



Government of Western Australia
Department of the Attorney General

Policy and Aboriginal Services Directorate

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Our Ref: 2009/02578

The Hon Kate Doust MLC
Chair
Standing Committee on Uniform Legislation and Statutes Review

Email: ahickman@parliament.wa.gov.au

Attention: Mr Alex Hickman

Dear Mr Hickman

DIRECTORS' LIABILITY REFORM BILL 2015

Thank you for providing the transcript of the private hearing before the Standing Committee on Uniform Legislation and Statutes Review which was held on Monday 16 March 2015.

A corrected copy of the transcript is also attached on my behalf and on behalf of Ms Burnside and Ms Eldred. The Department would be grateful for a finalised copy of the transcript when it becomes available.

In addition, a response to your question regarding the Work Health and Safety Bill 2014, together with clarificatory information on some of the matters discussed at the hearing, is set out in the attached document.

Yours sincerely

Andrew Marshall
Manager, Research and Analysis

31 March 2015

DIRECTORS' LIABILITY REFORM BILL 2015

1. The Committee has requested, by way of an email from Mr Alex Hickman dated 20 March 2015, information as to the consistency between the National Partnership Agreement to Deliver a Seamless National Economy and the Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety. Information on this matter is set out below.

The Directors' Liability Reform Bill 2015 is made pursuant to the National Partnership Agreement to Deliver a Seamless National Economy. In addition to this Agreement, Western Australia is also a party to the Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety, a copy of which is **attached**.

Part 5.2 of the Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety provides that jurisdictions will adopt a model Occupational Health and Safety Act. The model Occupational Health and Safety Bill which has been developed is **attached** and contains, in clause 27, a provision relating to the liability of officers.

Western Australia is not adopting the model Occupational Health and Safety Bill in its entirety. However, the Work Health and Safety Bill 2014, a copy of which is **attached**, is based on the model Bill and includes, at proposed section 27, a provision in very similar terms to that contained in the model Occupational Health and Safety Bill. The approach taken is distinct from the approach taken in the Directors' Liability Reform Bill. However, it does not appear to be directly inconsistent with the COAG Principles; for instance, the provision does not seek to impose absolute liability on officers in respect of conduct of a body corporate.

The Department understands that workplace safety legislation was excluded from the directors' liability project by COAG on the basis of work being done on such legislation at a national level.

2. At the hearing on 16 March 2015, the Department's officers referred briefly to derivative liability as being 'more, in a sense, active than just being an accessory'. This was a slight misstatement. Evidently, derivative liability can be characterised as 'active' in that an officer is made liable on the basis of his or her failure to take reasonable steps; liability does not simply flow from an officer's position within a body corporate. However, the Department considers that accessorial liability tends to relate to active *involvement* in a body corporate's offence, while derivative liability concerns situations in which an officer's liability derives from the body corporate's offending (and is imposed on the basis of his or her failure to take reasonable steps).

Relevantly, it has come to the Department's attention that a small error was made in the written answers provided to the Committee on 16 March 2015. In response to question 3, the Department advised that there were 62 Acts which imposed derivative liability. In fact, as noted in the Second Reading Speech, two of these Acts (the *Mining Act 1978* (WA) and the *Taxation Administration Act 2003*) currently impose accessorial liability only.

3. At the hearing on 16 March 2015, the Hon Mark Lewis MLC referred to question 8 in the list of questions previously provided by the Committee and asked how the type of liability to be applied to particular offences had been determined. Mr Lewis also queried the need for derivative liability in respect of the offence in section 5(1) of the *Water Services Act 2012*. Information on these questions is set out below.

At the hearing, the Department's officers advised that the type of liability to be imposed was worked out in consultation with the agencies that administer the relevant Acts. Although this is correct, it is also important to note that the questions as to whether an offence required derivative liability, and if so what type of liability should be imposed, were also determined according to the COAG Principles and Guidelines. That is, the underlying policy behind the Directors' Liability Reform Bill 2015 is not only to achieve consistency, but to ensure that a principles-based approach is taken in imposing personal criminal liability on officers of bodies corporate in respect of corporate offending.

With respect to the specific offence in section 5(1) of the *Water Services Act 2012*, at the hearing on 16 March 2015 the Department's officers advised that the agency that administers this Act had advised derivative liability was necessary for this offence. Again, while this is correct, it should also be noted that the offence was judged to meet the requirements set out in the COAG Principles and COAG Guidelines.

Section 5(1) of the *Water Services Act 2012* provides that a person must not provide a water service except under a licence. Section 5(2) of the Act provides that subsection (1) does not apply to the provision of a water service by a body corporate to a related body corporate, and section 7 provides that the Minister can grant exemptions from the application of section 5(1) in respect of the provision of a water service in a specified area or areas of the State if satisfied that it would not be contrary to the public interest to do so.

The offence itself is a serious one, as it has the potential to have a significant impact on the provision of public water services and as such there is a risk of significant public harm (COAG Principle 4(a)). It is also fundamental to the scheme of the *Water Services Act 2012* that a person providing a water service (defined in the Act as a water supply, sewerage, irrigation or drainage service) must be licensed. On page 8 of the Guidelines for Applying the COAG Principles, it states:

'Where a regulatory regime is concerned with protecting against serious public harm...the centrality of the Underlying Offence to that regime will be important in determining whether it is reasonable to apply a Directors' Liability Provision. For example, where legislation imposes a licensing regime for companies engaged in potentially dangerous activities, the offence relating to the need for the company to hold a licence may be one for which a Directors' Liability Provision could be justified, given that it is a core element of the public policy rationale underlying the regulatory regime and a failure to hold a licence (and consequently a failure to be subject to its conditions) could result in serious public harm'.

