplace if that work is safe and appropriate for the worker to carry out until the worker can resume normal duties.

### **88 Continuity of engagement of worker**

If a worker ceases work under this Division, that action does not affect the continuity of engagement of the worker for prescribed purposes if the worker has not unreasonably failed to comply with a direction to carry out suitable alternative work:

- (a) at the same or another workplace; and
- (b) that was safe and appropriate for the worker to carry out.

### **89 Request to regulator to appoint inspector to assist**

The health and safety representative or the person conducting the business or undertaking or the worker may ask the regulator to appoint an inspector to attend the workplace to assist in resolving an issue arising in relation to the cessation of work.

#### **Note**

The issue resolution procedures in Division 5 of this Part can also be used to resolve an issue arising in relation to the cessation of work.

## **Division 7 Provisional improvement notices**

### **90 Provisional improvement notices**

- (1) This section applies if a health and safety representative reasonably believes that a person:
  - (a) is contravening a provision of this Act; or
  - (b) has contravened a provision of this Act in circumstances that make it likely that the contravention will continue or be repeated.

- (2) The health and safety representative may issue a provisional improvement notice requiring the person to:
  - (a) remedy the contravention; or
  - (b) prevent a likely contravention from occurring; or
  - (c) remedy the things or operations causing the contravention or likely contravention.
- (3) However, the health and safety representative must not issue a provisional improvement notice to a person unless he or she has first consulted the person.
- (4) A health and safety representative cannot issue a provisional improvement notice unless the representative has:
  - (a) completed initial training prescribed by the regulations referred to in section 72(1)(b); or
  - (b) previously completed that training when acting as a health and safety representative for another work group; or
  - (c) completed training equivalent to that training under a corresponding WHS law.
- (5) A health and safety representative cannot issue a provisional improvement notice in relation to a matter if an inspector has already issued (or decided not to issue) an improvement notice or prohibition notice in relation to the same matter.

## **91 Provisional improvement notice to be in writing**

A provisional improvement notice must be in writing.

## **92 Contents of provisional improvement notice**

A provisional improvement notice must state:

- (a) that the health and safety representative believes the person:
  - (i) is contravening a provision of this Act; or
  - (ii) has contravened a provision of this Act in circumstances that make it likely that the contravention will continue or be repeated; and
- (b) the provision the representative believes is being, or has been, contravened; and
- (c) briefly, how the provision is being, or has been contravened; and
- (d) the day, at least 8 days after the notice is issued, by which the person is required to remedy the contravention or likely contravention.

## **93 Provisional improvement notice may include recommendations to remedy contravention**

- (1) A provisional improvement notice may include recommendations concerning the measures that may be taken to remedy the contravention, prevent the likely contravention, or the matters causing the contravention or likely contravention, to which the notice relates.
- (2) It is not an offence to fail to comply with the recommendations in a notice.

**94 Minor changes to provisional improvement notice**

A health and safety representative may make minor changes to a provisional improvement notice:

- (a) for clarification; or
- (b) to correct errors or references; or
- (c) to reflect changes of address or other circumstances.

**95 Issue of provisional improvement notice**

A provisional improvement notice may be issued to a person in accordance with section 209.

**96 Health and safety representative may cancel notice**

The health and safety representative may at any time cancel a provisional improvement notice issued to a person by written notice given to that person.

**97 Display of provisional improvement notice**

- (1) A person to whom a provisional improvement notice is issued must as soon as practicable display a copy of the notice in a prominent place at or near the workplace, or part of the workplace, at which work is being carried out that is affected by the notice.

Maximum penalty: tier F monetary penalty.

- (2) A person must not intentionally remove, destroy, damage or deface a notice displayed under subsection (1) during the period that the notice is in force.

Maximum penalty: tier F monetary penalty.

**98 Formal irregularities or defects in notice**

A provisional improvement notice is not invalid only because of:

- (a) a formal defect or irregularity in the notice unless the defect or irregularity causes or is likely to cause substantial injustice; or
- (b) a failure to use the correct name of the person to whom the notice is issued if the notice sufficiently identifies the person.

**99 Offence to contravene a provisional improvement notice**

- (1) This section applies if a provisional improvement notice has been issued to a person and an inspector has not been required under section 101 to attend at the workplace.
- (2) The person must comply with the provisional improvement notice within the time specified in the notice.

Maximum penalty: tier B monetary penalty.

**100 Request for review of provisional improvement notice**

- (1) Within 7 days after a provisional improvement notice is issued to a person:
  - (a) the person to whom it was issued; or
  - (b) if the person is a worker, the person conducting the business or undertaking at the workplace at which the worker carries out work,

may ask the regulator to appoint an inspector to review the notice.

- (2) If a request is made under subsection (1), the operation of the provisional improvement notice is stayed until the inspector makes a decision on the review.

## **101 Regulator to appoint inspector to review notice**

- (1) The regulator must ensure that an inspector attends the workplace as soon as practicable after a request is made under section 100.
- (2) The inspector must review the provisional improvement notice and inquire into the circumstances that are the subject of the provisional improvement notice.
- (3) An inspector may review a provisional improvement notice even if the period for compliance with the notice has expired.

## **102 Decision of inspector on review of provisional improvement notice**

- (1) After reviewing the provisional improvement notice, the inspector must:
  - (a) confirm the provisional improvement notice; or
  - (b) confirm the provisional improvement notice with changes; or
  - (c) cancel the provisional improvement notice.
- (2) The inspector must give a copy of his or her decision to:
  - (a) the applicant for the review of the provisional improvement notice; and
  - (b) the health and safety representative who issued the notice.

- (3) A provisional improvement notice that is confirmed (with or without changes) by an inspector is taken to be an improvement notice issued by the inspector under this Act.

**Division 8      Part not to apply to prisoners**

**103 Part does not apply to prisoners**

Nothing in this Part applies to a worker who is a prisoner in custody in a prison or police gaol.

**Note**

See the jurisdictional note in the Appendix.

## **Part 6 Discriminatory, coercive and misleading conduct**

### **Division 1 Prohibition of discriminatory, coercive or misleading conduct**

#### **104 Prohibition of discriminatory conduct**

- (1) A person must not engage in discriminatory conduct for a prohibited reason.  
Maximum penalty: tier A monetary penalty.
- (2) A person commits an offence under subsection (1) only if the reason referred to in section 106 was the dominant reason for the discriminatory conduct.

#### **Note**

Civil proceedings may be brought under Division 3 of this Part in relation to discriminatory conduct engaged in for a prohibited reason.

#### **105 What is *discriminatory conduct***

- (1) For the purposes of this Part, a person engages in ***discriminatory conduct*** if:
  - (a) the person:
    - (i) dismisses a worker; or
    - (ii) terminates a contract for services with a worker; or
    - (iii) puts a worker to his or her detriment in the engagement of the worker; or
    - (iv) alters the position of a worker to the worker's detriment; or
  - (b) the person:

Part 6 Discriminatory, coercive and misleading conduct

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- (i) refuses or fails to offer to engage a prospective worker; or
  - (ii) treats a prospective worker less favourably than another prospective worker would be treated in offering terms of engagement; or
  - (c) the person terminates a commercial arrangement with another person; or
  - (d) the person refuses or fails to enter into a commercial arrangement with another person.
- (2) For the purposes of this Part, a person also engages in discriminatory conduct if the person organises to take any action referred to in subsection (1) or threatens to organise or take that action.

**106 What is a *prohibited reason***

Conduct referred to in section 105 is engaged in for a ***prohibited reason*** if it is engaged in because the worker or prospective worker or the person referred to in section 105(1)(c) or (d) (as the case requires):

- (a) is, has been or proposes to be a health and safety representative or a member of a health and safety committee; or
- (b) undertakes, has undertaken or proposes to undertake another role under this Act; or
- (c) exercises a power or performs a function or has exercised a power or performed a function or proposes to exercise a power or perform a function as a health and safety

Part 6 Discriminatory, coercive and misleading conduct

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representative or as a member of a health and safety committee; or

- (d) exercises, has exercised or proposes to exercise a power under this Act or exercises, has exercised or proposes to exercise a power under this Act in a particular way; or
- (e) performs, has performed or proposes to perform a function under this Act or performs, has performed or proposes to perform a function under this Act in a particular way; or
- (f) refrains from, has refrained from or proposes to refrain from exercising a power or performing a function under this Act or refrains from, has refrained from or proposes to refrain from exercising a power or performing a function under this Act in a particular way; or
- (g) assists or has assisted or proposes to assist, or gives or has given or proposes to give any information to any person exercising a power or performing a function under this Act; or
- (h) raises or has raised or proposes to raise an issue or concern about work health and safety with:
  - (i) the person conducting a business or undertaking; or
  - (ii) an inspector; or
  - (iii) a WHS entry permit holder; or
  - (iv) a health and safety representative; or

Part 6 Discriminatory, coercive and misleading conduct

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- (v) a member of a health and safety committee; or
- (vi) another worker; or
- (vii) any other person who has a duty under this Act in relation to the matter; or
- (viii) any other person exercising a power or performing a function under this Act; or
- (i) is involved in, has been involved in or proposes to be involved in resolving a work health and safety issue under this Act; or
- (j) is taking action, has taken action or proposes to take action to seek compliance by any person with any duty or obligation under this Act.

**107 Prohibition of requesting, instructing, inducing, encouraging, authorising or assisting discriminatory conduct**

A person must not request, instruct, induce, encourage, authorise or assist another person to engage in discriminatory conduct in contravention of section 104.

Maximum penalty: tier A monetary penalty.

**Note**

Civil proceedings may be brought under Division 3 of this Part if a person requested, instructed, induced, encouraged, authorised or assisted another person to engage in discriminatory conduct for a prohibited reason.

**108 Prohibition of coercion or inducement**

- (1) A person must not organise or take, or threaten to organise or take, any action against another person

Part 6 Discriminatory, coercive and misleading conduct

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with intent to coerce or induce the other person, or a third person:

- (a) to exercise or not to exercise a power, or to propose to exercise or not to exercise a power, under this Act; or
- (b) to perform or not to perform a function, or to propose to perform or not to perform a function, under this Act; or
- (c) to exercise or not to exercise a power or perform a function, or to propose to exercise or not to exercise a power or perform a function, in a particular way; or
- (d) to refrain from seeking, or continuing to undertake, a role under this Act.

Maximum penalty: tier A monetary penalty.

**Note**

Civil proceedings may be brought under Division 3 of this Part in relation to a contravention of this section.

- (2) In this section, a reference to taking action or threatening to take action against a person includes a reference to not taking a particular action or threatening not to take a particular action in relation to that person.
- (3) To avoid doubt, a reasonable direction given by an emergency services worker in an emergency is not an action with intent to coerce or induce a person.

**Note**

See the jurisdictional note in the Appendix.

### **109 Misrepresentation**

- (1) A person must not knowingly or recklessly make a false or misleading representation to another person about that other person's:
  - (a) rights or obligations under this Act; or
  - (b) ability to initiate, or participate in, a process or proceedings under this Act; or
  - (c) ability to make a complaint or inquiry to a person or body empowered under this Act to seek compliance with this Act.

Maximum penalty: tier A monetary penalty.

- (2) Subsection (1) does not apply if the person to whom the representation is made would not be expected to rely on it.

## **Division 2      Criminal proceedings in relation to discriminatory conduct**

### **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.

Part 6 Discriminatory, coercive and misleading conduct

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- (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.
- (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.

**111 Order for compensation or reinstatement**

If a person is convicted or found guilty of an offence under section 104 or 107, the court may (in addition to imposing a penalty) make either or both of the following orders:

- (a) an order that the offender pay (within a specified period) the compensation to the person who was the subject of the discriminatory conduct that the court considers appropriate;
- (b) in relation to a person who was or is an employee or prospective employee, an order that:
  - (i) the person be reinstated or re-employed in his or her former position or, if that position is not available, in a similar position; or
  - (ii) the person be employed in the position for which he or she had applied or a similar position.

**Division 3 Civil proceedings in relation to discriminatory or coercive conduct**

**112 Civil proceedings in relation to engaging in or inducing discriminatory or coercive conduct**

- (1) An eligible person may apply to the [designated court or tribunal] for an order under this section.
- (2) The [designated court or tribunal] may make 1 or more of the orders set out in subsection (3) in relation to a person who has:
  - (a) engaged in discriminatory conduct for a prohibited reason; or
  - (b) requested, instructed, induced, encouraged, authorised or assisted another person to engage in discriminatory conduct for a prohibited reason; or
  - (c) contravened section 108.
- (3) For the purposes of subsection (2), the orders that the [designated court or tribunal] may make are:
  - (a) an injunction; or
  - (b) in the case of conduct referred to in subsection (2)(a) or (b), an order that the person pay (within a specified period) the compensation to the person who was the subject of the discriminatory conduct that the [designated court or tribunal] considers appropriate; or
  - (c) in the case of conduct referred to in subsection (2)(a) in relation to a worker who was or is an employee or prospective employee, an order that:

Part 6 Discriminatory, coercive and misleading conduct

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- (i) the worker be reinstated or re-employed in his or her former position or, if that position is not available, in a similar position; or
  - (ii) the prospective worker be employed in the position for which he or she had applied or a similar position; or
  - (d) any other order that the [designated court or tribunal] considers appropriate.
- (4) For the purposes of this section, a person may be found to have engaged in discriminatory conduct for a prohibited reason only if a reason referred to in section 106 was a substantial reason for the conduct.
- (5) Nothing in this section is to be construed as limiting any other power of the [designated court or tribunal].
- (6) For the purposes of this section, each of the following is an *eligible person*:
- (a) a person affected by the contravention;
  - (b) a person authorised as a representative by a person referred to in paragraph (a).

**Note**

See the jurisdictional note in the Appendix.

**113 Procedure for civil actions for discriminatory conduct**

- (1) A proceeding brought under section 112 must be commenced not more than 1 year after the date on which the applicant knew or ought to have known that the cause of action accrued.

Part 6 Discriminatory, coercive and misleading conduct

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- (2) In a proceeding under section 112 in relation to conduct referred to in section 112(2)(a) or (b), if a prohibited reason is alleged for discriminatory conduct, that reason is presumed to be a substantial reason for that conduct unless the defendant proves, on the balance of probabilities, that the reason was not a substantial reason for the conduct.
- (3) It is a defence to a proceeding under section 112 in relation to conduct referred to in section 112(2)(a) or (b) if the defendant proves that:
  - (a) the conduct was reasonable in the circumstances; and
  - (b) a substantial reason for the conduct was to comply with the requirements of this Act or a corresponding WHS law.
- (4) To avoid doubt, the burden of proof on the defendant under subsections (2) and (3) is a legal burden of proof.

**Division 4 General**

**114 General provisions relating to orders**

- (1) The making of an order in a proceeding under section 112 in relation to conduct referred to in section 112(2)(a) or (b) does not prevent the bringing of a proceeding for an offence under section 104 or 107 in relation to the same conduct.
- (2) If the [designated court or tribunal] makes an order under section 112 in a proceeding in relation to conduct referred to in section 112(2)(a) or (b), the court cannot make an order under section 111 in a proceeding for an offence under section 104 or 107 in relation to the same conduct.

Part 6 Discriminatory, coercive and misleading conduct

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- (3) If the court makes an order under section 111 in a proceeding for an offence under section 104 or 107, the [designated court or tribunal] cannot make an order under section 112 in a proceeding in relation to conduct referred to in section 112(2)(a) or (b) that is the same conduct.

**Notes**

See the jurisdictional note in the Appendix.

**115 Prohibition of multiple actions**

A person cannot:

- (a) commence a proceeding under Division 3 of this Part if the person has commenced a proceeding or made an application or complaint in relation to the same matter under a law of the Commonwealth or a State and that proceeding, application or complaint has not been withdrawn; or
- (b) recover any compensation under Division 3 of this Part if the person has received compensation for the matter under a law of the Commonwealth or a State; or
- (c) commence or continue an application under Division 3 of this Part if the person has failed in a proceeding, application or complaint in relation to the same matter under a law of the Commonwealth or a State, other than a proceeding, application or complaint relating to workers' compensation.

## Part 7 Workplace entry by WHS entry permit holders

### Notes

- 1 See the jurisdictional note in the Appendix.
- 2 Division 7 of Part 13 sets out the procedure in relation to the bringing of proceedings in relation to WHS civil penalty provisions.

### Division 1 Introductory

#### 116 Definitions

In this Part:

***official of a union*** means a person who holds an office in, or is an employee of, the union.

***relevant person conducting a business or undertaking*** means a person conducting a business or undertaking in relation to which the WHS entry permit holder is exercising or proposes to exercise the right of entry.

***relevant State or Territory industrial law*** means:

#### Note

See the jurisdictional note in the Appendix.

***relevant union*** means the union that a WHS entry permit holder represents.

***relevant worker***, in relation to a workplace, means a worker:

- (a) who is a member, or eligible to be a member, of a relevant union; and
- (b) whose industrial interests the relevant union is entitled to represent; and
- (c) who works at that workplace.

**Division 2     Entry to inquire into suspected contraventions**

**117 Entry to inquire into suspected contraventions**

- (1) A WHS entry permit holder may enter a workplace for the purpose of inquiring into a suspected contravention of this Act that relates to, or affects, a relevant worker.
- (2) The WHS entry permit holder must reasonably suspect before entering the workplace that the contravention has occurred or is occurring.