Further, it is considered reasonable to expect that an officer of a body corporate would take all reasonable steps to prevent the body corporate from providing such a service without a licence, and that the commission of such an offence by the body corporate would be within the officer's knowledge (COAG Principle 4(c)).

4. At the hearing on 16 March 2015, the Hon Mark Lewis also asked what had triggered the directors' liability reform process. In addition to the answers provided at the hearing, further information on the background to this reform project is set out below.

It should be emphasised that the aim of the COAG reform project was not only to standardise provisions that impose derivative liability on officers of bodies corporate, but also to limit these provisions in order to reduce the regulatory burden on officers.

Accordingly, on page 7 of the Guidelines for Applying the COAG Principles, it states that the 'usual and default position is that there should be no Directors' Liability Provision'.

Part of the rationale for reducing the number of such provisions was to focus the minds of officers on the most serious offences that might be committed by a body corporate. Thus, on page 15 of the Guidelines for Applying the COAG Principles, it states:

'One of the justifications for imposing Directors' Liability on some, but not all, Underlying Offences, is that it gives greater focus to those particular offences and signals to directors that they should take even greater than usual diligence to ensuring that the corporation complies with those obligations.

The ability of Directors' Liability Provisions to achieve this outcome – a heightened incentive on directors to engage in hands-on risk-management arrangements in respect of particular offences – depends in part on Directors' Liability Provisions only being imposed on a relatively small number of offences. If Directors' Liability is imposed on too many offences, some of which are serious and some of which are not, then the imposition of such liability fails to serve as an effective signal to directors as to the few particular offences which society considers to be of such seriousness as to justify a higher level of personal diligence and risk-avoidance behaviour on the part of corporate boards'.

Inter-Governmental Agreement

for

Regulatory and Operational Reform in Occupational Health and Safety

The COMMONWEALTH OF AUSTRALIA
The STATE OF NEW SOUTH WALES
The STATE OF VICTORIA
The STATE OF QUEENSLAND
The STATE OF WESTERN AUSTRALIA
The STATE OF SOUTH AUSTRALIA
The STATE OF TASMANIA
The AUSTRALIAN CAPITAL TERRITORY
The NORTHERN TERRITORY OF AUSTRALIA

Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety

AN AGREEMENT made on the 3rd day of July 2008 between:

The COMMONWEALTH OF AUSTRALIA; and
The STATE OF NEW SOUTH WALES; and
The STATE OF VICTORIA; and
The STATE OF QUEENSLAND; and
The STATE OF WESTERN AUSTRALIA; and
The STATE OF SOUTH AUSTRALIA; and
The STATE OF TASMANIA; and
The AUSTRALIAN CAPITAL TERRITORY; and
The NORTHERN TERRITORY OF AUSTRALIA

RECITALS

- A. The Parties are committed to improving the health and safety of Australian workers.
- B. The Parties recognise that occupational health and safety (OHS) regulation affects every workplace in Australia. All Parties have OHS laws that aim to prevent workplace death, injury and disease. While these laws are based on similar underlying principles there are differences between jurisdictions in the details and application of these laws.
- C. The Parties have agreed to work cooperatively to harmonise OHS legislation. The Parties have endorsed the development of this Agreement to strengthen and formalise jurisdictional commitment in implementing OHS reforms.
- D. The Parties have agreed to the Commonwealth submitting legislation to the Commonwealth Parliament to establish [*ASCC replacement body*] as a replacement to the Australian Safety and Compensation Council (ASCC).
- E. The Parties acknowledge that [*ASCC replacement body*] will also have a workers' compensation role that is not covered by this Agreement.
- F. This Agreement sets out the principles and processes for cooperation between the Parties to progress OHS regulatory and operational reform.

THE PARTIES AGREE AS FOLLOWS –

PART 1 - OBJECTIVES OF THE INTER-GOVERNMENTAL AGREEMENT

- 1.1 The purpose of this Agreement is to formalise cooperation between the Commonwealth, state and territory governments on the harmonisation of OHS legislation and to establish appropriate governance arrangements to support this cooperation.
- 1.2 The Parties agree that OHS harmonisation means national uniformity of the OHS legislative framework (comprised of a model OHS Act, supported by model OHS regulations and model codes of practice) complemented by a nationally consistent approach to compliance policy and enforcement policy.
- 1.3 The Parties to this Agreement affirm their commitment to work cooperatively to achieve harmonisation of OHS laws. Supporting this commitment, all Parties have agreed to:
 - (a) the development by the Commonwealth of legislation to replace the ASCC with a national independent body, [*ASCC replacement body*];
 - (b) the development, monitoring and maintenance of model OHS legislation by [*ASCC replacement body*], including compliance and enforcement provisions; and;
 - (c) the adoption and implementation of model OHS legislation by each jurisdiction, as agreed by WRMC.
- 1.4 The fundamental objective of the reform covered by this Agreement is to produce the optimal model for a national approach to OHS regulation and operation which will:
 - (a) enable the development of uniform, equitable and effective safety standards and protections for all Australian workers;
 - (b) address the compliance and regulatory burdens for employers with operations in more than one jurisdiction;
 - (c) create efficiencies for governments in the provision of OHS regulatory and support services; and
 - (d) achieve significant and continual reductions in the incidence of death, injury and disease in the workplace.

PART 2 – THE WORKPLACE RELATIONS MINISTERS’ COUNCIL

2.1 Role and Functions

2.1.1 The primary role of the Workplace Relations Ministers’ Council (WRMC) in relation to this Agreement is to work cooperatively to harmonise OHS legislation by 2011 or earlier if agreed by COAG and to ensure that the terms of this Agreement are complied with.

2.1.2 The members of WRMC represent the Parties to this Agreement.

2.1.3 In relation to the Commonwealth legislation under which [*ASCC replacement body*] will be established, WRMC will be responsible for:

- (a) making decisions about a model OHS Act, regulations and codes of practice and a consistent compliance and enforcement policy as recommended to it by [*ASCC replacement body*];
- (b) making decisions about any other matters submitted or recommended by [*ASCC replacement body*];
- (c) making decisions about the three year strategic plan and the annual operational plan, including the annual budget of [*ASCC replacement body*];
- (d) providing direction to [*ASCC replacement body*] on policy development; and
- (e) performing any other function conferred on it by this Agreement.

2.1.4 WRMC will perform any other function conferred on it by this Agreement.

2.1.5 For the purposes of this Agreement, WRMC will conduct its affairs in accordance with the processes established by this Agreement.

2.2 Procedural and voting arrangements

2.2.1. When considering matters raised by [*ASCC replacement body*] and/or covered by this Agreement:

- (a) each member of WRMC shall have one vote on a proposed resolution and this vote shall represent the views of each Party to this Agreement;
- (b) where a member of WRMC is unable to be present at a meeting at which a vote is to be taken, that member may:
 - (i) advise the WRMC Chair of the voting intentions of his or her government, in writing prior to the meeting; or

- (ii) by notice in writing to the Chair appoint another person to act as his or her proxy at that meeting and to vote on that resolution in the member's place;
- (c) where WRMC is required to vote on a matter, it may do so:
 - (i) at a meeting of WRMC; or
 - (ii) by a written vote where [*ASCC replacement body*] submits the recommendation to each of the members of WRMC through the WRMC Secretariat and the members provide their vote to the WRMC Secretariat by the deadline agreed by WRMC;
- (d) at a meeting of WRMC, members who do not vote in person or by written vote or by proxy will be counted as having voted to approve a recommendation. Where a vote is conducted without a meeting, a member who does not submit his or her vote by the deadline set, will be counted as having voted to approve the recommendation;
- (e) a vote on a resolution, either at a meeting or out-of-session, will be carried by a two thirds majority of all members of WRMC, unless otherwise stated in this Agreement;
- (f) any changes to the funding arrangements in Part 4 of this Agreement will require the unanimous agreement of WRMC; and
- (g) any variation to this Agreement will require the unanimous agreement of the Parties.

2.2.2 For the purpose of clause 2.2.1 of this Agreement, all Parties to this Agreement will have a single vote on all matters raised by [*ASCC replacement body*] and/or covered by this Agreement, notwithstanding the number of WRMC members representing each Party.

2.3 Reporting Requirements

2.3.1 WRMC will report to the Council of Australian Governments (COAG) in accordance with any requirements established by this Agreement or by COAG guidelines and protocols or at least annually.

PART 3 – ADMINISTRATIVE ARRANGEMENTS FOR [ASCC replacement body]

3.1 Establishment of [ASCC replacement body]

- 3.1.1 [ASCC replacement body] will be established under Commonwealth legislation and will be subject to Commonwealth corporate governance regimes.
- 3.1.2 The Commonwealth will use its best endeavours to have enacted by the Parliament of the Commonwealth the legislation required to establish [ASCC replacement body]. The main features of the proposed legislation are set out in Schedule 1 to this Agreement.
- 3.1.3 In appointing members representing employees and employers the Commonwealth Minister will request the nominating bodies to ensure nominees have practical experience and high level expertise.

3.2 Responsibilities and Functions of [ASCC replacement body]

- 3.2.1 [ASCC replacement body] will be an independent Australian Government agency with the primary responsibility of driving national policy development in respect of OHS and workers' compensation matters.
- 3.2.2 The functions of [ASCC replacement body] in relation to this Agreement will include to:
- (a) develop, monitor, maintain and provide advice to WRMC on model OHS legislation consisting of a model principal act, model regulations and model codes of practice, to be adopted by all jurisdictions;
 - (b) develop a compliance and enforcement policy to ensure nationally consistent regulatory approaches across all jurisdictions;
 - (c) research, develop and recommend national OHS standards as appropriate;
 - (d) provide policy advice to WRMC on initiatives to improve workplace safety;
 - (e) collect and analyse workplace injury and disease data and undertake research in order to inform the development and evaluation of OHS policy;
 - (f) oversee maintenance and further development of the National OHS Strategy 2002-2012;

- (g) monitor key developments both national and international in OHS;
- (h) drive a national communications strategy to raise awareness of health and safety at work; and
- (i) undertake any other functions that are agreed by WRMC.