**118 Rights that may be exercised while at workplace**

- (1) While at the workplace under this Division, the WHS entry permit holder may do all or any of the following in relation to the suspected contravention of this Act:
  - (a) inspect any work system, plant, substance, structure or other thing relevant to the suspected contravention;
  - (b) consult with the relevant workers in relation to the suspected contravention;
  - (c) consult with the relevant person conducting a business or undertaking about the suspected contravention;
  - (d) require the relevant person conducting a business or undertaking to allow the WHS entry permit holder to inspect, and make copies of, any document that is directly relevant to the suspected contravention and that:

## Model Work Health and Safety Bill

### Part 7 Workplace entry by WHS entry permit holders

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- (i) is kept at the workplace; or
  - (ii) is accessible from a computer that is kept at the workplace;
  - (e) warn any person whom the WHS entry permit holder reasonably believes to be exposed to a serious risk to his or her health or safety emanating from an immediate or imminent exposure to a hazard, of that risk.
- (2) However, the relevant person conducting the business or undertaking is not required under subsection (1)(d) to allow the WHS entry permit holder to inspect or make copies of a document if to do so would contravene a law of the Commonwealth or a law of a State.
- (3) A relevant person conducting a business or undertaking must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1)(d).
- WHS civil penalty provision.*
- Maximum penalty: WHS civil penalty provision tier 2.
- (4) Subsection (3) places an evidential burden on the defendant to show a reasonable excuse.

#### Notes

- 1 At least 24 hours notice is required for an entry to a workplace to inspect employee records or other documents held by someone other than a person conducting a business or undertaking. See section 120.
- 2 The use or disclosure of personal information obtained under this section is regulated under the *Privacy Act 1988* of the Commonwealth.

**119 Notice of entry**

- (1) A WHS entry permit holder must, as soon as practicable after entering a workplace under this Division, give notice of the entry and the suspected contravention, in accordance with the regulations, to:
  - (a) the relevant person conducting a business or undertaking; and
  - (b) the person with management or control of the workplace.
- (2) Subsection (1) does not apply if to give the notice would:
  - (a) defeat the purpose of the entry to the workplace; or
  - (b) unreasonably delay the WHS entry permit holder in an urgent case.
- (3) Subsection (1) does not apply to an entry to a workplace under this Division to inspect or make copies of documents referred to in section 120.

**Note**

See the jurisdictional note in the Appendix.

**120 Entry to inspect employee records or information held by another person**

- (1) This section applies if a WHS entry permit holder is entitled under section 117 to enter a workplace to inquire into a suspected contravention of this Act.
- (2) For the purposes of the inquiry into the suspected contravention, the WHS entry permit holder may enter any workplace for the purpose of inspecting, or making copies of:

Part 7 Workplace entry by WHS entry permit holders

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- (a) employee records that are directly relevant to a suspected contravention; or
  - (b) other documents that are directly relevant to a suspected contravention and that are not held by the relevant person conducting a business or undertaking.
- (3) Before doing so, the WHS entry permit holder must give notice of the proposed entry to the person from whom the documents are requested and the relevant person conducting a business or undertaking.
  - (4) The notice must comply with the regulations.
  - (5) The notice must be given during usual working hours at that workplace at least 24 hours, but not more than 14 days, before the entry.

**Note**

The use or disclosure of personal information obtained under this section is regulated under the *Privacy Act 1988* of the Commonwealth.

**Division 3 Entry to consult and advise workers**

**121 Entry to consult and advise workers**

- (1) A WHS entry permit holder may enter a workplace to consult on work health and safety matters with, and provide advice on those matters to, 1 or more relevant workers who wish to participate in the discussions.
- (2) A WHS entry permit holder may, after entering a workplace under this Division, warn any person whom the WHS entry permit holder reasonably believes to be exposed to a serious risk to his or

her health or safety, emanating from an immediate or imminent exposure to a hazard, of that risk.

**122 Notice of entry**

- (1) Before entering a workplace under this Division, a WHS entry permit holder must give notice of the proposed entry to the relevant person conducting a business or undertaking.
- (2) The notice must comply with the regulations.
- (3) The notice must be given during the usual working hours at that workplace at least 24 hours, but not more than 14 days, before the entry.

**Division 4 Requirements for WHS entry permit holders**

**123 Contravening WHS entry permit conditions**

A WHS entry permit holder must not contravene a condition imposed on the WHS entry permit.

*WHS civil penalty provision.*

Maximum penalty: WHS civil penalty provision tier 1.

**124 WHS entry permit holder must also hold permit under other law**

A WHS entry permit holder must not enter a workplace unless he or she also holds an entry permit under the Fair Work Act [or the relevant State or Territory industrial law].

*WHS civil penalty provision.*

Maximum penalty: WHS civil penalty provision tier 2.

**Note**

See the jurisdictional note in the Appendix.

**125 WHS entry permit to be available for inspection**

A WHS entry permit holder must, at all times that he or she is at a workplace under a right of entry under Division 2 or 3 of this Part, have his or her WHS entry permit and photographic identification available for inspection by any person on request.

*WHS civil penalty provision.*

Maximum penalty: WHS civil penalty provision tier 2.

**126 When right may be exercised**

A WHS entry permit holder may exercise a right under Division 2 or 3 of this Part only during the usual working hours at the workplace.

*WHS civil penalty provision.*

Maximum penalty: WHS civil penalty provision tier 2.

**127 Where the right may be exercised**

A WHS entry permit holder may exercise a right of entry to a workplace only in relation to:

- (a) the area of the workplace where the relevant workers work; or
- (b) any other work area that directly affects the health or safety of those workers.

**128 Work health and safety requirements**

A WHS entry permit holder must not exercise a right of entry to a workplace under Division 2 or 3 of this Part unless he or she complies with any reasonable request by the relevant person conducting a business or undertaking or the

Part 7 Workplace entry by WHS entry permit holders

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person with management or control of the workplace to comply with:

- (a) any work health and safety requirement that applies to the workplace; and
- (b) any other legislated requirement that applies to that type of workplace.

*WHS civil penalty provision.*

Maximum penalty: WHS civil penalty provision tier 2.

**129 Residential premises**

A WHS entry permit holder must not enter any part of a workplace that is used only for residential purposes.

*WHS civil penalty provision.*

Maximum penalty: WHS civil penalty provision tier 2.

**130 WHS entry permit holder not required to disclose names of workers**

- (1) A WHS entry permit holder is not required to disclose to the relevant person conducting a business or undertaking or the person with management or control of the workplace the name of any worker at the workplace.
- (2) A WHS entry permit holder who wishes to disclose to the relevant person conducting a business or undertaking or the person with management or control of the workplace the name of any worker may only do so with the consent of the worker.

## Division 5 WHS entry permits

### 131 Application for WHS entry permit

- (1) A union may apply to the authorising authority for the issue of a WHS entry permit to a person who is an official of the union.
- (2) The application must specify the person who is to hold the WHS entry permit and include a statutory declaration by that person declaring that he or she:
  - (a) is an official of the union; and
  - (b) has satisfactorily completed the prescribed training; and
  - (c) holds, or will hold, an entry permit under:
    - (i) the Fair Work Act; or
    - (ii) [the relevant State or Territory industrial law].

#### Note

See the jurisdictional note in the Appendix.

### 132 Consideration of application

In considering whether to issue a WHS entry permit, the authorising authority must take into account:

- (a) the object of this Act; and
- (b) the object of allowing union right of entry to workplaces for work health and safety purposes.

### 133 Eligibility criteria

The authorising authority must not issue a WHS entry permit to an official of a union unless the authorising authority is satisfied that the official:

- (a) is an official of the union; and
- (b) has satisfactorily completed the prescribed training; and
- (c) holds, or will hold, an entry permit under:
  - (i) the Fair Work Act; or
  - (ii) [the relevant State or Territory industrial law].

**Note**

See the jurisdictional note in the Appendix.

**134 Issue of WHS entry permit**

The authorising authority may issue a WHS entry permit to a person if the authorising authority has taken into account the matters in section 132 and is satisfied about the matters in section 133.

**135 Conditions on WHS entry permit**

The authorising authority may impose conditions on a WHS entry permit.

**136 Term of WHS entry permit**

A WHS entry permit has effect for a term of 3 years from the date it is issued.

**137 Expiry of WHS entry permit**

- (1) Unless it is earlier revoked, a WHS entry permit expires at the first of the following to occur:
  - (a) at the end of the term of the WHS entry permit;
  - (b) at the end of the term of the entry permit held by the WHS entry permit holder under:
    - (i) the Fair Work Act; or

- (ii) [the relevant State or Territory industrial law];
- (c) when the permit holder ceases to be an official of the union that applied for the permit;
- (d) the union that applied for the permit ceases to be:
  - (i) an organisation that is registered, or taken to be registered, under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth; or
  - (ii) an association of employees or independent contractors, or both, that is registered or recognised as such an association (however described) under the [relevant State or Territory industrial law].

**Note**

See the jurisdictional note in the Appendix.

- (2) An application may be made for the issue of a subsequent WHS entry permit before or after the current WHS entry permit expires.

### **138 Application to revoke WHS entry permit**

- (1) The following persons may apply to the authorising authority for a WHS entry permit held by a person to be revoked:
  - (a) the regulator;
  - (b) the relevant person conducting a business or undertaking;

Part 7 Workplace entry by WHS entry permit holders

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- (c) any other person in relation to whom the WHS entry permit holder has exercised or purported to exercise a right under this Part;
- (d) any other person affected by the exercise or purported exercise of a right under this Part by a WHS entry permit holder.

**Note**

See the jurisdictional note in the Appendix.

- (2) The grounds for an application for revocation of a WHS entry permit are

- (a) that the permit holder no longer satisfies the eligibility criteria for a WHS entry permit or an entry permit under a corresponding WHS law, or the Fair Work Act or the *Workplace Relations Act 1996* of the Commonwealth or the [relevant State or Territory industrial law]; or

**Note**

See the jurisdictional note in the Appendix.

- (b) that the permit holder has contravened any condition of the WHS entry permit; or
- (c) that the permit holder has acted or purported to act in an improper manner in the exercise of any right under this Act; or
- (d) in exercising or purporting to exercise a right under this Part, that the permit holder has intentionally hindered or obstructed a person conducting the business or undertaking or workers at a workplace.

- (3) The applicant must give written notice of the application, setting out the grounds for the

application, to the person who holds the WHS entry permit and the union concerned.

- (4) The person who holds the WHS entry permit and the union that the WHS entry permit holder represents are parties to the application.

**139 Authorising authority must permit WHS entry permit holder to show cause**

- (1) If, on an application under section 138, the authorising authority is satisfied that a ground may exist for the revocation of the WHS entry permit under section 138(2), the authorising authority must:
- give the WHS entry permit holder written notice (*a show cause notice*); and
  - if the authorising authority considers it appropriate, suspend the operation of the WHS entry permit until the authorising authority decides the application for revocation.
- (2) The show cause notice must:
- contain a statement to the effect that the WHS entry permit holder may, not later than 21 days after the day the WHS entry permit holder is given the notice, give the authorising authority written reasons explaining why the WHS entry permit should not be revoked; and
  - be accompanied by a summary of the reasons for the application; and
  - if applicable, be accompanied by a notice of suspension of the permit.

## **140 Determination of application**

- (1) If the authorising authority is satisfied on the balance of probabilities about any of the matters in section 138(2), it may make 1 or more of the following orders:
  - (a) an order imposing conditions on the WHS entry permit;
  - (b) an order suspending the WHS entry permit;
  - (c) an order revoking the WHS entry permit;
  - (d) an order about the future issue of a WHS entry permit to the person whose WHS entry permit is revoked;
  - (e) an order imposing any alternative action the authorising authority considers appropriate.
- (2) In deciding what action to take under subsection (1), in relation to a person, the authorising authority must take into account:
  - (a) the seriousness of any findings of the authorising authority having regard to the object of this Act; and
  - (b) any other matters the authority considers relevant.

## **Division 6 Dealing with disputes**

### **141 Application for assistance of inspector to resolve dispute**

If a dispute arises about the exercise or purported exercise by a WHS entry permit holder of a right of entry under this Act, any party to the dispute may ask the regulator to appoint an inspector to

attend the workplace to assist in resolving the dispute.

**142 Authorising authority may deal with a dispute about a right of entry under this Act**

- (1) The authorising authority may deal with a dispute about the exercise or purported exercise by a WHS entry permit holder of a right of entry under this Act (including a dispute about whether a request under section 128 is reasonable).
- (2) The authorising authority may deal with the dispute in any manner it thinks fit, including by means of mediation, conciliation or arbitration.
- (3) If the authorising authority deals with the dispute by arbitration, it may make 1 or more of the following orders:
  - (a) an order imposing conditions on a WHS entry permit;
  - (b) an order suspending a WHS entry permit;
  - (c) an order revoking a WHS entry permit;
  - (d) an order about the future issue of WHS entry permits to 1 or more persons;
  - (e) any other order it considers appropriate.
- (4) The authorising authority may deal with the dispute:
  - (a) on its own initiative; or
  - (b) on application by any of the following to whom the dispute relates:
    - (i) a WHS entry permit holder;
    - (ii) the relevant union;

Part 7 Workplace entry by WHS entry permit holders

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- (iii) the relevant person conducting a business or undertaking;
- (iv) any other person in relation to whom the WHS entry permit holder has exercised or purported to exercise the right of entry;
- (v) any other person affected by the exercise or purported exercise of the right of entry by a WHS entry permit holder;
- (vi) the regulator.

**Note**

See the jurisdictional note in the Appendix.

- (5) In dealing with a dispute, the authorising authority must not confer any rights on the WHS entry permit holder that are additional to, or inconsistent with, rights exercisable by the WHS entry permit holder under this Part.

**143 Contravening order made to deal with dispute**

A person must not contravene an order under section 142(3).

*WHS civil penalty provision.*

Maximum penalty: WHS civil penalty provision tier 2.

**Division 7 Prohibitions**

**144 Person must not refuse or delay entry of WHS entry permit holder**

- (1) A person must not, without reasonable excuse, refuse or unduly delay entry into a workplace by a

Part 7 Workplace entry by WHS entry permit holders

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WHS entry permit holder who is entitled to enter the workplace under this Part.

*WHS civil penalty provision.*

Maximum penalty: WHS civil penalty provision tier 2.

- (2) Subsection (1) places an evidential burden on the accused to show a reasonable excuse.

**145 Person must not hinder or obstruct WHS entry permit holder**

A person must not intentionally and unreasonably hinder or obstruct a WHS entry permit holder in entering a workplace or in exercising any rights at a workplace in accordance with this Part.

*WHS civil penalty provision.*

Maximum penalty: WHS civil penalty provision tier 2.

**146 WHS entry permit holder must not delay, hinder or obstruct any person or disrupt work at workplace**

A WHS entry permit holder exercising, or seeking to exercise, rights in accordance with this Part must not intentionally and unreasonably delay, hinder or obstruct any person or disrupt any work at a workplace, or otherwise act in an improper manner.

*WHS civil penalty provision.*

Maximum penalty: WHS civil penalty provision tier 2.

**147 Misrepresentations about things authorised by this Part**

- (1) A person must not take action:

Part 7 Workplace entry by WHS entry permit holders

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- (a) with the intention of giving the impression;  
or
- (b) reckless as to whether the impression is  
given,

that the doing of a thing is authorised by this Part if it is not so authorised.

*WHS civil penalty provision.*

Maximum penalty: WHS civil penalty provision tier 2.

- (2) Subsection (1) does not apply if the person reasonably believes that the doing of the thing is authorised.

**148 Unauthorised use or disclosure of information or documents**

A person must not use or disclose information or a document obtained under Division 2 of this Part in an inquiry into a suspected contravention for a purpose that is not related to the inquiry or rectifying the suspected contravention, unless:

- (a) the person reasonably believes that the use or disclosure is necessary to lessen or prevent:
  - (i) a serious risk to a person's health or safety; or
  - (ii) a serious threat to public health or safety; or
- (b) the person has reason to suspect that unlawful activity has been, is being or may be engaged in, and uses or discloses the information or document as a necessary part of an investigation of the matter or in

Part 7 Workplace entry by WHS entry permit holders

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reporting concerns to relevant persons or authorities; or

- (c) the use or disclosure is required or authorised by or under law; or
- (d) the person reasonably believes that the use or disclosure is reasonably necessary for 1 or more of the following by, or on behalf of, an enforcement body (within the meaning of the *Privacy Act 1988* of the Commonwealth):
  - (i) the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law;
  - (ii) the enforcement of laws relating to the confiscation of the proceeds of crime;
  - (iii) the protection of the public revenue;
  - (iv) the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct;
  - (v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal; or
- (e) if the information is, or the document contains, personal information—the use or disclosure is made with the consent of the individual to whom the information relates.

*WHS civil penalty provision.*

Maximum penalty: WHS civil penalty provision tier 2.

## Division 8 General

### 149 Return of WHS entry permits

(1) The person to whom a WHS entry permit is issued must return the permit to the authorising authority within 14 days of any of the following things happening:

- (a) the permit is revoked or suspended;
- (b) the permit expires.

*WHS civil penalty provision.*

Maximum penalty: WHS civil penalty provision tier 4.

(2) After the end of a period of suspension of a WHS entry permit, the authorising authority must return the WHS entry permit to the person to whom it was issued if:

- (a) the person, or the person's union, applies to the authorising authority for the return of the permit; and
- (b) the permit has not expired.

### 150 Union to provide information to authorising authority

The relevant union must advise the authorising authority if:

- (a) the WHS entry permit holder resigns from or otherwise leaves the union; or
- (b) the WHS entry permit holder has had any entry permit granted under a corresponding WHS law, or the Fair Work Act or the *Workplace Relations Act 1996* of the Commonwealth or the [relevant State or

Territory industrial law] (no matter when in force) cancelled or suspended; or

- (c) the union ceases to be:
  - (i) an organisation that is registered, or taken to be registered, under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth; or
  - (ii) an association of employees or independent contractors, or both, that is registered or recognised as such an association (however described) under the [relevant State or Territory industrial law].

**Note**

See the jurisdictional note in the Appendix.

*WHS civil penalty provision.*

Maximum penalty: WHS civil penalty provision tier 3.