3.3 Reporting Requirements

- 3.3.1 The Chief Executive of [*ASCC replacement body*] will provide an annual report to Parliament and to the Members of [*ASCC replacement body*] and to WRMC which will include progress of the jurisdictions in implementing OHS reform and any other matters covered by this Agreement.
- 3.3.2 The [*ASCC replacement body*] Members will report to WRMC in accordance with any requirements established by this Agreement or as required by WRMC. This reporting will include a three year strategic plan and annual operational plans, consistent with the strategic plan, for approval by WRMC.

PART 4 – FINANCIAL ARRANGEMENTS FOR [*ASCC replacement body*]

4.1 Funding of [*ASCC replacement body*]

- 4.1.1 The Parties agree to provide funds for the establishment and ongoing maintenance of the [*ASCC replacement body*].
- 4.1.2 The Parties agree to the following funding arrangements:
 - (a) the Parties will each provide a share of the [*ASCC replacement body*] budget based on the following:
 - (i) the Commonwealth will fund 50 per cent of the budget;
 - (ii) the States and Territories will, together, fund 50 per cent of the budget with the contribution of each State and Territory proportional to its population. Proportions will be calculated each year using the most recently published Estimated Resident Population of Australia as published by the Australian Bureau of Statistics in 3101.0 – Australian Demographic Statistics;
 - (b) for 2008-09, the [*ASCC replacement body*] will have an initial budget of \$17 million, pro-rated to the date of establishment of [*ASCC replacement body*], and subject to indexation by the CPI as a minimum each year;

- (c) for 2009-10 and subsequent years, [*ASCC replacement body*] will submit to WRMC, by the end of May of the previous year, an annual operational plan, including the annual budget, consistent with the strategic plan; and
- (d) on each occasion the annual operational plan, including the annual budget will be approved by a two thirds majority vote of WRMC.

PART 5 – OCCUPATIONAL HEALTH AND SAFETY REFORM

5.1 Model OHS Legislation

- 5.1.1 The Parties commit to work cooperatively to harmonise OHS regulation through the adoption and implementation of model OHS legislation.
- 5.1.2 The Parties support the National Review into Model Occupational Health and Safety Laws, announced by the Commonwealth Minister on 4 April 2008.
- 5.1.3 Model OHS legislation will comprise a model principal Act supported by model OHS regulations and model codes of practice. Model OHS legislation will be developed by [*ASCC replacement body*] in accordance with the terms of this Agreement.
- 5.1.4 The development process for model OHS legislation will allow for interested persons to make representations concerning any proposed model legislation. Prior to submitting any proposed model legislation to WRMC, [*ASCC replacement body*] will give due consideration to any representations duly made to it and make such alterations to the proposed legislation as it sees fit.
- 5.1.5 The Parties agree that a national compliance and enforcement policy will be developed to ensure a consistent regulatory approach across all jurisdictions.
- 5.1.6 For the purpose of ensuring that model OHS legislation applies throughout Australia, each Party to this Agreement will, subject to its parliamentary and other law-making processes, take all necessary steps to enact or otherwise give effect to model OHS legislation within its jurisdiction within the timeframes agreed by WRMC.
- 5.1.7 For the purposes of subclause 5.1.1, the adoption and implementation of model OHS legislation requires each jurisdiction to enact or otherwise give effect to their own laws that mirror the model laws as far as possible having regard to the drafting protocols in each jurisdiction.

- 5.1.8 The adoption and implementation of model OHS legislation is not intended to prevent jurisdictions from enacting or otherwise giving effect to additional provisions, provided these do not materially affect the operation of the model legislation, for example, by providing for a consultative mechanism within a jurisdiction.
- 5.1.9 [ASCC replacement body] will make model OHS legislation publicly available on its website when it is agreed by WRMC. [ASCC replacement body] will hold and maintain all original copies of agreed model OHS legislation, including any subsequent amendments.

5.2 Model OHS Act

- 5.2.1 WRMC will consider and respond to the recommendations of the National Review and will subsequently decide on the optimal structure and content of a model OHS Act to be adopted by all jurisdictions.
- 5.2.2 Following its agreement on the optimal structure and content of a model OHS Act, WRMC will request [ASCC replacement body] to develop the proposed model OHS Act in accordance with its decision.
- 5.2.3 As part of its development of the model OHS Act, [ASCC replacement body] will undertake consultation processes to allow for interested persons to make representations concerning the proposed model OHS Act. This will include the development and release of an exposure draft bill and a regulatory impact statement (RIS) in accordance with COAG guidelines, for public consultation. [ASCC replacement body] must consult with the states and territories in developing the RIS.
- 5.2.4 [ASCC replacement body] will submit the proposed model OHS Act to WRMC for consideration and decision.
- 5.2.5 Where WRMC agrees to the proposed model OHS Act by consensus, it becomes the agreed model OHS Act. WRMC will make a public announcement of its decision which will include the commitment of all jurisdictions to fully implement the agreed model OHS Act no later than December 2011.

5.3 Model OHS Regulations

- 5.3.1 Model OHS regulations to support the Act will be developed by [ASCC replacement body] and submitted to WRMC progressively in three stages:
- (a) Stage one will set out an overall framework for a consolidated body of regulations and will incorporate detail on those matters broadly common to all current jurisdictional regulations, as well as recently reviewed national standards material;

- (b) Stage two will include consideration of matters that are broadly included in some, but not all, jurisdictions' regulations, as well as material from national standards currently under review; and
- (c) Stage three will cover those matters identified as requiring considerable policy development and will complete the remainder of the regulations identified in the framework.