### **151 Register of WHS entry permit holders**

The authorising authority must keep available for public access an up-to-date register of WHS entry permit holders in accordance with the regulations.

## **Part 8 The regulator**

### **Division 1 Functions of regulator**

#### **152 Functions of regulator**

The regulator has the following functions:

- (a) to advise and make recommendations to the Minister and report on the operation and effectiveness of this Act;
- (b) to monitor and enforce compliance with this Act;
- (c) to provide advice and information on work health and safety to duty holders under this Act and to the community;
- (d) to collect, analyse and publish statistics relating to work health and safety;
- (e) to foster a co-operative, consultative relationship between duty holders and the persons to whom they owe duties and their representatives in relation to work health and safety matters;
- (f) to promote and support education and training on matters relating to work health and safety;
- (g) to engage in, promote and co-ordinate the sharing of information to achieve the object of this Act, including the sharing of information with a corresponding regulator;
- (h) to conduct and defend proceedings under this Act before a court or tribunal;
- (i) any other function conferred on the regulator by this Act.

**Note**

See the jurisdictional notes in the Appendix.

**153 Powers of regulator**

- (1) Subject to this Act, the regulator has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) Without limiting subsection (1), the regulator has all the powers and functions that an inspector has under this Act.

**154 Delegation by regulator**

- (1) The regulator may, by instrument in writing, delegate to any person a power or function under this Act other than this power of delegation.

**Note**

See the jurisdictional note in the Appendix.

- (2) A delegation under this section:

- (a) may be made subject to such conditions as the regulator thinks fit; and
- (b) is revocable at will; and
- (c) does not derogate from the power of the regulator to act.

**Division 2 Powers of regulator to obtain information**

**155 Powers of regulator to obtain information**

- (1) This section applies if the regulator has reasonable grounds to believe that a person is capable of giving information, providing documents or giving evidence in relation to a possible contravention of this Act or that will assist the

Part 8 The regulator

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regulator to monitor or enforce compliance with this Act.

- (2) The regulator may, by written notice served on the person, require the person to do 1 or more of the following:
- (a) to give the regulator, in writing signed by the person (or in the case of a body corporate, by a competent officer of the body corporate) and within the time and in the manner specified in the notice, that information of which the person has knowledge;
  - (b) to produce to the regulator, in accordance with the notice, those documents;
  - (c) to appear before a person appointed by the regulator on a day, and at a time and place, specified in the notice (being a day, time and place that are reasonable in the circumstances) and give either orally or in writing that evidence and produce those documents.
- (2A) The notice may be served in any way that a notice may be issued or given under section 209.
- (3) The notice must:
- (a) state that the requirement is made under this section; and
  - (b) contain a statement to the effect that it is an offence to refuse or fail to comply with the requirement without reasonable excuse; and
  - (c) if the notice requires the person to provide information or documents or answer questions:

Part 8 The regulator

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- (i) contain a statement about the effect of sections 172 and 269; and
  - (ii) state that the person may attend with a legal practitioner.
- (4) The regulator must not make a requirement under subsection (2)(c) unless the regulator has taken all reasonable steps to obtain the information under subsections (2)(a) and (b) and has been unable to do so.
- (5) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under this section.
- Maximum penalty: tier D monetary penalty.
- (6) Subsection (5) places an evidential burden on the accused to show a reasonable excuse.
- (7) Section 172 (with any necessary changes) applies to a requirement under this section.
- (8) A notice may be served on a person under this section even though:
- (a) the person is outside the State; or
  - (b) the notice relates to information, documents or evidence:
    - (i) outside the State; or
    - (ii) relating to a matter happening outside the State.

## **Part 9 Securing compliance**

### **Division 1 Appointment of inspectors**

#### **156 Appointment of inspectors**

The regulator may, by instrument, appoint any of the following as an inspector:

- (a) a public servant;
- (b) an employee of a public authority;
- (c) the holder of a statutory office;
- (d) a person who is appointed as an inspector under a corresponding WHS law;
- (e) a person in a prescribed class of persons.

#### **Note**

See the jurisdictional notes in the Appendix.

#### **157 Identity cards**

- (1) The regulator must give each inspector an identity card that states the person's name and appointment as an inspector and includes any other matter prescribed by the regulations.
- (2) An inspector must produce his or her identity card for inspection on request when exercising compliance powers.
- (3) If a person to whom an identity card has been issued ceases to be an inspector, the person must return the identity card to the regulator as soon as practicable.

#### **Note**

See the jurisdictional notes in the Appendix.

**158 Accountability of inspectors**

- (1) An inspector must give written notice to the regulator of all interests, pecuniary or otherwise, that the inspector has, or acquires, and that conflict or could conflict with the proper performance of the inspector's functions.
- (2) The regulator must give a direction to an inspector not to deal, or to no longer deal, with a matter if the regulator becomes aware that the inspector has a potential conflict of interest in relation to a matter and the regulator considers that the inspector should not deal, or should no longer deal, with the matter.

**159 Suspension and ending of appointment of inspectors**

- (1) The regulator may suspend or end the appointment of an inspector.
- (2) A person's appointment as an inspector ends when the person ceases to be eligible for appointment as an inspector.

**Division 2 Functions and powers of inspectors**

**160 Functions and powers of inspectors**

An inspector has the following functions and powers under this Act:

- (a) to provide information and advice about compliance with this Act;
- (b) to assist in the resolution of:
  - (i) work health and safety issues at workplaces; and

- (ii) issues related to access to a workplace by an assistant to a health and safety representative; and
- (iii) issues related to the exercise or purported exercise of a right of entry under Part 7;
- (c) to review disputed provisional improvement notices;
- (d) to require compliance with this Act through the issuing of notices;
- (e) to investigate contraventions of this Act and assist in the prosecution of offences;
- (f) to attend coronial inquests in relation to work-related deaths and examine witnesses.

**Note**

See the jurisdictional note in the Appendix.

**161 Conditions on inspectors' compliance powers**

An inspector's compliance powers are subject to any conditions specified in the instrument of the inspector's appointment.

**162 Inspectors subject to regulator's directions**

- (1) An inspector is subject to the regulator's directions in the exercise of the inspector's compliance powers.
- (2) A direction under subsection (1) may be of a general nature or may relate to a specified matter or specified class of matter.

## **Division 3 Powers relating to entry**

### **Subdivision 1 General powers of entry**

#### **163 Powers of entry**

- (1) An inspector may at any time enter a place that is, or that the inspector reasonably suspects is, a workplace.
- (2) An entry may be made under subsection (1) with, or without, the consent of the person with management or control of the workplace.
- (3) If an inspector enters a place under subsection (1) and it is not a workplace, the inspector must leave the place immediately.
- (4) An inspector may enter any place if the entry is authorised by a search warrant.

#### **Note**

An inspector may enter residential premises to gain access to a workplace (see section 170(c)).

#### **164 Notification of entry**

- (1) An inspector may enter a place under section 163 without prior notice to any person.
- (2) An inspector must, as soon as practicable after entry to a workplace or suspected workplace, take all reasonable steps to notify the following persons of the entry and the purpose of the entry:
  - (a) the relevant person conducting a business or undertaking at the workplace;
  - (b) the person with management or control of the workplace;

- (c) any health and safety representative for workers carrying out work for that business or undertaking at the workplace.
- (3) However, an inspector is not required to notify any person if to do so would defeat the purpose for which the place was entered or cause unreasonable delay.
- (4) In this section ***relevant person conducting a business or undertaking*** means the person conducting any business or undertaking in relation to which the inspector is exercising the powers of entry.

### **165 General powers on entry**

- (1) An inspector who enters a workplace under section 163 may do all or any of the following:
  - (a) inspect, examine and make inquiries at the workplace;
  - (b) inspect and examine anything (including a document) at the workplace;
  - (c) bring to the workplace and use any equipment or materials that may be required;
  - (d) take measurements, conduct tests and make sketches or recordings (including photographs, films, audio, video, digital or other recordings);
  - (e) take and remove for analysis a sample of any substance or thing without paying for it;
  - (f) require a person at the workplace to give the inspector reasonable help to exercise the inspector's powers under paragraphs (a) to (e);

- (g) exercise any compliance power or other power that is reasonably necessary to be exercised by the inspector for the purposes of this Act.

**Note**

See the jurisdictional notes in the Appendix.

- (2) A person required to give reasonable help under subsection (1)(f) must not, without reasonable excuse, refuse or fail to comply with the requirement.

Maximum penalty: tier D monetary penalty.

- (3) Subsection (2) places an evidential burden on the accused to show a reasonable excuse.

## **166 Persons assisting inspectors**

- (1) A person (*the assistant*), including an interpreter, may accompany the inspector entering a workplace under section 163 to assist the inspector if the inspector considers the assistance is necessary.
- (2) The assistant:
  - (a) may do the things at the place and in the manner that the inspector reasonably requires to assist the inspector to exercise compliance powers; but
  - (b) must not do anything that the inspector does not have power to do, except as permitted under a search warrant.
- (3) Anything done lawfully by the assistant is taken for all purposes to have been done by the inspector.

## **Subdivision 2 Search warrants**

### **Note**

See the jurisdictional note in the Appendix.

### **167 Search warrants**

- (1) An inspector may apply to a magistrate for a search warrant for a place.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

### **Example**

The magistrate may require additional information supporting the application to be given by statutory declaration.

- (4) The magistrate may issue a search warrant only if the magistrate is satisfied there are reasonable grounds for suspecting:
  - (a) there is a particular thing or activity (the *evidence*) that may provide evidence of an offence against this Act; and
  - (b) the evidence is, or may be within the next 72 hours, at the place.
- (5) The search warrant must state:
  - (a) that a stated inspector may, with necessary and reasonable help and force, enter the place and exercise the inspector's compliance powers; and

- (b) the offence for which the search warrant is sought; and
- (c) the evidence that may be seized under the search warrant; and
- (d) the hours of the day or night when the place may be entered; and
- (e) the date, within 7 days after the search warrant's issue, the search warrant ends.

**168 Announcement before entry on warrant**

- (1) Before executing a search warrant, the inspector named in the warrant or an assistant to the inspector must:
  - (a) announce that he or she is authorised by the warrant to enter the place; and
  - (b) give any person at the place an opportunity to allow that entry.
- (2) However, the inspector or an assistant to the inspector is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the place is needed to ensure:
  - (a) the safety of any person; or
  - (b) that the effective execution of the warrant is not frustrated.

**169 Copy of warrant to be given to person with management or control of place**

If the person who has or appears to have management or control of a place is present at the place when a search warrant is being executed, the inspector must:

- (a) identify himself or herself to that person by producing his or her identity card for inspection; and
- (b) give that person a copy of the execution copy of the warrant.

### **Subdivision 3 Limitation on entry powers**

#### **170 Places used for residential purposes**

Despite anything else in this Division, the powers of an inspector under this Division in relation to entering a place are not exercisable in relation to any part of a place that is used only for residential purposes except:

- (a) with the consent of the person with management or control of the place; or
- (b) under the authority conferred by a search warrant; or
- (c) for the purpose only of gaining access to a suspected workplace, but only:
  - (i) if the inspector reasonably believes that no reasonable alternative access is available; and
  - (ii) at a reasonable time having regard to the times at which the inspector believes work is being carried out at the place to which access is sought.

#### **Subdivision 4 Specific powers on entry**

##### **171 Power to require production of documents and answers to questions**

- (1) An inspector who enters a workplace under this Division may, while the inspector is at the workplace:
  - (a) require a person to tell the inspector who has custody of, or access to, a document; or
  - (b) require a person who has custody of, or access to, a document mentioned in paragraph (a) to produce the document to the inspector; or
  - (c) require a person at the workplace to answer any questions put by the inspector.
- (2) A requirement under subsection (1)(b) must be made by written notice unless the circumstances require the inspector to have immediate access to the document.
- (2A) Also, within 30 days after the day an inspector enters a workplace under this Division, the inspector or another inspector may give a written notice to a person:
  - (a) requiring the person, if the person has custody of, or access to, a specified document, to produce the document to the inspector within a specified period; or
  - (b) requiring the person to give written answers to specified questions within a specified period; or
  - (c) requiring the person to:

Part 9 Securing compliance

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- (i) attend before the inspector at a specified time and place and answer any questions put by the inspector; or
  - (ii) attend before the inspector at a specified time, by audiovisual link or audio link, and answer any questions put by the inspector.
- (2B) If a requirement is made of a person under subsection (2A)(c)(i) to attend before the inspector in person:
- (a) the person may ask to attend before the inspector by audiovisual link or audio link instead; and
  - (b) the inspector must agree to the request if it would be reasonable in the circumstances.
- (2C) If a requirement is made of a person under subsection (2A)(c)(ii) to attend before the inspector by audiovisual link or audio link:
- (a) the person may ask to attend before the inspector in person instead; and
  - (b) the inspector must agree to the request if it would be reasonable in the circumstances.
- (2D) A requirement under subsection (2A) may only relate to a document or question relevant to the purpose for which the workplace was entered.
- (2E) A notice under subsection (2A) may be served in any way that a notice may be issued or given under section 209.
- (3) An interview conducted by an inspector under subsection (1)(c) or (2A)(c) must be conducted in private if:

Part 9 Securing compliance

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- (a) the inspector considers it appropriate; or
  - (b) the person being interviewed so requests.
- (4) Subsection (3) does not limit the operation of section 166 or prevent a representative of the person being interviewed from being present at the interview.
- (5) Subsection (3) may be invoked during an interview by:
- (a) the inspector; or
  - (b) the person being interviewed,
- in which case the subsection applies to the remainder of the interview.
- (6) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under this section.

Maximum penalty: tier D monetary penalty.

**Note**

See sections 172 and 173 in relation to self-incrimination and section 269 in relation to legal professional privilege.

- (7) Subsection (6) places an evidential burden on the accused to show a reasonable excuse.

**172 Abrogation of privilege against self-incrimination**

- (1) A person is not excused from answering a question or providing information or a document under this Part on the ground that the answer to the question, or the information or document, may tend to incriminate the person or expose the person to a penalty.
- (2) However, the answer to a question or information or a document provided by an individual is not

admissible as evidence against that individual in civil or criminal proceedings other than proceedings arising out of the false or misleading nature of the answer, information or document.

- (3) To avoid doubt, 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.

**Note**

See the jurisdictional notes in the Appendix.

**173 Warning to be given**

- (1) Before requiring a person to answer a question or provide information or a document under this Part, other than by a written notice under section 171(2A), an inspector must:
- (a) identify himself or herself to the person as an inspector by producing the inspector's identity card or in some other way; and
  - (b) warn the person it is an offence to refuse or fail to comply with the requirement without reasonable excuse; and
  - (c) warn the person about the effect of section 172; and
  - (d) advise the person about the effect of section 269.
- (1A) A written notice under section 171(2A) must:
- (a) state that the notice is given under section 171(2A); and
  - (b) state the purpose of the entry to the workplace to which the notice relates; and

- (c) 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; and
  - (d) contain a statement about the effect of sections 172 and 269; and
  - (e) if the notice requires the person to attend before an inspector—state that the person may attend with a legal practitioner or other representative.
- (2) It is not an offence for an individual to refuse to answer a question put by an inspector or provide information or a document to an inspector under this Part on the ground that the question, information or document might tend to incriminate him or her, unless he or she was first given the warning in subsection (1)(c) or a notice with the statement mentioned in subsection (1A)(d).
- (3) Nothing in this section prevents an inspector from obtaining and using evidence given to the inspector voluntarily by any person.

#### **174 Powers to copy and retain documents**

- (1) An inspector may:
  - (a) make copies of, or take extracts from, a document given to the inspector in accordance with a requirement under this Act; and
  - (b) keep that document for the period that the inspector considers necessary.
- (2) While an inspector retains custody of a document, the inspector must permit the following persons to

inspect or make copies of the document at all reasonable times:

- (a) the person who produced the document;
- (b) the owner of the document;
- (c) a person authorised by a person referred to in paragraph (a) or (b).

**175 Power to seize evidence etc.**

- (1) An inspector who enters a workplace under section 163 may seize anything (including a document) at the place if the inspector reasonably believes the thing is evidence of an offence against this Act.
- (2) An inspector who enters a place with a search warrant may seize the evidence for which the warrant was issued.
- (3) An inspector may also seize anything else at the place if the inspector reasonably believes:
  - (a) the thing is evidence of an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed or used to continue or repeat the offence.

**176 Inspector's power to seize dangerous workplaces and things**

- (1) This section applies if an inspector who enters a workplace under this Part reasonably believes that:
  - (a) the workplace or part of the workplace; or
  - (b) plant at the workplace; or

- (c) a substance at the workplace or part of the workplace; or
  - (d) a structure at a workplace,  
is defective or hazardous to a degree likely to cause serious injury or illness or a dangerous incident to occur.
- (2) The inspector may seize the workplace or part, the plant, the substance or the structure.

### **177 Powers supporting seizure**

- (1) Having seized a thing, an inspector may:
  - (a) move the thing from the place where it was seized (*the place of seizure*); or
  - (b) leave the thing at the place of seizure but take reasonable action to restrict access to it;  
or

#### **Examples**

- 1 Sealing a thing and marking it to show access to it is restricted.
  - 2 Sealing the entrance to a room where the seized thing is situated and marking it to show access to it is restricted.
  - (c) if the thing is plant or a structure—dismantle or cause to be dismantled the plant or structure.
- (2) If an inspector restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing or something restricting access to the thing without an inspector's approval.

Maximum penalty: tier D monetary penalty.

- (3) To enable a thing to be seized, an inspector may require the person in control of it:
  - (a) to take it to a stated reasonable place by a stated reasonable time; and
  - (b) if necessary, to remain in control of it at the stated place for a reasonable time.
- (4) The requirement:
  - (a) must be made by written notice; or
  - (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by written notice as soon as practicable.
- (5) A further requirement may be made under this section in relation to the same thing if it is necessary and reasonable to make the further requirement.
- (6) The person must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (3) or (5).

Maximum penalty: tier D monetary penalty.
- (7) Subsection (6) places an evidential burden on the accused to show a reasonable excuse.

### **178 Receipt for seized things**

- (1) As soon as practicable after an inspector seizes a thing, the inspector must give a receipt for it to the person from whom it was seized.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt in a conspicuous position and in a reasonably secure way at the place of seizure.

- (3) The receipt must describe generally each thing seized and its condition.
- (4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt required by this section (given the thing's nature, condition and value).

### **179 Forfeiture of seized things**

- (1) A seized thing is forfeited to the [State] if the regulator:
  - (a) cannot find the person entitled to the thing after making reasonable inquiries; or
  - (b) cannot return it to the person entitled to it, after making reasonable efforts; or
  - (c) reasonably believes it is necessary to forfeit the thing to prevent it being used to commit an offence against this Act.
- (2) Subsection (1)(a) does not require the regulator to make inquiries if it would be unreasonable to make inquiries to find the person entitled to the thing.
- (3) Subsection (1)(b) does not require the regulator to make efforts if it would be unreasonable to make efforts to return the thing to the person entitled to it.
- (4) If the regulator decides to forfeit the thing under subsection (1)(c), the regulator must tell the person entitled to the thing of the decision by written notice.
- (5) Subsection (4) does not apply if:

Part 9 Securing compliance

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- (a) the regulator cannot find the person entitled to the thing, after making reasonable inquiries; or
  - (b) it is impracticable or would be unreasonable to give the notice.
- (6) The notice must state:
- (a) the reasons for the decision; and
  - (b) that the person entitled to the thing may apply within 28 days after the date of the notice for the decision to be reviewed; and
  - (c) how the person may apply for the review; and
  - (d) that the person may apply for a stay of the decision if the person applies for a review.
- (7) In deciding whether and, if so, what inquiries and efforts are reasonable or whether it would be unreasonable to give notice about a thing, regard must be had to the thing's nature, condition and value.
- (8) Any costs reasonably incurred by the [State] in storing or disposing of a thing forfeited under subsection (1)(c) may be recovered in a court of competent jurisdiction as a debt due to the [State] from that person.
- (9) In this section **person entitled** to a thing means the person from whom it was seized unless that person is not entitled to possess it in which case it means the owner of the thing.

**Note**

See the jurisdictional note in the Appendix.

## **180 Return of seized things**

- (1) If a seized thing has not been forfeited, the person entitled to the thing may apply to the regulator for the return of the thing after the end of 6 months after it was seized.
- (2) The regulator must return the thing to the applicant under subsection (1) unless the regulator has reasonable grounds to retain the thing.
- (3) The regulator may impose any conditions on the return of the thing under this section that the regulator considers appropriate to eliminate or minimise any risk to work health or safety related to the thing.
- (4) In this section **person entitled** to a thing means the person entitled to possess the thing or the owner of the thing.

## **181 Access to seized things**

- (1) Until a seized thing is forfeited or returned, the regulator must permit the following persons to inspect it and, if it is a document, to make copies of it at all reasonable times:
  - (a) the person from whom the thing was seized;
  - (b) the owner of the thing;
  - (c) a person authorised by a person referred to in paragraph (a) or (b).
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow inspection or copying.

## **Division 4     Damage and compensation**

### **182    Damage etc. to be minimised**

In the exercise, or purported exercise, of a compliance power, an inspector must take all reasonable steps to ensure that the inspector, and any assistant to the inspector, cause as little inconvenience, detriment and damage as is practicable.

### **183    Inspector to give notice of damage**

- (1) This section applies if an inspector or an assistant to an inspector damages a thing when exercising or purporting to exercise a compliance power.
- (2) The inspector must, as soon as practicable, give written notice of the damage to the person who the inspector believes on reasonable grounds, is the person in control of the thing.
- (3) If the inspector believes the damage was caused by a latent defect in the thing or circumstances beyond the inspector's or assistant's control, the inspector may state it in the notice.
- (4) If, for any reason, it is impracticable to comply with subsection (2), the inspector must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.
- (5) This section does not apply to damage the inspector reasonably believes is trivial.

### **184    Compensation**

- (1) A person may claim compensation from the [State] if the person incurs loss or expense

because of the exercise or purported exercise of a power under Division 3 of this Part.

- (2) Compensation may be claimed and ordered in a proceeding:
  - (a) brought in a court of competent jurisdiction; or
  - (b) for an offence against this Act brought against the person claiming compensation.
- (3) The court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) The regulations may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

**Note**

See the jurisdictional note in the Appendix.

**Division 5 Other matters**

**185 Power to require name and address**

- (1) An inspector may require a person to provide the person's name and residential address if:
  - (a) the inspector finds the person committing an offence against this Act; or
  - (b) the inspector finds the person in circumstances that lead, or has information that leads, the inspector to reasonably suspect the person has committed an offence against this Act; or
  - (c) the inspector reasonably believes that the person may be able to assist in the investigation of an offence against this Act.

- (2) When asking a person to provide his or her name and residential address, the inspector must:
  - (a) tell the person the reason for the requirement to provide his or her name and residential address; and
  - (b) warn the person that it is an offence to fail to state that name and residential address, unless the person has a reasonable excuse.
- (3) If the inspector reasonably believes that the name or residential address is false, the inspector may require the person to give evidence of its correctness.
- (4) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1) or (3).

Maximum penalty: tier D monetary penalty.

- (5) Subsection (4) places an evidential burden on the accused to show a reasonable excuse.

**Note**

See the jurisdictional notes in the Appendix.

**186 Inspector may take affidavits**

An inspector is authorised to take affidavits for any purpose relating or incidental to the exercise of his or her compliance powers.

**187 Attendance of inspector at coronial inquests**

An inspector may attend and has authority to examine witnesses at any inquest into the cause of death of a worker while carrying out work.

**Note**

See the jurisdictional note in the Appendix.

## **Division 6 Offences in relation to inspectors**

### **188 Offence to hinder or obstruct inspector**

A person must not intentionally hinder or obstruct an inspector in exercising his or her compliance powers, or induce or attempt to induce any other person to do so.

Maximum penalty: tier D monetary penalty.

### **189 Offence to impersonate inspector**

A person who is not an inspector must not, in any way, hold himself or herself out to be an inspector.

Maximum penalty: tier D monetary penalty.

#### **Note**

See the jurisdictional note in the Appendix.

### **190 Offence to assault, threaten or intimidate inspector**

A person must not directly or indirectly assault, threaten or intimidate, or attempt to assault, threaten or intimidate, an inspector or a person assisting an inspector.

Maximum penalty:

In the case of an individual—tier B monetary penalty or imprisonment for 2 years or both.

In the case of a body corporate—tier B monetary penalty.

## **Part 10 Enforcement measures**

### **Division 1 Improvement notices**

#### **191 Issue of improvement notices**

- (1) This section applies if an inspector reasonably believes that a person:
  - (a) is contravening a provision of this Act; or
  - (b) has contravened a provision in circumstances that make it likely that the contravention will continue or be repeated.
- (2) The inspector may issue an improvement notice requiring the person to:
  - (a) remedy the contravention; or
  - (b) prevent a likely contravention from occurring; or
  - (c) remedy the things or operations causing the contravention or likely contravention.

#### **192 Contents of improvement notices**

- (1) An improvement notice must state:
  - (a) that the inspector believes the person:
    - (i) is contravening a provision of this Act; or
    - (ii) has contravened a provision in circumstances that make it likely that the contravention will continue or be repeated; and
  - (b) the provision the inspector believes is being, or has been, contravened; and

Part 10 Enforcement measures

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- (c) briefly, how the provision is being, or has been, contravened; and
  - (d) the day by which the person is required to remedy the contravention or likely contravention.
- (2) An improvement notice may include directions concerning the measures to be taken to remedy the contravention or prevent the likely contravention, or the matters or activities causing the contravention or likely contravention, to which the notice relates.
- (3) The day stated for compliance with the improvement notice must be reasonable in all the circumstances.

**193 Compliance with improvement notice**

The person to whom an improvement notice is issued must comply with the notice within the period specified in the notice.

Maximum penalty: tier B monetary penalty.

**194 Extension of time for compliance with improvement notices**

- (1) This section applies if a person has been issued with an improvement notice.
- (2) An inspector may, by written notice given to the person, extend the compliance period for the improvement notice.
- (3) However, the inspector may extend the compliance period only if the period has not ended.
- (4) In this section:

***compliance period*** means the period stated in the improvement notice under section 192, and includes that period as extended under this section.

## Division 2 Prohibition notices

### 195 Power to issue prohibition notice

- (1) This section applies if an inspector reasonably believes that:
  - (a) an activity is occurring at a workplace that involves or will involve a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard; or
  - (b) an activity may occur at a workplace that, if it occurs, will involve a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard.
- (2) The inspector may give a person who has control over the activity a direction prohibiting the carrying on of the activity, or the carrying on of the activity in a specified way, until an inspector is satisfied that the matters that give or will give rise to the risk have been remedied.
- (3) The direction may be given orally, but must be confirmed by written notice (a ***prohibition notice***) issued to the person as soon as practicable.

### 196 Contents of prohibition notice

- (1) A prohibition notice must state:

Part 10 Enforcement measures

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- (a) that the inspector believes that grounds for the issue of the prohibition notice exist and the basis for that belief; and
  - (b) briefly, the activity that the inspector believes involves or will involve the risk and the matters that give or will give rise to the risk; and
  - (c) the provision of this Act that the inspector believes is being, or is likely to be, contravened by that activity.
- (2) A prohibition notice may include directions on the measures to be taken to remedy the risk, activities or matters to which the notice relates, or the contravention or likely contravention referred to in subsection (1)(c).
- (3) Without limiting section 195, a prohibition notice that prohibits the carrying on of an activity in a specified way may do so by specifying 1 or more of the following:
- (a) a workplace, or part of a workplace, at which the activity is not to be carried out;
  - (b) anything that is not to be used in connection with the activity;
  - (c) any procedure that is not to be followed in connection with the activity.

**197 Compliance with prohibition notice**

The person to whom a direction is given under section 195(2) or a prohibition notice is issued must comply with the direction or notice.

Maximum penalty: tier A monetary penalty.

## Division 2A Prohibited asbestos notices

### 197A Definitions

In this Division:

**asbestos** means the asbestiform varieties of mineral silicates belonging to the serpentine or amphibole groups of rock forming minerals, including the following:

- (a) actinolite asbestos;
- (b) grunerite (or amosite) asbestos (brown);
- (c) anthophyllite asbestos;
- (d) chrysotile asbestos (white);
- (e) crocidolite asbestos (blue);
- (f) tremolite asbestos;
- (g) a mixture that contains 1 or more of the minerals referred to in paragraphs (a) to (f).

**asbestos containing material (ACM)** means any material or thing that, as part of its design, contains asbestos.

**prohibited asbestos** means asbestos or ACM, fixed or installed in a workplace on or after 31 December 2003.

**relevant person** in relation to a workplace means:

- (a) a person conducting a business or undertaking at the workplace; or
- (b) a person with management or control of the workplace; or

Part 10 Enforcement measures

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- (c) a person with management or control of fixtures, fittings or plant at the workplace; or
- (d) a person who the regulator reasonably believes is or was involved in, or caused, whether directly or indirectly, the fixing or installing of prohibited asbestos at the workplace.

**197B Issue of prohibited asbestos notices**

The regulator must issue a prohibited asbestos notice to a relevant person in relation to a workplace if the regulator reasonably believes prohibited asbestos is present in the workplace.

**197C Contents of prohibited asbestos notices**

- (1) A prohibited asbestos notice must state:
  - (a) that the regulator believes prohibited asbestos is present in the workplace and the basis of that belief; and
  - (b) details of the prohibited asbestos, including the location, type and condition of the prohibited asbestos; and
  - (c) directions in relation to specific measures the relevant person to whom the prohibited asbestos notice is issued is required to take in relation to the prohibited asbestos, including in relation to the management or removal of the prohibited asbestos
  - (d) the day by which the relevant person to whom the prohibited asbestos notice is

issued is required to comply with the prohibited asbestos notice.

- (2) The day stated for compliance with the prohibited asbestos notice must be reasonable in all the circumstances.
- (3) The regulations may prescribe factors that must be considered by the regulator when determining specific measures the relevant person to whom a prohibited asbestos notice is issued is required to take in relation to prohibited asbestos.

**197D Compliance with prohibited asbestos notice**

A relevant person to whom a prohibited asbestos notice is issued must comply with the notice.

Maximum penalty: tier A monetary penalty.

**197E Extension of time for compliance with prohibited asbestos notices**

- (1) This section applies if a relevant person has been issued with a prohibited asbestos notice.
- (2) The regulator may, by written notice given to the relevant person, extend the compliance period for the prohibited asbestos notice.
- (3) However, the regulator may extend the compliance period only if the period has not ended.
- (4) In this section:

*compliance period* means the period stated in the prohibited asbestos notice under section 197C, and includes that period as extended under this section.

### **Division 3 Non-disturbance notices**

#### **198 Issue of non-disturbance notice**

An inspector may issue a non-disturbance notice to the person with management or control of a workplace if the inspector reasonably believes that it is necessary to do so to facilitate the exercise of his or her compliance powers.

#### **199 Contents of non-disturbance notice**

- (1) A non-disturbance notice may require the person to:
  - (a) preserve the site at which a relevant occurrence has occurred for a specified period; or
  - (b) prevent the disturbance of a particular site (including the operation of plant) in other circumstances for a specified period that is reasonable in the circumstances.
- (2) A non-disturbance notice must specify the period (of no more than 7 days) for which it applies and set out:
  - (a) the obligations of the person to whom the notice is issued; and
  - (b) the measures to be taken to preserve a site or prevent disturbance of a site; and
  - (c) the penalty for contravening the notice.
- (3) In subsection (1) a reference to a site includes any plant, substance, structure or thing associated with the site.
- (4) A non-disturbance notice does not prevent any action:

- (a) to assist an injured person; or
- (b) to remove a deceased person; or
- (c) that is essential to make the site safe or to prevent a further relevant occurrence; or
- (d) that is associated with a police investigation; or
- (e) for which an inspector has given permission.

**200 Compliance with non-disturbance notice**

- (1) A person must not, without reasonable excuse, refuse or fail to comply with a non-disturbance notice issued to the person.

Maximum penalty: tier B monetary penalty.

- (2) Subsection (1) places an evidential burden on the accused to show a reasonable excuse.

**201 Issue of subsequent notices**

If an inspector considers it necessary to do so, he or she may issue 1 or more subsequent non-disturbance notices to a person, whether before or after the expiry of the previous notice, each of which must comply with section 199.

**Division 4 General requirements applying to notices**

**202 Application of Division**

In this Division **notice** means improvement notice, prohibition notice, non-disturbance notice or prohibited asbestos notice.

**203 Notice to be in writing**

A notice must be in writing.

#### **204 Directions in notices**

A direction included in an improvement notice, prohibition notice or prohibited asbestos notice may:

- (a) refer to a code of practice; and
- (b) offer the person to whom it is issued a choice of measures to take or ways in which to remedy the contravention.

#### **205 Recommendations in notice**

- (1) An improvement notice, prohibition notice or prohibited asbestos notice may include recommendations.
- (2) It is not an offence to fail to comply with recommendations in a notice.

#### **206 Changes to notice**

- (1) An inspector may:
  - (a) make minor changes to a notice issued by an inspector; or
  - (b) extend the compliance period for an improvement notice in accordance with section 194.
- (2) The regulator may:
  - (a) make minor changes to a prohibited asbestos notice issued by the regulator; or
  - (b) extend the compliance period of a prohibited asbestos notice in accordance with section 197E.
- (3) In this section, *minor changes* means a minor change to a notice:

- (a) for clarification; or
- (b) to correct errors or references; or
- (c) to reflect changes of address or other circumstances.

**207 Regulator may vary or cancel notice**

- (1) Except as provided in section 206, a notice issued by an inspector may only be varied or cancelled by the regulator.
- (2) A notice issued by the regulator may only be varied or cancelled by the regulator.

**208 Formal irregularities or defects in notice**

A notice is not invalid only because of:

- (a) a formal defect or irregularity in the notice unless the defect or irregularity causes or is likely to cause substantial injustice; or
- (b) a failure to use the correct name of the person to whom the notice is issued if the notice sufficiently identifies the person and is issued or given to the person in accordance with section 209.

**209 Issue and giving of notice**

- (1) A notice may be issued or given to a person:
  - (a) by delivering it personally to the person or sending it by post or facsimile or electronic transmission to the person's usual or last known place of residence or business; or
  - (b) by leaving it for the person at the person's usual or last known place of residence or business with a person who appears to be

Part 10 Enforcement measures

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over 16 years and who appears to reside or work there; or

- (c) by leaving it for the person at the workplace to which the notice relates with a person who is or appears to be the person with management or control of the workplace; or
- (d) in a prescribed manner.

(2) The regulations may prescribe:

- (a) the manner of issuing a notice; and
- (b) the steps a person to whom a notice is issued must take to bring it to the attention of other persons.

**210 Display of notice**

(1) A person to whom a notice is issued must, as soon as possible, display a copy of the notice in a prominent place at or near the workplace, or part of the workplace, at which work is being carried out that is affected by the notice.

Maximum penalty: tier F monetary penalty.

(2) A person must not intentionally remove, destroy, damage or deface a notice displayed under subsection (1) while the notice is in force.

Maximum penalty: tier F monetary penalty.

**Division 5 Remedial action**

**211 When regulator may carry out action**

(1) This section applies if a person to whom a prohibition notice or prohibited asbestos notice is issued fails to take reasonable steps to comply with the notice.