5.3.2 As part of its development of model OHS regulations, [*ASCC replacement body*] will undertake consultation processes to allow for interested persons to make representations concerning proposed model OHS regulations. This will include the development and release of an exposure draft bill and a regulatory impact statement (RIS) in accordance with COAG guidelines, for public consultation.

5.3.3 Where WRMC agrees to proposed model OHS regulations by consensus, they become agreed model OHS regulations. WRMC will make a public announcement of its decision which will include the commitment of all jurisdictions to fully implement the agreed model OHS regulations no later than December 2011.

5.4 Model OHS Codes of Practice

5.4.1 Model OHS Codes of Practice will be developed by [*ASCC replacement body*].

5.4.2 As part of its development of model OHS Codes of Practice, [*ASCC replacement body*] will undertake consultation processes to allow for interested persons to make representations concerning proposed model OHS Codes of Practice. Model OHS Codes of Practice will be developed in accordance with COAG guidelines.

5.4.3 [*ASCC replacement body*] will submit proposed model OHS Codes of Practice to WRMC for consideration and decision.

5.4.4 Where WRMC agrees to proposed model OHS Codes of Practice by consensus, they become agreed model OHS Codes of Practice. WRMC will make a public announcement of its decision which will include the commitment of all jurisdictions to fully implement the agreed model OHS Codes of Practice within timeframes established by WRMC.

5.5 Maintenance of Nationally Uniform OHS Legislation

5.5.1 The Parties commit to ensure that their laws and other instruments giving effect to the agreed model OHS legislation will remain nationally uniform over time.

- 5.5.2 Any Party that proposes to amend its legislation or introduce new legislation so as to materially affect the operation of model OHS legislation will submit the proposed amendments or new legislation to WRMC for decision. Each Party agrees that it will not progress implementation of any such amendment or such new legislation unless WRMC has endorsed the proposed amendment or new legislation.
- 5.5.3 Where WRMC approves an amendment to legislation or new legislation that affects the operation of the agreed model OHS legislation, all Parties will (unless otherwise agreed by WRMC) undertake all necessary steps to introduce appropriate changes to their legislation with a view to ensuring that OHS legislation remains nationally consistent.

PART 6 - REVIEW OF ARRANGEMENTS ESTABLISHED BY THIS AGREEMENT

- 6.1 The Parties commit to review the operation of [*ASCC replacement body*] and this Agreement no later than the sixth anniversary of the commencement of the Act establishing [*ASCC replacement body*] or as agreed by WRMC.

PART 7 - OPERATION AND INTERPRETATION OF AGREEMENT

7.1 Commencement of Agreement

- 7.1.1 This Agreement commences when it has been signed by all Parties.

7.2 Provision of Information

- 7.2.1 The Parties agree to provide such information to [*ASCC replacement body*] as is necessary for [*ASCC replacement body*] to undertake its responsibilities and functions as set out in this Agreement and the legislation establishing [*ASCC replacement body*].

7.3 Definitions

7.3.1 In this Agreement, except where a contrary intention appears:

Agreed Reform means a reform relating to OHS as agreed by WRMC, including any amendments to that reform that have been made in accordance with this Agreement;

Agreement means this document, including the schedules, as amended from time to time;

[ASCC replacement body] refers to the agency or organisation that will replace the Australian Safety and Compensation Council;

COAG means the Council of Australian Governments;

Codes of Practice refers to codes of practice supporting the model OHS Act;

Commonwealth means the Commonwealth of Australia;

Commonwealth Minister means the Commonwealth Minister responsible for the operations of [ASCC replacement body] and its enabling legislation;

Compliance policy and enforcement policy mean the arrangements for determining whether the model OHS legislation is being complied with and how breaches are dealt with;

Jurisdiction means the Commonwealth, States and Territories;

Model OHS Act is the principal Act of the model OHS legislation;

Model OHS legislation is legislation, regulations and codes of practice developed by [ASCC replacement body];

OHS means occupational health and safety;

Party means the Commonwealth, a State or a Territory that is a Party to this Agreement;

Regulations refer to regulations supporting the model OHS Act;

State means a State of the Commonwealth of Australia that is a Party to this Agreement;

Territory means a Territory of the Commonwealth of Australia that is a Party to this Agreement;

WRMC means the Workplace Relations Ministers' Council.

7.4 Amendment to the Agreement

7.4.1 This Agreement may be varied from time to time by the unanimous agreement of the Parties.

7.4.2 Any amendment to this Agreement will be made in writing and executed by all Parties, and will include the date on which the amendment will come into force.

7.5 Dispute Resolution

7.5.1 Where a dispute arises under or in relation to this Agreement:

- (a) WRMC will negotiate to resolve the dispute in the first instance; and
- (b) if the negotiations fail, WRMC will refer the dispute to COAG to seek a resolution.

7.6 Publication of the Agreement

7.6.1 The Parties agree that this Agreement is to be made publicly available by the Commonwealth by the following means:

- (a) by tabling in both Houses of the Commonwealth Parliament; and
- (b) by publication on relevant Commonwealth Government websites.

7.6.2 Any future amendments to this Agreement made in accordance with clauses 7.4.1 and 7.4.2 of this Agreement are to be made publicly available in accordance with clause 7.6.1 of this Agreement.

IN WITNESS WHEREOF this Agreement has been executed as at the day and year first written above.

SIGNED by:

The Honourable Kevin Rudd MP)
Prime Minister of the Commonwealth of Australia) _____

The Honourable Morris Iemma MP)
Premier of the State of New South Wales) _____

The Honourable John Brumby MP)
Premier of the State of Victoria) _____

The Honourable Anna Bligh MP)
Premier of the State of Queensland) _____

The Honourable Alan Carpenter MLA)
Premier of the State of Western Australia) _____

The Honourable Michael Rann MP)
Premier of the State of South Australia) _____

The Honourable David Bartlett MP)
Premier of the State of Tasmania) _____

Mr Jon Stanhope MLA)
Chief Minister of the Australian Capital Territory) _____

The Honourable Paul Henderson MLA)
Chief Minister of the Northern Territory of Australia) _____

**Schedule 1 – Matters to be included in Commonwealth Legislation
establishing [ASCC replacement body]**

1. The legislation will establish [ASCC replacement body] as the principal national organisation driving policy development in respect of occupational health and safety (OHS) and workers' compensation matters and subject to Commonwealth corporate governance regimes including:
 - (a) the *Financial Management and Accountability Act 1997*, and
 - (b) the *Public Service Act 1999*
2. [ASCC replacement body] will be constituted by Members who will be accountable to WRMC. [ASCC replacement body] will be assisted by a Chief Executive and staff who will be accountable to the Commonwealth Minister.
3. The legislation will:
 - (a) specify the membership of the [ASCC replacement body] as being:
 - i. an independent chair, nominated by the Commonwealth Minister in consultation with WRMC;
 - ii. a member nominated by the Commonwealth Minister;
 - iii. 8 members, each of whom is nominated by a State or Territory Minister;
 - iv. 2 members representing bodies which, in the Commonwealth Minister's opinion, represent the interests of workers across Australia;
 - v. 2 members representing bodies which, in the Commonwealth Minister's opinion, represent the interests of employers across Australia; and
 - vi. Chief Executive (non voting);
 - (b) provide for Members (other than the Chief Executive) to be part-time and to be formally appointed for up to 3 years by the Commonwealth Minister;
 - (c) provide for the Chair to be part-time, to be remunerated as determined by the Remuneration Tribunal and to be appointed by the Commonwealth Minister after consultation with WRMC;
 - (d) provide for the appointment by the Commonwealth Minister of a Chief Executive with responsibility for the day to day operations of [ASCC replacement body], who is to be the head of [ASCC replacement body] for

the purposes of the *Financial Management and Accountability Act 1997* and the *Public Service Act 1999*, and who is to take into account any recommendations of the [ASCC replacement body] in carrying out the functions of [ASCC replacement body];

- (e) provide for staff of [ASCC replacement body] to be appointed under the *Public Service Act 1999*;
- (f) establish the reporting requirements of [ASCC replacement body] to WRMC;
- (g) establish the functions of [ASCC replacement body];
- (h) establish a Special Account under the *Financial Management and Accountability Act 1997* to ensure that financial contributions of States and Territories are applied in accordance with the intergovernmental agreement;
- (i) establish the convening of and procedures at meetings including that:
 - i. members will meet as directed by the Chair with a minimum of three meetings a year;
 - ii. decisions will be made by a two thirds majority of votes of the voting Members present and voting, but decisions on the model OHS legislation will be made by a two thirds majority of the votes of voting Members present and voting and a majority of the votes of all voting Members who represent the Commonwealth, States and Territories;
 - iii. a quorum will consist of a majority of voting Members, but on deliberations or decisions relating to the model OHS legislation a quorum is not constituted if a majority of all of the voting Members who represent the Commonwealth, States and Territories are not present for the deliberation or decision; and
- (j) provide for the Chair to constitute committees for the purpose of assisting [ASCC replacement body] in the performance of its functions and the exercise of its powers.

Model Bill 23/6/2011

Model Work Health and Safety Bill

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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

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- (c) encouraging unions and employer organisations to take a constructive role in 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.

authorised, in Part 4—see section 40.

authorising authority means:

Note

See the jurisdictional note in the Appendix.

Category 1 offence—see section 31.

Category 2 offence—see section 32.

Category 3 offence—see section 33.

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.

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.

inspector means an inspector appointed under Part 9.

internal reviewer means:

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

local authority means:

Note

See the jurisdictional note in the Appendix.

medical treatment means treatment by a medical practitioner registered under [the relevant registration Act].

Note

See the jurisdictional note in the Appendix.

notifiable incident—see section 35.

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.

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plant includes:

- (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 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.

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.

union means:

- (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.

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

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
 - (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 transferrable

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
 - (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

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- (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
 - (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

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- (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

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

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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 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
 - (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.

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- (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:
 - (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
 - (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

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- (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
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- (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
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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, 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:
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- (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 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, 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
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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;
 - 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.
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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.

31 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 exposes an individual to whom that duty is owed to a risk of death or serious injury or illness; and
 - (c) the person is reckless as to the risk to an individual of death or serious injury or illness.

Maximum penalty:

In the case of an offence committed by an individual (other than as a person conducting a business or undertaking or as an officer of

a person conducting a business or undertaking)—\$300 000 or 5 years imprisonment or both.