- (2) The regulator may take any remedial action the regulator believes reasonable to make the workplace or situation safe after giving written notice to the person to whom the prohibition notice or prohibited asbestos notice was issued of:
  - (a) the regulator's intention to take that action; and
  - (b) the owner's or person's liability for the costs of that action.

**212 Power of the regulator to take other remedial action**

- (1) This section applies if the regulator reasonably believes that:
  - (a) circumstances in which a prohibition notice or prohibited asbestos notice can be issued exist; and
  - (b) a prohibition notice or prohibited asbestos notice cannot be issued because, after taking reasonable steps:
    - (i) in relation to a prohibition notice—the person with management or control of the workplace cannot be found; or
    - (ii) in relation to a prohibited asbestos notice—a relevant person in relation to the workplace cannot be found.
- (2) The regulator may take any remedial action necessary to make the workplace safe.

**213 Costs of remedial or other action**

The regulator may recover the reasonable costs of any remedial action taken under:

- (a) section 211 from the person to whom the notice is issued; or
  - (b) section 212 from any person to whom the prohibition notice or prohibited asbestos notice could have been issued in relation to the matter,
- as a debt due to the regulator.

## **Division 6      Injunctions**

### **214 Application of Division**

In this Division, *notice* means improvement notice, prohibition notice, non-disturbance notice or prohibited asbestos notice.

### **215 Injunctions for noncompliance with notices**

- (1) The regulator may apply to [the designated court] for an injunction:
  - (a) compelling a person to comply with a notice; or
  - (b) restraining a person from contravening a notice.
- (2) The regulator may do so:
  - (a) whether or not proceedings have been brought for an offence against this Act in connection with any matter in relation to which the notice was issued; and
  - (b) whether any period for compliance with the notice has expired.

#### **Note**

See the jurisdictional note in the Appendix.

## Part 11 Enforceable undertakings

### 216 Regulator may accept WHS undertakings

- (1) The regulator may accept a written undertaking (a *WHS undertaking*) given by a person in connection with a matter relating to a contravention or alleged contravention by the person of this Act.

#### Note

Section 230(3) requires the regulator to publish guidelines in relation to the acceptance of WHS undertakings.

- (2) A WHS undertaking cannot be accepted for a contravention or alleged contravention that is a Category 1 offence.
- (3) The giving of a WHS undertaking does not constitute an admission of guilt by the person giving it in relation to the contravention or alleged contravention to which the undertaking relates.

### 217 Notice of decision and reasons for decision

- (1) The regulator must give the person seeking to make a WHS undertaking written notice of the regulator's decision to accept or reject the WHS undertaking and of the reasons for the decision.
- (2) The regulator must publish, on the regulator's website, notice of a decision to accept a WHS undertaking and the reasons for that decision.

### 218 When a WHS undertaking is enforceable

A WHS undertaking takes effect and becomes enforceable when the regulator's decision to accept the undertaking is given to the person who made the undertaking or at any later date specified by the regulator.

## **219 Compliance with WHS undertaking**

A person must not contravene a WHS undertaking made by that person that is in effect.

Maximum penalty: tier B monetary penalty.

## **220 Contravention of WHS undertaking**

- (1) The regulator may apply to the [designated court] for an order if a person contravenes a WHS undertaking.
- (2) If the court is satisfied that the person who made the WHS undertaking has contravened the undertaking, the court, in addition to the imposition of any penalty, may make 1 or both of the following orders:
  - (a) an order directing the person to comply with the undertaking;
  - (b) an order discharging the undertaking.
- (3) In addition to the orders referred to in subsection (2), the court may make any other order that the court considers appropriate in the circumstances, including orders directing the person to pay to the [State]:
  - (a) the costs of the proceedings; and
  - (b) the reasonable costs of the regulator in monitoring compliance with the WHS undertaking in the future.

### **Note**

See the jurisdictional note in the Appendix.

- (4) Nothing in this section prevents proceedings being brought for the contravention or alleged

contravention of this Act to which the WHS undertaking relates.

**Note**

Section 222 specifies circumstances affecting proceedings for a contravention for which a WHS undertaking has been given.

**221 Withdrawal or variation of WHS undertaking**

- (1) A person who has made a WHS undertaking may at any time, with the written agreement of the regulator:
  - (a) withdraw the undertaking; or
  - (b) vary the undertaking.
- (2) However, the provisions of the undertaking cannot be varied to provide for a different alleged contravention of the Act.
- (3) The regulator must publish, on the regulator's website, notice of the withdrawal or variation of a WHS undertaking.

**222 Proceeding for alleged contravention**

- (1) Subject to this section, no proceedings for a contravention or alleged contravention of this Act may be brought against a person if a WHS undertaking is in effect in relation to that contravention.
- (2) No proceedings may be brought for a contravention or alleged contravention of this Act against a person who has made a WHS undertaking in relation to that contravention and has completely discharged the WHS undertaking.
- (3) The regulator may accept a WHS undertaking in relation to a contravention or alleged

Model Work Health and Safety Bill

Part 11 Enforceable undertakings

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contravention before proceedings in relation to that contravention have been finalised.

- (4) If the regulator accepts a WHS undertaking before the proceedings are finalised, the regulator must take all reasonable steps to have the proceedings discontinued as soon as possible.

## Part 12 Review of decisions

### Division 1 Reviewable decisions

#### 223 Which decisions are reviewable

(1) The following table sets out:

- (a) decisions made under this Act that are reviewable in accordance with this Part (*reviewable decisions*); and
- (b) who is eligible to apply for review of a reviewable decision (the *eligible person*).

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
1	Section 54(2) (decision following failure to commence negotiations)	<ul style="list-style-type: none"><li>(1) A worker whose interests are affected by the decision or his or her representative appointed for the purpose of section 52(1)(b).</li><li>(2) A person conducting a business or undertaking whose interests are affected by the decision.</li><li>(3) A health and safety representative who represents a worker whose interests are affected by the decision.</li></ul>
2	Section 72(6) (decision in relation to training of health and safety representative)	<ul style="list-style-type: none"><li>(1) A person conducting a business or undertaking whose interests are affected by the decision.</li><li>(2) A health and safety representative whose interests are affected by the decision.</li></ul>

## Model Work Health and Safety Bill

### Part 12 Review of decisions

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Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
3	Section 76(6) (decision relating to health and safety committee)	<ul style="list-style-type: none"><li>(1) A worker whose interests are affected by the decision.</li><li>(2) A person conducting a business or undertaking whose interests are affected by the decision.</li><li>(3) A health and safety representative who represents a worker whose interests are affected by the decision.</li></ul>
4	Section 102 (decision on review of provisional improvement notice)	<ul style="list-style-type: none"><li>(1) The person to whom the provisional improvement notice was issued.</li><li>(2) The health and safety representative who issued the provisional improvement notice.</li><li>(3) A worker whose interests are affected by the decision.</li><li>(4) A health and safety representative who represents a worker whose interests are affected by the decision.</li><li>(5) A person conducting a business or undertaking whose interests are affected by the decision.</li></ul>
5	Section 179 (forfeiture of thing)	The person entitled to the thing.

## Model Work Health and Safety Bill

### Part 12 Review of decisions

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
6	Section 180 (Return of seized things)	The person entitled to the thing.
7	Section 191 (issue of improvement notice)	(1) The person to whom the notice was issued.  (2) A person conducting a business or undertaking whose interests are affected by the decision.  (3) A worker whose interests are affected by the decision.  (4) A health and safety representative who represents a worker whose interests are affected by the decision.
8	Section 194 (extension of time for compliance with improvement notice)	(1) The person to whom the notice was issued.  (2) A person conducting a business or undertaking whose interests are affected by the decision.  (3) A worker whose interests are affected by the decision.  (4) A health and safety representative who represents a worker whose interests are affected by the decision.
9	Section 195 (issue of prohibition notice)	(1) The person to whom the notice was issued.

## Model Work Health and Safety Bill

### Part 12 Review of decisions

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Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
		<p>(2) The person with management or control of the workplace, plant or substance.</p> <p>(3) A person conducting a business or undertaking whose interests are affected by the decision.</p> <p>(4) A worker whose interests are affected by the decision.</p> <p>(5) A health and safety representative who represents a worker whose interests are affected by the decision.</p> <p>(6) A health and safety representative who gave a direction under section 85 to cease work, that is relevant to the prohibition notice.</p>
9A	Section 197B (issue of prohibited asbestos notice)	<p>(1) The person to whom the notice was issued.</p> <p>(2) The person with management or control of the workplace.</p> <p>(3) A person conducting a business or undertaking whose interests are affected by the decision.</p> <p>(4) A worker whose interests are affected by the decision.</p> <p>(5) A health and safety representative who represents a worker whose</p>

## Model Work Health and Safety Bill

### Part 12 Review of decisions

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Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
9B	Section 197E (extension of time for compliance with prohibited asbestos notice)	<p>interests are affected by the decision.</p> <p>(1) The person to whom the notice was issued.</p> <p>(2) The person with management or control of the workplace.</p> <p>(3) A person conducting a business or undertaking whose interests are affected by the decision.</p> <p>(4) A worker whose interests are affected by the decision.</p> <p>(5) A health and safety representative who represents a worker whose interests are affected by the decision.</p>
10	Section 198 (issue of a non-disturbance notice)	<p>(1) The person to whom the notice was issued.</p> <p>(2) The person with management or control of the workplace.</p> <p>(3) A person conducting a business or undertaking whose interests are affected by the decision.</p> <p>(4) A worker whose interests are affected by the decision.</p> <p>(5) A health and safety representative who represents a worker whose interests are affected by the decision.</p>

## Model Work Health and Safety Bill

### Part 12 Review of decisions

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
11	Section 201 (issue of subsequent notice)	<ul style="list-style-type: none"><li>(1) The person to whom the notice was issued.</li><li>(2) The person with management or control of the workplace.</li><li>(3) A person conducting a business or undertaking whose interests are affected by the decision.</li><li>(4) A worker whose interests are affected by the decision.</li> <li>(5) A health and safety representative who represents a worker whose interests are affected by the decision.</li></ul>
12	Section 207 (Decision of regulator to vary or cancel notice)	<ul style="list-style-type: none"><li>(1) The person to whom the notice was issued.</li><li>(2) The person with management or control of the workplace.</li><li>(3) A person conducting a business or undertaking whose interests are affected by the decision.</li><li>(4) A worker whose interests are affected by the decision.</li> <li>(5) A health and safety representative who represents a worker whose interests are affected by the decision.</li><li>(6) In the case of a prohibition notice, a health and safety</li></ul>

Model Work Health and Safety Bill

Part 12 Review of decisions

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Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
		representative whose direction under section 85 to cease work gave rise to the notice.
13	A prescribed provision of the regulations	A person prescribed by the regulations as eligible to apply for review of the reviewable decision.

- (2) Unless the contrary intention appears, a reference in this Part to a decision includes a reference to:
- making, suspending, revoking or refusing to make an order, determination or decision;
  - giving, suspending, revoking or refusing to give a direction, approval, consent or permission;
  - issuing, suspending, revoking or refusing to issue an authorisation;
  - imposing a condition;
  - making a declaration, demand or requirement;
  - retaining, or refusing to deliver up, a thing; or
  - doing or refusing to do any other act or thing.
- (3) In this section **person entitled** to a thing means the person from whom it was seized unless that person is not entitled to possess it, in which case it means the owner of the thing.

**Notes**

- 1 Decisions under the regulations that will be reviewable decisions will be set out in the regulations.
- 2 See the jurisdictional note in the Appendix.

**Division 2 Internal review**

**224 Application for internal review**

- (1) An eligible person in relation to a reviewable decision, other than a decision made by the regulator or a delegate of the regulator, may apply to the regulator for review (an *internal review*) of the decision within:
  - (a) the prescribed time after the day on which the decision first came to the eligible person's notice; or
  - (b) such longer period as the regulator allows.
- (2) The application must be made in the manner and form required by the regulator.
- (3) For the purposes of this section, the *prescribed time* is:
  - (a) in the case of a decision to issue an improvement notice the period specified in the notice for compliance with the notice or 14 days, whichever is the lesser; and
  - (b) in any other case, 14 days.

**225 Internal reviewer**

- (1) The regulator may appoint a person or body to review decisions on applications under this Division.
- (2) The person who made the decision cannot be an internal reviewer in relation to that decision.

**226 Decision of internal reviewer**

- (1) The internal reviewer must review the reviewable decision and make a decision as soon as is reasonably practicable and within 14 days after the application for internal review is received.
- (2) The decision may be:
  - (a) to confirm or vary the reviewable decision; or
  - (b) to set aside the reviewable decision and substitute another decision that the internal reviewer considers appropriate.
- (3) If the internal reviewer seeks further information from the applicant, the 14-day period ceases to run until the applicant provides the information to the internal reviewer.
- (4) The applicant must provide the further information within the time (being not less than 7 days) specified by the internal reviewer in the request for information.
- (5) If the applicant does not provide the further information within the required time, the decision is taken to have been confirmed by the internal reviewer at the end of that time.
- (6) If the reviewable decision is not varied or set aside within the 14-day period, the decision is taken to have been confirmed by the internal reviewer.

**227 Decision on internal review**

As soon as practicable after reviewing the decision, the internal reviewer must give the applicant in writing:

- (a) the decision on the internal review; and

(b) the reasons for the decision.

**228 Stays of reviewable decisions on internal review**

- (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.
- (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.
- (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.
- (4) The reviewer must make a decision on an application for a stay within 1 working day after the reviewer receives the application.
- (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.
- (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:
  - (a) the end of the prescribed period for applying for an external review of the decision made on the internal review;
  - (b) an application for external review is made.

### **Division 3     External review**

#### **229 Application for external review**

- (1) An eligible person may apply to [the external review body] for review (an *external review*) of:
  - (a) a reviewable decision made by the regulator; or
  - (b) a decision made, or taken to have been made, on an internal review.

#### **Note**

See the jurisdictional notes in the Appendix.

- (2) The application must be made:
  - (a) if the decision was to forfeit a thing (including a document), within 28 days after the day on which the decision first came to the applicant's notice; or
  - (b) in the case of any other decision, within 14 days after the day on which the decision first came to the applicant's notice; or
  - (c) if the regulator is required by the external review body to give the eligible person a statement of reasons, within 14 days after the day on which the statement is provided.

## **Part 13 Legal proceedings**

### **Division 1 General matters**

#### **230 Prosecutions**

- (1) Subject to subsection (4), proceedings for an offence against this Act may only be brought by:
  - (a) the regulator; or
  - (b) an inspector with the written authorisation of the regulator (either generally or in a particular case).
- (2) An authorisation under subsection (1)(b) is sufficient authority to continue proceedings in any case where the court amends the charge, warrant or summons.
- (3) The regulator must issue, and publish on the regulator's website, general guidelines for or in relation to:
  - (a) the prosecution of offences under this Act; and
  - (b) the acceptance of WHS undertakings under this Act.
- (4) Nothing in this section affects the ability of the Director of Public Prosecutions to bring proceedings for an offence against this Act.

#### **Note**

See the jurisdictional notes in the Appendix.

#### **231 Procedure if prosecution is not brought**

- (1) This section applies if:
  - (a) a person:

Part 12 Review of decisions

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- (i) reasonably considers that the occurrence of an act, matter or thing constitutes a Category 1 offence or a Category 2 offence; or
  - (ii) reasonably considers, from a coronial report or the proceedings at a coronial inquiry or inquest, that a Category 1 offence or a Category 2 offence has been committed; and
- (b) no prosecution for the offence has been brought.
- (1A) The person may make a written request to the regulator that a prosecution be brought.
- (1B) The request may only be made:
- (a) if subsection (1)(a)(i) applies—at least 6 months but not more than 18 months after the act, matter or thing occurs; or
  - (b) if subsection (1)(a)(ii) applies—within 6 months after the report is made or the inquiry or inquest ends.

**Note**

See section 232 in relation to the limitation period for prosecutions.

- (2) Within 3 months after the regulator receives a request the regulator must:
- (a) advise the person (in writing):
    - (i) whether the investigation is complete; and
    - (ii) if the investigation is complete, whether a prosecution has been or will be

Part 12 Review of decisions

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brought or give reasons why a prosecution will not be brought; and

- (b) advise the person who the applicant believes committed the offence of the application and of the matters set out in paragraph (a).
- (2A) If, under subsection (2)(a)(i), the regulator advises the person that the investigation is not complete, the regulator must:
- (a) until the investigation is complete, give the person a written update about the investigation at least every 3 months; and
  - (b) when the investigation is complete, give the person a written notice stating:
    - (i) whether a prosecution will be brought; and
    - (ii) if a prosecution will not be brought—the reasons why.
- (3) If the regulator advises the person under subsection (2) or (2A) that a prosecution for a Category 1 or Category 2 offence will not be brought, the regulator must:
- (a) advise the person that the person may ask the regulator to refer the matter to the Director of Public Prosecutions for consideration; and
  - (b) if the person makes a written request to the regulator to do so, refer the matter to the Director of Public Prosecutions within 1 month of the request.
- (4) The Director of Public Prosecutions must consider the matter and advise (in writing) the regulator

within 1 month as to whether the Director considers that a prosecution should be brought.

- (5) The regulator must ensure a copy of the advice is given to:
  - (a) the person who made the request; and
  - (b) the person who the applicant believes committed the offence.
- (6) If the regulator declines to follow the advice of the Director of Public Prosecutions to bring proceedings, the regulator must give written reasons for the decision to any person to whom a copy of the advice is given under subsection (5).
- (7) In this section a reference to the occurrence of an act, matter or thing includes a reference to a failure in relation to an act, matter or thing.

**Note**

See the jurisdictional note in the Appendix.