In the case of an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$600 000 or 5 years imprisonment or both.

In the case of an offence committed by a body corporate—\$3 000 000.

- (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:

In the case of an offence committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$150 000.

In the case of an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$300 000.

In the case of an offence committed by a body corporate—\$1 500 000.

**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:

In the case of an offence committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$50 000.

In the case of an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$100 000.

In the case of an offence committed by a body corporate—\$500 000.

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

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- (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

35 What is a *notifiable incident*

In this Act, *notifiable incident* means:

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

36 What is a *serious injury or illness*

In this Part, *serious injury or illness* of a person means an injury or illness requiring the person to have:

- (a) immediate treatment as an in-patient in a hospital; or
- (b) immediate treatment for:
 - (i) the amputation of any part of his or her body; or
 - (ii) a serious head injury; or
 - (iii) a serious eye injury; or
 - (iv) a serious burn; or
 - (v) the separation of his or her skin from an underlying tissue (such as degloving or scalping); or
 - (vi) a spinal injury; or
 - (vii) the loss of a bodily function; or
 - (viii) serious lacerations; or
- (c) medical treatment within 48 hours of exposure to a substance,

and includes any other injury or illness prescribed by the regulations but does not include an illness or injury of a prescribed kind.

37 What is a *dangerous incident*

In this Part, a *dangerous incident* means an incident in relation to a workplace that exposes a worker or any other person to a serious risk to a person's health or safety emanating from an immediate or imminent exposure to:

- (a) an uncontrolled escape, spillage or leakage of a substance; or
- (b) an uncontrolled implosion, explosion or fire; or
- (c) an uncontrolled escape of gas or steam; or
- (d) an uncontrolled escape of a pressurised substance; or
- (e) electric shock; or
- (f) the fall or release from a height of any plant, substance or thing; or
- (g) the collapse, overturning, failure or malfunction of, or damage to, any plant that is required to be authorised for use in accordance with the regulations; or
- (h) the collapse or partial collapse of a structure; or
- (i) the collapse or failure of an excavation or of any shoring supporting an excavation; or
- (j) the inrush of water, mud or gas in workings, in an underground excavation or tunnel; or
- (k) the interruption of the main system of ventilation in an underground excavation or tunnel; or
- (l) any other event prescribed by the regulations,

but does not include an incident of a prescribed kind.

38 Duty to notify of notifiable incidents

- (1) A person who conducts a business or undertaking must ensure that the regulator is notified immediately after becoming aware that a notifiable incident arising out of the conduct of the business or undertaking has occurred.

Maximum penalty:

In the case of an individual—\$10 000.

In the case of a body corporate—\$50 000.

- (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
 - (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 incident requested by the regulator; and
 - (b) if required by the regulator, give a written notice of the incident 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 notifiable incident for at least 5 years from the day that notice of the incident is given to the regulator under this section.

Maximum penalty:

In the case of an individual—\$5000.

In the case of a body corporate—\$25 000.

39 Duty to preserve incident sites

- (1) The person with management or control of a workplace at which a notifiable incident has occurred must ensure so far as is reasonably practicable, that the site where the incident occurred is not disturbed until an inspector arrives at the site or any earlier time that an inspector directs.

Maximum penalty:

In the case of an individual—\$10 000.

In the case of a body corporate—\$50 000.

- (2) In subsection (1) a reference to a site includes any plant, substance, structure or thing associated with the notifiable incident.
- (3) Subsection (1) 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 notifiable incident; or

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- (d) that is associated with a police investigation;
or
- (e) for which an inspector or the regulator has
given permission.

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:

In the case of an individual—\$50 000.

In the case of a body corporate—\$250 000.

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:

In the case of an individual—\$20 000.

In the case of a body corporate—\$100 000.

- (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:
- (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:

In the case of an individual—\$20 000.

In the case of a body corporate—\$100 000.

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:

In the case of an individual—\$20 000.

In the case of a body corporate—\$100 000.

- (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:

In the case of an individual—\$20 000.

In the case of a body corporate—\$100 000.

44 Requirements for prescribed qualifications or experience

- (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 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:

In the case of an individual—\$20 000.

In the case of a body corporate—\$100 000.

- (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:

In the case of an individual—\$20 000.

In the case of a body corporate—\$100 000.

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:

In the case of an individual—\$20 000.

In the case of a body corporate—\$100 000.

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:

In the case of an individual—\$20 000.

In the case of a body corporate—\$100 000.

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:

In the case of an individual—\$20 000.

In the case of a body corporate—\$100 000.

- (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;
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- (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 will 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
 - (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:

In the case of an individual—\$10 000.

In the case of a body corporate—\$50 000.

- (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:

In the case of an individual—\$2000.

In the case of a body corporate—\$10 000.

- (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:

In the case of an individual—\$2000.

In the case of a body corporate—\$10 000.

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:

In the case of an individual—\$10 000.

In the case of a body corporate—\$50 000.

- (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:

In the case of an individual—\$2000.

In the case of a body corporate—\$10 000.

- (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:

In the case of an individual—\$2000.

In the case of a body corporate—\$10 000.

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:

In the case of an individual—\$10 000.

In the case of a body corporate—\$50 000.

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.
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- (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

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- (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.
- (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
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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.
- (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
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- (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
- (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

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- (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:

In the case of an individual—\$10 000.

In the case of a body corporate—\$50 000.