## **232 Limitation period for prosecutions**

- (1) Proceedings for an offence against this Act may be brought within the latest of the following periods to occur:
  - (a) within 2 years after the offence first comes to the notice of the regulator;
  - (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;
  - (c) if a WHS undertaking has been given in relation to the offence, within 6 months after:

- (i) the WHS undertaking is contravened;  
or
- (ii) it comes to the notice of the regulator  
that the WHS undertaking has been  
contravened; or
- (iii) the regulator has agreed under  
section 221 to the withdrawal of the  
WHS undertaking.

**Note**

See the jurisdictional note in the Appendix.

- (2) A proceeding for a Category 1 offence may be brought after the end of the applicable limitation period in subsection (1) if fresh evidence relevant to the offence is discovered and the court is satisfied that the evidence could not reasonably have been discovered within the relevant limitation period.

**233 Multiple contraventions of health and safety duty provision**

- (1) Two or more contraventions of a health and safety duty provision by a person that arise out of the same factual circumstances may be charged as a single offence or as separate offences.
- (2) This section does not authorise contraventions of 2 or more health and safety duty provisions to be charged as a single offence.
- (3) A single penalty only may be imposed in relation to 2 or more contraventions of a health and safety duty provision that are charged as a single offence.

- (4) In this section ***health and safety duty provision*** means a provision of Division 2, 3 or 4 of Part 2.

## **Division 2      Sentencing for offences**

### **234 Application of this Division**

This Division applies if a court convicts a person, or finds a person guilty (the ***offender***), of an offence against this Act.

### **235 Orders generally**

- (1) One or more orders may be made under this Division against the offender.
- (2) Orders may be made under this Division in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.

### **236 Adverse publicity orders**

- (1) The court may make an order (an ***adverse publicity order***) in relation to the offender requiring the offender:
  - (a) to take either or both of the following actions within the period specified in the order:
    - (i) to publicise, in the way specified in the order, the offence, its consequences, the penalty imposed and any other related matter;
    - (ii) to notify a specified person or specified class of persons, in the way specified in the order, of the offence, its consequences, the penalty imposed and any other related matter; and

Part 12 Review of decisions

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- (b) to give the regulator, within 7 days after the end of the period specified in the order, evidence that the action or actions were taken by the offender in accordance with the order.
- (2) The court may make an adverse publicity order on its own initiative or on the application of the person prosecuting the offence.
- (3) If the offender fails to give evidence to the regulator in accordance with subsection (1)(b), the regulator, or a person authorised in writing by the regulator, may take the action or actions specified in the order.
- (4) However, if:
  - (a) the offender gives evidence to the regulator in accordance with subsection (1)(b); and
  - (b) despite that evidence, the regulator is not satisfied that the offender has taken the action or actions specified in the order in accordance with the order,the regulator may apply to the [designated court] for an order authorising the regulator, or a person authorised in writing by the regulator, to take the action or actions.
- (5) If the regulator or a person authorised in writing by the regulator takes an action or actions in accordance with subsection (3) or an order under subsection (4), the regulator is entitled to recover from the offender, by action in a court of competent jurisdiction, an amount in relation to the reasonable expenses of taking the action or actions as a debt due to the regulator.

**Note**

See the jurisdictional note in the Appendix.

**237 Orders for restoration**

- (1) The court may order the offender to take such steps as are specified in the order, within the period so specified, to remedy any matter caused by the commission of the offence that appears to the court to be within the offender's power to remedy.
- (2) The period in which an order under this section must be complied with may be extended, or further extended, by order of the court but only if an application for the extension is made before the end of that period.

**238 Work health and safety project orders**

- (1) The court may make an order requiring the offender to undertake a specified project for the general improvement of work health and safety within the period specified in the order.
- (2) The order may specify conditions that must be complied with in undertaking the specified project.

**239 Release on the giving of a court-ordered WHS undertaking**

- (1) The court may (with or without recording a conviction) adjourn the proceeding for a period of up to 2 years and make an order for the release of the offender on the offender giving an undertaking with specified conditions (a *court-ordered WHS undertaking*).

Part 12 Review of decisions

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- (2) A court-ordered WHS undertaking must specify the following conditions:
  - (a) that the offender appears before the court if called on to do so during the period of the adjournment and, if the court so specifies, at the time to which the further hearing is adjourned;
  - (b) that the offender does not commit, during the period of the adjournment, any offence against this Act;
  - (c) that the offender observes any special conditions imposed by the court.
- (3) An offender who has given a court-ordered WHS undertaking under this section may be called on to appear before the court by order of the court.
- (4) An order under subsection (3) must be served on the offender not less than 4 days before the time specified in it for the appearance.
- (5) If the court is satisfied at the time to which a further hearing of a proceeding is adjourned that the offender has observed the conditions of the court-ordered WHS undertaking, it must discharge the offender without any further hearing of the proceeding.

**240 Injunctions**

If a court finds a person guilty of an offence against this Act, the court may issue an injunction requiring the person to cease contravening this Act.

**Note**

An injunction may also be obtained under section 215 for noncompliance with a non-disturbance notice, improvement notice or prohibition notice.

**241 Training orders**

The court may make an order requiring the person to undertake or arrange for 1 or more workers to undertake a specified course of training.

**242 Offence to fail to comply with order**

- (1) A person must not, without reasonable excuse, fail to comply with an order under this Division.  
Maximum penalty: tier B monetary penalty.
- (2) Subsection (1) places an evidential burden on the accused to show a reasonable excuse.
- (3) This section does not apply to an order or injunction under section 239 or 240.

**Division 3 Infringement notices**

**243 Infringement notices**

**Note**

See the jurisdictional notes in the Appendix.

**Division 4 Offences by bodies corporate**

**244 Definitions**

In this Division:

***authorised person***, for a body corporate, means an officer, employee or agent of the body corporate acting within the officer's, employee's or agent's actual or apparent authority.

**board of directors** means the body, whatever it is called, exercising the executive authority of the body corporate.

**Commonwealth Criminal Code** means the *Criminal Code* set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth.

**physical element** has the meaning given by the Commonwealth Criminal Code, Division 4.

#### **244A Physical elements**

The conduct constituting the physical element of an offence is taken to have been committed by a body corporate if the conduct is committed by:

- (a) the body corporate's board of directors; or
- (b) 1 or more authorised persons; or
- (c) 1 or more persons acting at the direction of or with the express or implied agreement or consent of:
  - (i) an authorised person; or
  - (ii) the body corporate's board of directors.

#### **244B Fault elements other than gross negligence**

- (1) If it is necessary to establish a state of mind of a body corporate in relation to the commission of the physical element of an offence, it is sufficient to show:
  - (a) the body corporate's board of directors:
    - (i) intentionally, knowingly or recklessly carried out the relevant conduct; or

Part 12 Review of decisions

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- (ii) expressly, tacitly or impliedly authorised or permitted the carrying out of the conduct constituting the physical element of the offence; or
  - (b) an authorised person—
    - (i) intentionally, knowingly or recklessly engaged in the relevant conduct; or
    - (ii) expressly, tacitly or impliedly authorised or permitted the carrying out of the conduct constituting the physical element of the offence; or
  - (c) a corporate culture existed within the body corporate that directed, encouraged, tolerated or led to the carrying out of the conduct constituting the physical element of the offence.
- (1A) For subsection (1), having a state of mind in relation to the commission of a physical element of an offence does not include engaging in conduct with gross negligence with respect to the physical element.
- Notes**
- 1 For how the fault element of gross negligence applies in relation to a body corporate, see section 244BA.
  - 2 See the jurisdictional note in the Appendix.
- (2) Subsection (1)(b) and (c) do not apply if the body corporate proves it took reasonable precautions to prevent the conduct or the authorisation or permission of the conduct.
  - (3) Factors relevant to the application of subsection (1)(c) include:

Part 12 Review of decisions

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- (a) whether authority or permission to carry out the conduct constituting the physical element of an offence, of the same or a similar character, had previously been given by a corporate officer; and
- (b) whether the person who carried out the conduct constituting the physical element of the offence believed on reasonable grounds, or had a reasonable expectation, that a corporate officer would have authorised or permitted the carrying out of the conduct.

(4) In this section:

***corporate culture*** means 1 or more attitudes, policies, rules, courses of conduct or practices existing within the body corporate generally or in the part of the body corporate in which the relevant activity takes place.

***corporate officer*** means an officer within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth other than a partner in a partnership.

**244BA Gross negligence**

- (1) If gross negligence is a fault element in relation to the commission of the physical element of an offence, the fault element may exist on the part of a body corporate, despite no individual authorised person of the body corporate having the fault element, if the body corporate has engaged in conduct with gross negligence when viewed as a whole, determined by aggregating the conduct of more than 1 authorised person.

- (2) For the purposes of subsection (1), gross negligence may be evidenced by the fact that the prohibited conduct was substantially attributable to:
  - (a) inadequate corporate management, control or supervision of the conduct of 1 or more authorised persons; or
  - (b) failure to provide adequate systems for conveying relevant information to relevant persons in the body corporate.

**Note**

See the jurisdictional note in the Appendix.

**244C Mistake of fact**

If mistake of fact is relevant to determining liability for an offence, a body corporate may rely on mistake of fact only if:

- (a) the employee, agent or officer of the body corporate who carried out the conduct was under a mistaken but reasonable belief about facts that, had they existed, would have meant the conduct would not have constituted the offence; and
- (b) the body corporate proves it took reasonable precautions to prevent the conduct.

**244D Failure to take reasonable precautions**

For sections 244B(2) and 244C, a failure to take reasonable precautions may be evidenced by the fact that the conduct constituting the offence was substantially attributable to:

- (a) inadequate management, control or supervision of the conduct of one or more of

the body corporate's employees, agents or officers; or

- (b) failure to provide adequate systems for conveying relevant information to relevant persons in the body corporate.

## **Division 5      The Crown**

### **245 Offences and the Crown**

- (1) If the Crown is guilty of an offence against this Act, the penalty to be imposed on the Crown is the penalty applicable to a body corporate.
- (2) For the purposes of this Act, any conduct engaged in on behalf of the Crown by an employee, agent or officer of the Crown acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is conduct also engaged in by the Crown.

#### **Note**

See the jurisdictional note in the Appendix.

- (3) If an offence under this Act requires proof of knowledge, intention or recklessness, it is sufficient in proceedings against the Crown for that offence to prove that the person referred to in subsection (2) had the relevant knowledge, intention or recklessness.
- (4) If for an offence against this Act mistake of fact is relevant to determining liability, it is sufficient in proceedings against the Crown for that offence if the person referred to in subsection (2) made that mistake of fact.

## **246 WHS civil penalty provisions and the Crown**

- (1) If the Crown contravenes a WHS civil penalty provision, the monetary penalty to be imposed on the Crown is the penalty applicable to a body corporate.
- (2) For the purposes of a WHS civil penalty provision, any conduct engaged in on behalf of the Crown by an employee, agent or officer of the Crown acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is conduct also engaged in by the Crown.

### **Note**

See the jurisdictional note in the Appendix.

- (3) If a WHS civil penalty provision requires proof of knowledge, it is sufficient in proceedings against the Crown for a contravention of that provision to prove that the person referred to in subsection (2) had that knowledge.

## **247 Officers**

- (1) A person who makes, or participates in making, decisions that affect the whole, or a substantial part, of a business or undertaking of the Crown is taken to be an officer of the Crown for the purposes of this Act.
- (2) A Minister of a State or the Commonwealth is not in that capacity an officer for the purposes of this Act.

## **248 Responsible agency for the Crown**

- (1) A provisional improvement notice, improvement notice, prohibition notice, non-disturbance notice,

Part 12 Review of decisions

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infringement notice or notice of entry under Part 7 to be given to or served on the Crown under this Act may be given to or served on the responsible agency.

- (2) If an infringement notice is to be served on the Crown for an offence against this Act, the responsible agency may be specified in the infringement notice.
- (3) If proceedings are brought against the Crown for an offence against this Act or in relation to a contravention of this Act, the responsible agency in relation to the offence or contravention may be specified in any document initiating, or relating to, the proceedings.
- (4) The responsible agency in relation to an offence or a contravention of this Act is entitled to act in proceedings against the Crown for the offence or relating to the contravention and, subject to any relevant rules of court, the procedural rights and obligations of the Crown as the accused or defendant in the proceedings are conferred or imposed on the responsible agency.
- (5) The person prosecuting the offence or bringing the proceedings may change the responsible agency during the proceedings with the court's leave.
- (6) In this section, the ***responsible agency***:
  - (a) in relation to a notice referred to in subsection (1) is:
    - (i) in the case of a provisional improvement notice, improvement notice or infringement notice, the agency of the Crown the acts or

Part 12 Review of decisions

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- omissions of which are alleged to contravene this Act;
- (ii) in the case of a prohibition notice, the agency of the Crown which has control over the activity referred to in section 195(1)(a) or (b);
  - (iii) in the case of a non-disturbance notice, the agency of the Crown with the management and control of the workplace;
  - (iv) in the case of a notice of entry under Part 7, the agency of the Crown conducting the relevant business or undertaking or with the management and control of the workplace; and
- (b) in relation to an offence or proceedings for a contravention of this Act, is the agency of the Crown:
- (i) the acts or omissions of which are alleged to constitute the offence or contravention; or
  - (ii) if that agency has ceased to exist, that is the successor of that agency; or
  - (iii) if that agency has ceased to exist and there is no clear successor, that the court declares to be the responsible agency.

## **Division 6     Public authorities**

### **249 Application to public authorities that are bodies corporate**

This Division applies only to public authorities that are bodies corporate.

### **250 Proceedings against public authorities**

- (1) Proceedings may be brought under this Act against a public authority in its own name.
- (2) Nothing in this Division affects any privileges that a public authority may have under the Crown.

### **251 Imputing conduct to public authorities**

- (1) For the purposes of this Act, any conduct engaged in on behalf of a public authority by an employee, agent or officer of the public authority acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is conduct also engaged in by the public authority.
- (2) If an offence under this Act requires proof of knowledge, intention or recklessness, it is sufficient in proceedings against the public authority for that offence to prove that the person referred to in subsection (1) had the relevant knowledge, intention or recklessness.
- (3) If for an offence against this Act mistake of fact is relevant to determining liability, it is sufficient in proceedings against the public authority for that offence if the person referred to in subsection (1) made that mistake of fact.

## **252 Officer of public authority**

A person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking of a public authority is taken to be an officer of the public authority for the purposes of this Act.

## **253 Proceedings against successors to public authorities**

- (1) Proceedings for an offence against this Act that were instituted against a public authority before its dissolution, or that could have been instituted against a public authority if not for its dissolution, may be continued or instituted against its successor if the successor is a public authority.
- (2) An infringement notice served on a public authority for an offence against this Act is taken to be an infringement notice served on its successor if the successor is a public authority.
- (3) Similarly, any penalty paid by a public authority in relation to an infringement notice is taken to be a penalty paid by its successor if the successor is a public authority.

## **Division 7 WHS civil penalty provisions**

### **254 When is a provision a WHS civil penalty provision**

- (1) A subsection of Part 7 (or a section of Part 7 that is not divided into subsections) is a ***WHS civil penalty provision*** if:
  - (a) the words "*WHS civil penalty provision*" and a maximum penalty, expressed as a WHS civil penalty provision tier, are set out at the foot of the subsection (or section); or

- (b) another provision of Part 7 specifies that the subsection (or section) is a WHS civil penalty provision.
- (2) A subregulation (or a regulation that is not divided into subregulations) is a ***WHS civil penalty provision*** if:
  - (a) the words "*WHS civil penalty provision*" and a maximum penalty, expressed as a WHS civil penalty provision tier, are set out at the foot of the subregulation (or regulation); or
  - (b) another provision of the regulations specifies that the subregulation (or regulation) is a WHS civil penalty provision.

**255 Proceedings for contravention of WHS civil penalty provision**

Subject to this Division, proceedings may be brought in a court against a person for a contravention of a WHS civil penalty provision.

**256 Involvement in contravention treated in same way as actual contravention**

- (1) A person who is involved in a contravention of a WHS civil penalty provision is taken to have contravened that provision.
- (2) A person is ***involved in*** a contravention of a civil penalty provision if, and only if, the person:
  - (a) has aided, abetted, counselled or procured the contravention; or
  - (b) has induced the contravention, whether by threats or promises or otherwise; or

- (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention; or
- (d) has conspired with others to effect the contravention.

**257 Contravening a civil penalty provision is not an offence**

A contravention of a WHS civil penalty provision is not an offence.

**258 Civil proceeding rules and procedure to apply**

A court must apply the rules of evidence and procedure for civil proceedings when hearing proceedings for a contravention of a WHS civil penalty provision.

**259 Proceeding for a contravention of a WHS civil penalty provision**

- (1) In a proceeding for a contravention of a WHS civil penalty provision, if the court is satisfied that a person has contravened a WHS civil penalty provision, the court may:
  - (a) order the person to pay a monetary penalty that the court considers appropriate; and
  - (b) make any other order that the court considers appropriate, including an injunction.
- (2) A monetary penalty imposed under subsection (1) must not exceed the relevant maximum amount of monetary penalty specified under Part 7 or the regulations in relation to a contravention of that WHS civil penalty provision.

**260 Proceeding may be brought by the regulator or an inspector**

Proceedings for a contravention of a WHS civil penalty provision may only be brought by:

- (a) the regulator; or
- (b) an inspector with the written authorisation of the regulator (either generally or in a particular case).

**261 Limitation period for WHS civil penalty proceedings**

Proceedings for a contravention of a WHS civil penalty provision may be brought within 2 years after the contravention first comes to the notice of the regulator.

**262 Recovery of a monetary penalty**

If the court orders a person to pay a monetary penalty:

- (a) the penalty is payable to the [State]; and
- (b) the [State] may enforce the order as if it were a judgment of the court.

**Note**

See the jurisdictional note in the Appendix.

**263 Civil double jeopardy**

A court must not make an order against a person under section 259 for contravention of a WHS civil penalty provision if an order has been made against the person under a civil penalty provision under an Act of the Commonwealth or a State in relation to conduct that is substantially the same as the conduct constituting the contravention.

**264 Criminal proceedings during civil proceedings**

- (1) Proceedings against a person for a contravention of a WHS civil penalty provision are stayed if:
  - (a) criminal proceedings are commenced or have already commenced against the person for an offence; and
  - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention of the WHS civil penalty provision.
- (2) The proceedings for the order may be resumed if the person is not convicted or found guilty of the offence. Otherwise, the proceedings for the order are dismissed.

**265 Criminal proceedings after civil proceedings**

Criminal proceedings may be commenced against a person for conduct that is substantially the same as conduct constituting a contravention of a WHS civil penalty provision regardless of whether an order has been made against the person under section 259.

**266 Evidence given in proceedings for contravention of WHS civil penalty provision not admissible in criminal proceedings**

- (1) Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:
  - (a) the individual previously gave the information or produced the documents in proceedings against the individual for a contravention of a WHS civil penalty

Part 12 Review of decisions

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provision (whether or not the order was made); and

- (b) the conduct alleged to constitute the offence is substantially the same as the conduct alleged to constitute the contravention of the WHS civil penalty provision.
- (2) However, this does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in the proceedings for the contravention of the WHS civil penalty provision.

**Division 8 Civil liability not affected by this Act**

**267 Civil liability not affected by this Act**

Except as provided in Part 6 and Part 7 and Division 7 of this Part, nothing in this Act is to be construed as:

- (a) conferring a right of action in civil proceedings in relation to a contravention of a provision of this Act; or
- (b) conferring a defence to an action in civil proceedings or otherwise affecting a right of action in civil proceedings; or
- (c) affecting the extent (if any) to which a right of action arises, or civil proceedings may be brought, in relation to breaches of duties or obligations imposed by the regulations.

## Part 14 General

### Division 1 General provisions

#### 268 Offence to give false or misleading information

(1) A person must not give information in complying or purportedly complying with this Act that the person knows:

- (a) to be false or misleading in a material particular; or
- (b) omits any matter or thing without which the information is misleading.

Maximum penalty: tier D monetary penalty.

(2) A person must not produce a document in complying or purportedly complying with this Act that the person knows to be false or misleading in a material particular without:

- (a) indicating the respect in which it is false or misleading and, if practicable, providing correct information; or
- (b) accompanying the document with a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:
  - (i) stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and
  - (ii) setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.

Maximum penalty: tier D monetary penalty.

- (3) Subsection (2) places an evidential burden on the accused to show that the accused had indicated the extent to which the document was false or misleading or that the accompanying document sufficiently explained the extent to which the document was false or misleading.

**Note**

See the jurisdictional note in the Appendix.

**269 Act does not affect legal professional privilege**

Nothing in this Act requires a person to produce a document that would disclose information, or otherwise provide information, that is the subject of legal professional privilege.

**270 Immunity from liability**

- (1) An inspector, or other person engaged in the administration of this Act, incurs no civil liability for an act or omission done or omitted to be done in good faith and in the execution or purported execution of powers and functions under this Act.
- (2) A civil liability that would, but for subsection (1), attach to a person, attaches instead to the [State].

**Note**

See the jurisdictional note in the Appendix.

**271 Confidentiality of information**

- (1) This section applies if a person obtains information or gains access to a document in exercising any power or function under this Act (other than under Part 7).
- (2) The person must not do any of the following:

Part 14 General

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- (a) disclose to anyone else:
  - (i) the information; or
  - (ii) the contents of or information contained in the document;
- (b) give access to the document to anyone else;
- (c) use the information or document for any purpose.

Maximum penalty: tier D monetary penalty.

- (3) Subsection (2) does not apply to the disclosure of information, or the giving of access to a document or the use of information or a document:
  - (a) about a person, with the person's consent; or
  - (b) that is necessary for the exercise of a power or function under this Act; or
  - (c) that is authorised under section 271A; or
  - (d) that is required by any court, tribunal, authority or person having lawful authority to require the production of documents or the answering of questions; or
  - (e) that is required or authorised under a law; or
  - (f) to a Minister.
- (4) A person must not intentionally disclose to another person the name of an individual who has made a complaint in relation to that other person unless:
  - (a) the disclosure is made with the consent of the complainant; or
  - (b) the disclosure is required under a law.

Maximum penalty: tier D monetary penalty.

**271A Additional ways that regulator may use and share information**

- (1) This section applies in relation to information or a document mentioned in section 271(1).
- (2) The regulator or a person authorised by the regulator may, in the circumstances stated in subsection (3):
  - (a) disclose the information, or the contents of or information contained in the document, to any other person including a corresponding regulator; or
  - (b) give access to the document to any other person including a corresponding regulator; or
  - (c) use the information or document.
- (3) The circumstances are that the regulator reasonably believes the disclosure, access or use:
  - (a) is necessary for administering, or monitoring or enforcing compliance with, this Act; or
  - (b) is necessary for the administration or enforcement of another Act prescribed by the regulations; or
  - (c) is necessary for the administration or enforcement of another Act or law, if the disclosure, access or use is necessary to lessen or prevent a serious risk to public health or safety; or
  - (d) is necessary for the recognition of authorisations under a corresponding WHS law; or

- (f) is required for the exercise of a power or function under a corresponding WHS law.
- (4) This section does not limit the operation of section 271(3)(a), (b), (d), (e) or (f) in relation to the disclosure of information, giving of access to a document or use of information or a document by the regulator or a person authorised by the regulator.

**272 No contracting out**

A term of any agreement or contract that purports to exclude, limit or modify the operation of this Act or any duty owed under this Act or to transfer to another person any duty owed under this Act is void.

**272A No insurance or other indemnity against penalties**

- (1) A person must not, without reasonable excuse:
  - (a) enter into a contract of insurance or other arrangement under which the person, or another person, is purportedly covered for all or part of a liability for a monetary penalty under this Act; or
  - (b) provide insurance or a grant of indemnity for all or part of a liability for a monetary penalty under this Act; or
  - (c) take the benefit of a contract of insurance, arrangement or grant of indemnity mentioned in paragraph (a) or (b).

Maximum penalty: tier B monetary penalty.

- (2) Subsection (1) places an evidential burden on the accused to show a reasonable excuse.

- (3) A term of a contract of insurance or other arrangement is void to the extent it purports to cover a person for all or part of a liability for a monetary penalty under this Act.

**Note**

See the jurisdictional note in the Appendix.

**272B Liability of officers for offences by body corporate under s 272A**

- (1) A person commits an offence against this section if:
  - (a) a body corporate contravenes section 272A; and
  - (b) the person is an officer of the body corporate; and
  - (c) the person is involved in the body corporate's contravention of section 272A.

Maximum penalty: tier B monetary penalty.

- (2) For subsection (1)(c), section 256(2) applies as if a reference in that section to a civil penalty provision were a reference to section 272A.

**273 Person not to levy workers**

A person conducting a business or undertaking must not impose a levy or charge on a worker, or permit a levy or charge to be imposed on a worker, for anything done, or provided, in relation to work health and safety.

Maximum penalty: tier F monetary penalty.

## Division 2 Codes of practice

### 274 Approved codes of practice

- (1) The Minister may approve a code of practice for the purposes of this Act and may vary or revoke an approved code of practice.
- (2) The Minister may only approve, vary or revoke a code of practice under subsection (1) if that code of practice, variation or revocation was developed by a process that involved consultation between:
  - (a) the Governments of the Commonwealth and each State and Territory; and
  - (b) unions; and
  - (c) employer organisations.
- (3) A code of practice may apply, adopt or incorporate any matter contained in a document formulated, issued or published by a person or body whether:
  - (a) with or without modification; or
  - (b) as in force at a particular time or from time to time.
- (4) An approval of a code of practice, or a variation or revocation of an approved code of practice, takes effect when notice of it is published in the Government Gazette or on such later date as is specified in the approval, variation or revocation.
- (5) As soon as practicable after approving a code of practice, or varying or revoking an approved code of practice, the Minister must ensure that notice of the approval, variation or revocation is published in the Government Gazette and a newspaper circulating generally throughout the [State].

- (6) The regulator must ensure that a copy of:
- (a) each code of practice that is currently approved; and
  - (b) each document applied, adopted or incorporated (to any extent) by an approved code of practice,
- is available for inspection by members of the public without charge at the office of the regulator during normal business hours.

**Note**

See the jurisdictional note in the Appendix.

**275 Use of codes of practice in proceedings**

- (1) This section applies in a proceeding for an offence against this Act.
- (2) An approved code of practice is admissible in the proceeding as evidence of whether or not a duty or obligation under this Act has been complied with.
- (3) The court may:
  - (a) have regard to the code as evidence of what is known about a hazard or risk, risk assessment or risk control to which the code relates; and
  - (b) rely on the code in determining what is reasonably practicable in the circumstances to which the code relates.

**Note**

See section 18 for the meaning of *reasonably practicable*.

- (4) Nothing in this section prevents a person from introducing evidence of compliance with this Act in a manner that is different from the code but

provides a standard of work health and safety that is equivalent to or higher than the standard required in the code.

### **Division 3 Regulation-making powers**

#### **276 Regulation-making powers**

- (1) The Governor in Council may make regulations in relation to:
  - (a) any matter relating to work health and safety; and
  - (b) any matter or thing required or permitted by this Act to be prescribed or that is necessary or convenient to be prescribed to give effect to this Act.
- (2) Without limiting subsection (1), the regulations may make provision for or in relation to matters set out in Schedule 3.
- (3) The regulations may:
  - (a) be of general or limited application; or
  - (b) differ according to differences in time, place or circumstance; or
  - (c) leave any matter or thing to be, from time to time, determined, applied or approved by the regulator, an inspector or any other prescribed person or body of persons; or
  - (d) apply, adopt or incorporate any matter contained in any document formulated, issued or published by a person or body whether:

Part 14 General

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- (i) with or without modification; or
- (ii) as in force at a particular time or as in force or remade from time to time; or
- (e) prescribe exemptions from complying with any of the regulations on the terms and conditions (if any) prescribed; or
- (f) allow the regulator to provide exemptions from complying with any of the regulations on the terms and conditions (if any) prescribed or, if the regulations allow, on the terms and conditions (if any) determined by the regulator; or
- (g) prescribe fees for doing any act or providing any service for the purposes of this Act and prescribe the circumstances and way in which fees can be refunded, waived or reduced; or
- (h) prescribe the following penalties for an offence under the regulations—
  - (i) a tier E monetary penalty;
  - (ii) a tier F monetary penalty;
  - (iii) a tier G monetary penalty;
  - (iv) a tier H monetary penalty;
  - (v) a tier I monetary penalty;
- (i) prescribe an infringement penalty for each infringement offence which must not exceed 20 per cent of the penalty for the offence which is prescribed as the infringement offence.

## Model Work Health and Safety Bill

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### **Note**

See the jurisdictional notes in the Appendix.

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Schedule 1—Application of Act to dangerous goods and high risk plant

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**Schedule 1—Application of Act to dangerous goods and high risk plant**

- 1 This Act applies to the storage and handling of dangerous goods even if the dangerous goods are not at a workplace or for use in carrying out work.
- 2 For the purposes of clause 1:
  - (a) a reference in this Act to carrying out work includes a reference to the storage or handling of dangerous goods; and
  - (b) a reference in this Act to a workplace includes a reference to the premises at or in which the dangerous goods are stored or handled; and
  - (c) a reference in this Act to work health and safety (however expressed) includes a reference to public health and safety.
- 3 This Act applies to the operation or use of high risk plant, affecting public safety, even if the plant is not situated, operated or used at a workplace or for use in carrying out work.
- 4 For the purposes of clause 3:
  - (a) a reference in this Act to carrying out work includes a reference to the operation and use of high risk plant affecting public safety; and
  - (b) a reference in this Act to a workplace includes a reference to any high risk plant affecting public safety and the premises at or in which the plant is situated or used; and

(c) a reference in this Act to work health and safety (however expressed) includes a reference to public health and safety.

5 The operation of this Schedule is subject to any exclusions or modifications prescribed by the regulations.

6 In this Schedule:

***dangerous goods*** means anything prescribed as dangerous goods.

***high risk plant*** means plant prescribed as high risk plant.

**Note**

See the jurisdictional note in the Appendix.

## **Schedule 2—The regulator and local tripartite consultation arrangements and other local arrangements**

### **Note**

See the jurisdictional note in the Appendix.

## Schedule 3—Regulation-making powers

### 1 Duties

- 1.1 Matters relating to the way in which duties imposed by this Act are to be performed.
- 1.2 Matters relating to the regulation or prohibition of specified activities or a specified class of activities:
  - (a) at workplaces or a specified class of workplaces; or
  - (b) by a specified class of persons on whom duties or obligations are imposed by this Act, to eliminate or minimise risks to health and safety.
- 1.3 Imposing duties on persons in relation to any matter provided for under the regulations.

### 2 Incidents

Matters relating to incidents at workplaces including:

- (a) regulating or requiring the taking of any action to avoid an incident at a workplace or in the course of conducting a business or undertaking; and
- (b) regulating, requiring or prohibiting the taking of any action in the event of an incident at a workplace or in the conduct of a business or undertaking.

### 3 Plant, substances or structures

Matters relating to plant, substances or structures, including:

- (a) regulating the storage and handling of plant, substances and structures; and
- (b) regulating or requiring:
  - (i) the examination, testing, labelling, maintenance or repair of plant and structures; or
  - (ii) the examination, testing, analysis or labelling of any substance.

#### **4 Protection and welfare of workers**

Matters relating to the protection and welfare of workers including:

- (a) regulating or requiring the provision and use of protective clothing or equipment, or rescue equipment, in specified circumstances; and
- (b) regulating or requiring the provision of specified facilities for the welfare of workers at the workplace; and
- (c) matters relating to health and safety in relation to accommodation provided to workers.

#### **5 Hazards and risks**

Matters relating to hazards and risks including:

- (a) the prescribing of standards relating to the use of or exposure to any physical, biological, chemical or psychological hazard; and
- (b) matters relating to safety cases, safety management plans and safety management systems (however described); and

(c) matters relating to measures to control risks.

## **6 Records and notices**

- 6.1 The keeping and availability of records of health and safety representatives and deputy health and safety representatives.
- 6.2 The keeping of records in relation to incidents.
- 6.3 The keeping of records of specified activities, matters or things to be kept by specified persons.
- 6.4 The giving of notice of or information about specified activities, matters or things to the regulator, an inspector or other specified person.

## **7 Authorisations**

- 7.1 Matters relating to authorisations (including licences, registrations and permits) and qualifications, and experience for the purposes of Part 4 or the regulations including providing for:
  - (a) applications for the grant, issue, renewal, variation, suspension and cancellation of authorisations, including the minimum age to be eligible for an authorisation; and
  - (b) the evidence and information to be provided in relation to applications including the provision of statutory declarations; and
  - (c) exemptions; and
  - (d) variations of authorisations by the regulator whether on application or otherwise; and
  - (e) authorisation of persons as trainers and assessors; and
  - (f) examination of applicants for authorisations; and

- (g) conditions of authorisations; and
  - (h) fees for applications for the grant, issue, renewal and variation of authorisations.
- 7.2 The recognition of authorisations under corresponding WHS laws and exceptions to recognition.
- 7.3 The sharing of information with corresponding regulators relating to the grant, issue, renewal, variation, suspension or cancellation of authorisations.

## **8 Work groups**

Matters relating to work groups and variation of work groups and agreements or variations of agreements relating to the determination of work groups.

## **9 Health and safety committees and health and safety representatives**

Matters relating to health and safety committees and health and safety representatives.

## **10 Issue resolution**

Matters relating to issue resolution including:

- (a) the minimum requirements for an agreed procedure for resolving an issue; and
- (b) the requirements for a default issue resolution procedure where there is no agreed procedure.

## **11 WHS entry permits**

Matters relating to WHS entry permits, including providing for:

- (a) eligibility for WHS entry permits; and
- (b) procedures for applications for WHS entry permits and objections to applications for WHS entry permits; and
- (c) conditions of WHS entry permits; and
- (d) the form of WHS entry permits; and
- (e) requirements for training; and
- (f) records of WHS entry permits.

## **12 Identity cards**

Matters relating to identity cards.

## **13 Forfeiture**

Matters relating to:

- (a) costs of forfeiture and disposal of forfeited things; and
- (b) disposal of seized things and forfeited things.

## **14 Review of decisions**

Matters relating to the review of decisions under the regulations including:

- (a) prescribing decisions as reviewable decisions for the purposes of Part 12 or for the purposes of the regulations; and
- (b) prescribing procedures for internal and external review of decisions under the regulations; and
- (c) conferring jurisdiction on the [designated court or tribunal] to conduct reviews under the regulations.

## Model Work Health and Safety Bill

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### **Note**

See the jurisdictional notes in the Appendix.

Schedule 4—Penalty amounts

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**Schedule 4—Penalty amounts**

**1 Maximum monetary penalties—categories 1–3**

If a category 1 monetary penalty, category 2 monetary penalty or category 3 monetary penalty is specified as the maximum penalty for an offence under this Act the maximum penalty is the penalty set out in the table to this clause as indexed under clause 4 and rounded under clause 5.

<b>Tier</b>	<b>Maximum penalty—individual (as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)</b>	<b>Maximum penalty—individual (otherwise)</b>	<b>Maximum penalty—body corporate</b>
category 1	\$2 085 000	\$1 042 000	\$10 425 000
category 2	\$418 000	\$209 000	\$2 090 000
category 3	\$140 000	\$70 000	\$700 000

**1A Maximum monetary penalties—industrial manslaughter**

**Note**

Schedule 4—Penalty amounts

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See the jurisdictional note in the Appendix. The jurisdictional note recommends a maximum monetary penalty of \$18 million.

**2 Maximum monetary penalties—tiers A–I**

If a tier A monetary penalty, tier B monetary penalty, tier C monetary penalty, tier D monetary penalty, tier E monetary penalty, tier F monetary penalty, tier G monetary penalty, tier H monetary penalty or tier I monetary penalty is specified as the maximum penalty for an offence under this Act the maximum penalty is the penalty set out in the table to this clause as indexed under clause 4 and rounded under clause 5.

<b>Tier</b>	<b>Maximum penalty— individual</b>	<b>Maximum penalty—body corporate</b>
tier A	\$139 000	\$695 000
tier B	\$70 000	\$350 000
tier C	\$28 000	\$140 000
tier D	\$14 000	\$70 000
tier E	\$8 400	\$42 000
tier F	\$7 000	\$35 000
tier G	\$5 000	\$25 000
tier H	\$2 800	\$14 000
tier I	\$1 700	\$8 500

Schedule 4—Penalty amounts

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**3 Maximum monetary penalty—WHS civil penalty tiers 1–4**

If a tier 1 WHS civil penalty provision, tier 2 WHS civil penalty provision, tier 3 WHS civil penalty provision or tier 4 WHS civil penalty provision is specified as the maximum penalty for an offence under this Act the maximum penalty is the penalty set out in the table to this clause as indexed under clause 4 and rounded under clause 5.

<b>Tier</b>	<b>Maximum penalty—individual</b>	<b>Maximum penalty—body corporate</b>
tier 1	\$28 000	\$140 000
tier 2	\$14 000	\$70 000
tier 3	\$7 000	\$35 000
tier 4	\$2 800	\$14 000

**4 Indexation of maximum penalty amounts**

- (1) The maximum amount of each monetary penalty set out in clauses 1–3 must be indexed for the year commencing on 1 July 2024, and each subsequent year, in accordance with this clause.
- (2) The maximum amount of each monetary penalty applying in each year is calculated as follows—

$$A \times \frac{B}{C}$$

where—

Schedule 4—Penalty amounts

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**A** is the maximum amount of a monetary penalty set out in clauses 1–3.

**B** is the CPI number for the March quarter in the year immediately preceding the year for which the amount is calculated.

**C** is the CPI number for the March quarter of 2022.

- (3) If the maximum amount of a monetary penalty calculated for a year is less than the amount that applied in the previous year, then the amount for the previous year continues to apply.
- (4) In this clause:  
**CPI number** means the All Groups Consumer Price Index number, that is, the weighted average of the 8 Australian capital cities, published by the Australian Statistician.  
**year** means a period of 12 months starting on 1 July.

## 5 Rounding of maximum penalty amounts

If, after indexation under clause 4, the maximum amount of a monetary penalty is:

- (a) less than \$10 000 and not a multiple of \$100:
  - (i) the maximum amount of the penalty must be rounded to the nearest \$100; and
  - (ii) an amount of \$50 is rounded down; or
- (b) more than \$10 000 and not a multiple of \$1 000:
  - (i) the maximum amount of the penalty must be rounded to the nearest \$1 000; and
  - (ii) an amount of \$500 is rounded down.

## **6 Public notification of adjusted maximum penalty amounts**

- (1) As soon as practicable after publication by the Australian Statistician of the CPI number for the March quarter each year, the regulator must give notice of the maximum amount of each monetary penalty calculated under this Schedule.
- (2) Notice must be given:
  - (a) on an appropriate government website; and
  - (b) in the Government Gazette.

### **Editorial note**

The monetary penalty amounts as calculated under this Schedule may also be viewed on the Safe Work Australia website (<http://www.swa.gov.au>).

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Appendix

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**APPENDIX**  
**JURISDICTIONAL NOTES**

<b>Section</b>	<b>Jurisdictional note</b>
1	Appropriate local provisions to be inserted. However, a uniform form of citation is suggested, for example, the <i>Work Health and Safety Act 2010</i> .  In Victoria a purpose provision will be used in place of the citation provision.
2	Appropriate local provisions to be inserted with a view to commencing the model provisions on the same date in each jurisdiction.
3(1)	The words in brackets are optional for jurisdictions. They may only be included if the relevant provisions of Schedule 1 are included.
3(2)	The words in brackets are optional for jurisdictions. They may only be included if the relevant provisions of Schedule 1 are included.
4 <i>authorising authority</i>	Each jurisdiction will need to specify the court or tribunal or body to be the authorising authority for that jurisdiction. If the term regulator or designated court or tribunal or both is to be used in Part 7 instead of authorising authority, this definition is to be deleted.

Appendix

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<b>Section</b>	<b>Jurisdictional note</b>
4 <i>corresponding WHS law</i>	<p>Each jurisdiction will specify the Acts that are to be corresponding Acts and may include a power to prescribe corresponding Acts by regulation.</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> <p>This term is used in the definition of corresponding regulator in clause 4, and in sections 85, 90, 113, 138, 156 and 271 and item 7.2 of Schedule 3 to refer to training and other requirements, eligibility criteria, appointments, authorisations and information-sharing under corresponding WHS laws.</p>
4 <i>court</i>	Each jurisdiction will specify the relevant court or courts for the Act or specified provisions of the Act.
4 <i>industrial manslaughter monetary penalty</i>	<p>A jurisdiction that creates the offence of industrial manslaughter will need to insert a monetary penalty in Schedule 4.</p> <p>The recommended maximum monetary penalty applies only to a body corporate and is \$18 million.</p>
4 <i>local authority</i>	Each jurisdiction will determine the local authorities for its jurisdiction.
4 <i>public authority</i>	Each jurisdiction will determine the public authorities for its jurisdiction.
4 <i>regulator</i>	Each jurisdiction will specify the relevant regulator for its jurisdiction, for example WorkSafe Victoria.
4 <i>this Act</i>	Some jurisdictions may need to disapply the meaning of this term in their Interpretation Acts.

## Model Work Health and Safety Bill

### Appendix

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<b>Section</b>	<b>Jurisdictional note</b>
7	<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> <p>Each jurisdiction may vary section 7(2)(b) as necessary for consistency with jurisdictional police laws (for example, to limit the application of section 7(2)(b) in jurisdictions where police are taken always to be on duty).</p>
9	<p>Jurisdictions may have to disapply the provisions of their Interpretations Acts relating to examples and notes.</p> <p>Jurisdictions may use a different style to identify examples and notes from that in the model Bill.</p>
10	<p>Each jurisdiction will, if necessary, enact a provision to ensure that the Crown in right of the jurisdiction and also in all its other capacities is bound by the model provisions. For example, the Australian Capital Territory can omit this provision because of the effect of section 121 of its <i>Legislation Act 2001</i>. Some jurisdictions may need to refer to the State rather than the Crown throughout the Bill.</p>
11	<p>Each jurisdiction may insert a local provision relating to extraterritorial application including the extraterritorial reach of offences.</p>

## Model Work Health and Safety Bill

### Appendix

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<b>Section</b>	<b>Jurisdictional note</b>
12	<p>Each jurisdiction may insert local provisions to establish the relationship between the model provisions and other Acts in the jurisdiction. The Commonwealth will need to deal with the operation of Commonwealth and State and Territory laws, see for example section 4 of the <i>Occupational Health and Safety Act 1991</i> of the Commonwealth.</p> <p>The Commonwealth may need to draft provisions to deal with matters relating to national security, defence and federal police operation, see for example sections 6 to 8 of the <i>Occupational Health and Safety Act 1991</i> of the Commonwealth.</p>
30A	<p>Each jurisdiction may insert local provisions to create an offence of industrial manslaughter. The offence of industrial manslaughter would be in addition to the existing offence under section 31 and address conduct by a person that represents a gross deviation from the reasonable standard of care resulting in a work-related fatality.</p> <p>The recommended maximum penalty for the offence is:</p> <p>For an individual—20 years imprisonment.</p> <p>For a body corporate—industrial manslaughter monetary penalty.</p>
31(1)	A jurisdiction may replace the term ‘gross negligence’ with another term consistent with the law of the jurisdiction.
36(3)	Each jurisdiction will specify the relevant registration Act which will be the Health Practitioner Regulation National Law of that jurisdiction.
38	A jurisdiction may remove this reporting requirement to the extent that similar reporting arrangements exist under local laws.

## Model Work Health and Safety Bill

### Appendix

Section	Jurisdictional note
65 (and sections 112, 114, 215, 220, 236 and Schedule 3)	Jurisdictions will designate the relevant courts and tribunals and specify the relevant jurisdiction in relation to any matter conferred on a court or tribunal under any provision of the Model Bill or the regulations and make any necessary consequential amendments including the amendment or addition of definitions.
103	Each jurisdiction may need to make appropriate amendments to this provision to ensure it conforms to local legislation.
108	Jurisdictions may need to include their own definitions of emergency services worker.
110	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.".
Part 7 (and sections 138 and 142)	A jurisdiction may use <b>regulator</b> rather than <b>authorising authority</b> for some or all of the provisions of Part 7 and make any necessary consequential changes. This will be necessary for jurisdictions where the regulator performs some or all of the functions of the authorising authority.
116 (and sections 124, 131, 133, 137, 138 and 150)	A State or Territory may insert its relevant industrial law. The Commonwealth may omit this definition and omit references to <b>relevant State or Territory industrial law</b> where they appear in sections 124, 131, 133, 137, 138 and 150.
119	The Commonwealth may need to provide that 24 hours notice may be required to enter workplaces associated with national security, defence and federal police operations.
152	Jurisdictions may add to the list of functions.

## Model Work Health and Safety Bill

### Appendix

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<b>Section</b>	<b>Jurisdictional note</b>
154	A jurisdiction may specify local delegation requirements and the persons to whom a delegation may be made and may rely on its standard delegation provisions.
156	A jurisdiction will need to include local provisions to ensure that appropriate arrangements are made for the appointment as an inspector of a person who is an inspector under a corresponding WHS law. A jurisdiction may need to include local provisions to ensure that the dual appointments are made in a manner consistent with any applicable public service laws. For example, section 51 of the <i>Occupational Health and Safety Act 1991</i> of the Commonwealth. A jurisdiction may replace the term <b>public servant</b> with the corresponding or appropriate term used in the jurisdiction.
157	Jurisdictions may need to specify local provisions for identity cards.
160	A jurisdiction may omit paragraph (f) if this matter is dealt with in other laws of the jurisdiction.
165	A jurisdiction may omit the words "without paying for it" in subsection (1)(e).
Part 9, Division 3, Subdivision 2	A jurisdiction will need to make appropriate adjustments to the search warrant provisions to enable them to operate in its jurisdiction.

## Model Work Health and Safety Bill

### Appendix

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<b>Section</b>	<b>Jurisdictional note</b>
172	<p>A jurisdiction may adjust this provision as necessary to accord with the legal or legislative or human rights principles applying in its jurisdiction.</p> <p>A requirement to answer a question, or provide information or a document, may be made of a person in another jurisdiction where section 172 of the corresponding WHS law may be different. Section 172(3) is to remove doubt that, if a requirement is made under the WHS law of a jurisdiction, it is section 172 of that WHS law that applies.</p> <p>For example, if the regulator in NSW issues a notice under section 155 of the NSW law to a person in the ACT, section 172 of the NSW law applies to the requirement.</p>
179	The Commonwealth will need to adjust this provision for its jurisdiction.
184 (and sections 179, 220, 262, 270 and 274)	Jurisdictions will need to replace "State" with "Territory" or "the Commonwealth" as is relevant to the jurisdiction.
185	A jurisdiction may include an alternative provision that deals with compensation for acquisition of property under this Act.
187	A jurisdiction may amend section 185 to align it with its human rights charter or other legislative protocols.
189	A jurisdiction may amend or remove the offence in subsection (4) if this is inconsistent with the powers of police in that jurisdiction.
	A jurisdiction may omit this provision if this matter is dealt with in other laws of its jurisdiction.
	A jurisdiction which has a Criminal Code may displace the default element of intention that applies in that jurisdiction by stating that recklessness will apply.

## Model Work Health and Safety Bill

### Appendix

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<b>Section</b>	<b>Jurisdictional note</b>
223	<p>A jurisdiction may provide for the following decisions to be reviewable decisions where the regulator is the authorising authority:</p> <p>(a) a decision under section 134 to refuse to issue a WHS permit;</p> <p>(b) a decision under section 140 to revoke, suspend or take other action in relation to a WHS entry permit.</p> <p>The eligible persons in relation to the reviewable decision would be:</p> <p>(a) the relevant union;</p> <p>(b) the person for whom the entry permit is sought, in relation to section 134;</p> <p>(c) the WHS permit holder, in relation to section 140.</p>
229	<p>Each jurisdiction must specify the appropriate external review body.</p> <p>A jurisdiction may provide for the nature and scope of the external review and the powers that may be exercised by the external review body in relation to an external review if this is not provided for in other laws. An external review is intended to be a merits review and the external review body is to be able to affirm or overturn the decision reviewed or to substitute its own decision for that decision.</p> <p>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.</p>
230	<p>In relation to section 230(1), a jurisdiction may add other public officials who hold a relevant public office or administer this Act to bring proceedings for an offence against this Act, with the written authorisation of the regulator.</p>

## Model Work Health and Safety Bill

### Appendix

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<b>Section</b>	<b>Jurisdictional note</b>
	In relation to section 230(4), amendments may be necessary in some jurisdictions to ensure that this provision does not conflict with arrangements under other legislation in that jurisdiction.
	A jurisdiction may confer jurisdiction on courts to hear prosecutions and appeals in relation to offences under this Act.
231	A jurisdiction may amend subsections (2), (3), (4), (5) and (6) to reflect the role of the Director of Public Prosecutions in that jurisdiction or omit the provisions if they are inconsistent with prosecutorial policy and practice in that jurisdiction.
232	A jurisdiction may specify other types of official inquiries for the purposes of subsection (1)(b), as appropriate to that jurisdiction.
243	Jurisdictions must enact provisions as necessary to: <ul style="list-style-type: none"><li>• enable an infringement scheme to be established in relation to this Act; and</li><li>• prescribe the offences for which infringement notices may be issued consistent with the model regulations.</li></ul>
244–244D	A jurisdiction may omit these sections if the relevant laws of the jurisdiction already provide for this.
244B(1A)	A jurisdiction may replace the term ‘gross negligence’ with another term consistent with the law of the jurisdiction.
244BA	A jurisdiction may replace the term ‘gross negligence’ with another term consistent with the law of the jurisdiction.
245	A jurisdiction may need to adjust this section in relation to its jurisdiction.
246	A jurisdiction may need to adjust this section in relation to its jurisdiction
268	The Commonwealth may rely on the provisions of the Criminal Code in place of this offence.

## Model Work Health and Safety Bill

### Appendix

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<b>Section</b>	<b>Jurisdictional note</b>
272A(3)	Each jurisdiction will need to consider the application of this section to contracts and other arrangements in force when the section commences.
274	Jurisdictions may need to adjust the references to the Government Gazette as relevant to the jurisdiction.
276	Jurisdictions may replace Governor in Council with the appropriate term for that jurisdiction. A jurisdiction can include a provision clarifying that the regulation-making powers do not limit the powers already provided in their interpretation legislation.
Schedule 1	This Schedule is optional for jurisdictions. A jurisdiction may choose to regulate high risk plant or dangerous goods or both.
Schedule 2	A jurisdiction may use this Schedule to establish the regulator and to provide for local consultation arrangements and for local arrangements for the collection of money and the provision of data.
Schedule 4, clause 1A	A jurisdiction that creates the offence of industrial manslaughter should insert a clause providing for the maximum monetary penalty payable for the offence by a body corporate. The recommended maximum penalty is \$18 million.

## Model Work Health and Safety Bill

### Appendix

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<b>Section</b>	<b>Jurisdictional note</b>
Additional jurisdictional notes	<p>The Commonwealth will make appropriate amendments to set out the intended area of coverage of the Model Bill. The existing Commonwealth Act applies to Commonwealth departments and agencies, Commonwealth authorities and certain licensees and their employees and contractors.</p> <p>Jurisdictions will use numbering that is harmonised with the Model Bill. Some jurisdictions may need to omit or add provisions to give effect to jurisdictional notes. If a provision is omitted, the jurisdiction will leave a gap in the numbering. If a provision is added an alphanumeric number will be used. eg 29A, 29B.</p> <p>The Commonwealth or any other jurisdiction may specify, where necessary, whether a provision of the Model Bill is legislative or non-legislative in character.</p> <p>A jurisdiction will adjust the penalty provisions in the Model Bill to fit the manner of creating offences in its jurisdiction e.g. use of "penalty" rather than "maximum penalty".</p> <p>Jurisdictions may include subsections (or include a general statement provision in the Bill) clarifying where all or part of an offence attracts strict liability or absolute liability.</p> <p>A jurisdiction may need to make adjustments to accommodate the procedures and rules in its jurisdiction for bringing proceedings in relation to unincorporated associations and partnerships.</p> <p>Jurisdictions will designate the relevant courts and tribunals and specify the relevant jurisdiction in relation to any matter conferred on a court or tribunal under any provision of the Model Bill and make any necessary consequential amendments including the amendment or addition of definitions.</p>

## Model Work Health and Safety Bill

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<b>Section</b>	<b>Jurisdictional note</b>
	The Commonwealth may disapply section 4AB of the <i>Crimes Act 1914</i> of the Commonwealth to ensure uniformity with the monetary penalties in this Act.
	The Commonwealth may disapply section 4K of the <i>Crimes Act 1914</i> of the Commonwealth in relation to offences under sections 75 and 149.
	The Commonwealth and any other jurisdiction may include provisions in Division 3 of Part 9 to deal with the operation and seizure of electronic equipment during an entry and search of a place.
	The Commonwealth may define Fair Work Australia as a relevant tribunal or the purposes of this Act.

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