- (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:

In the case of an individual—\$10 000.

In the case of a body corporate—\$50 000.

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

Maximum penalty:

In the case of an individual—\$10 000.

In the case of a body corporate—\$50 000.

- (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.
- (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) subject to subsection (5), chosen by the health and safety representative, in consultation with the person conducting the business or undertaking.
- (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,
- 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) as to the matters set out in subsections (1)(c) and (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:

In the case of an individual—\$10 000.

In the case of a body corporate—\$50 000.

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

- (1) 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:

In the case of an individual—\$2000.

In the case of a body corporate—\$10 000.

- (2) A person conducting a business or undertaking must provide a copy of the up-to-date list prepared under subsection (1) to the regulator as soon as practicable after it is prepared.

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:

In the case of an individual—\$5000.

In the case of a body corporate—\$25 000.

- (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:

In the case of an individual—\$10 000.

In the case of a body corporate—\$50 000.

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

Maximum penalty:

In the case of an individual—\$10 000.

In the case of a body corporate—\$50 000.

- (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:

In the case of an individual—\$10 000.

In the case of a body corporate—\$50 000.

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
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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 give directions to remedy contravention

- (1) A provisional 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.

(2) A direction included in a provisional improvement notice may:

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

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:

In the case of an individual—\$5000.

In the case of a body corporate—\$25 000.

- (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:

In the case of an individual—\$5000.

In the case of a body corporate—\$25 000.

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:

In the case of an individual—\$50 000.

In the case of a body corporate—\$250 000.

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:

In the case of an individual—\$100 000.

In the case of a body corporate—\$500 000.

- (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:
 - (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 representative or as a member of a health and safety committee; or
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- (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
 - (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:

In the case of an individual—\$100 000.

In the case of a body corporate—\$500 000.

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 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:

In the case of an individual—\$100 000.

In the case of a body corporate—\$500 000.

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:

In the case of an individual—\$100 000.

In the case of a body corporate—\$500 000.

- (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.
- (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:
 - (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.
- (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.
- (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

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- (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.

- (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:

In the case of an individual—\$10 000.

In the case of a body corporate—\$50 000.

- (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 is reasonably practicable after entering a workplace under this Division, give notice of the entry and the suspected contravention, in accordance with the regulations, to:
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- (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:
- (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: \$10 000.

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: \$10 000.

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: \$10 000.

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: \$10 000.

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 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: \$10 000.

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: \$10 000.

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;
 - (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:
 - (a) give the WHS entry permit holder written notice (a *show cause notice*); and
 - (b) 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:
 - (a) 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
 - (b) be accompanied by a summary of the reasons for the application; and
 - (c) 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;
 - (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:

In the case of an individual—\$10 000.

In the case of a body corporate—\$50 000.

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

WHS civil penalty provision.

Maximum penalty:

In the case of an individual—\$10 000.

In the case of a body corporate—\$50 000.

(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:

In the case of an individual—\$10 000.

In the case of a body corporate—\$50 000.

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: \$10 000.

147 Misrepresentations about things authorised by this Part

- (1) A person must not take action:
- (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:

In the case of an individual—\$10 000.

In the case of a body corporate—\$50 000.

- (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 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:

In the case of an individual—\$10 000.

In the case of a body corporate—\$50 000.

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: \$2000.

(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:

In the case of an individual—\$5000.

In the case of a body corporate—\$25 000.

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 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.
- (3) The notice must:
- (a) state that the requirement is made under this section; and
 - (b) contain a statement to the effect that a failure to comply with a requirement is an offence; and
 - (c) if the notice requires the person to provide information or documents or answer questions:
 - (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.

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Part 8 The regulator

- (5) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under this section.

Maximum penalty:

In the case of an individual—\$10 000.

In the case of a body corporate—\$50 000.

- (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.

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:

In the case of an individual—\$10 000.

In the case of a body corporate—\$50 000.

- (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:
 - (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 to produce that document to the inspector while the inspector is at that workplace or within a specified period; 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.
- (3) An interview conducted by an inspector under subsection (1)(c) must be conducted in private if:
 - (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:

In the case of an individual—\$10 000.

In the case of a body corporate—\$50 000.

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.

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, 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 that failure to comply with the requirement or to answer the question, without reasonable excuse, would constitute an offence; and
 - (c) warn the person about the effect of section 172; and
 - (d) advise the person about the effect of section 269.
- (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).
- (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.

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- (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:

In the case of an individual—\$10 000.

In the case of a body corporate—\$50 000.

- (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:

In the case of an individual—\$10 000.

In the case of a body corporate—\$50 000.

- (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:
 - (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: \$10 000.
- (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:

In the case of an individual—\$10 000.

In the case of a body corporate—\$50 000.

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: \$10 000.

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—\$50 000 or imprisonment for 2 years or both.

In the case of a body corporate—\$250 000.

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
 - (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:

In the case of an individual—\$50 000.

In the case of a body corporate—\$250 000.

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:
 - (a) that the inspector believes that grounds for the issue of the prohibition notice exist and the basis for that belief; and
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- (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:

In the case of an individual—\$100 000.

In the case of a body corporate—\$500 000.

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 notifiable incident 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 incident; 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:

In the case of an individual—\$50 000.

In the case of a body corporate—\$250 000.

- (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 or non-disturbance notice.

203 Notice to be in writing

A notice must be in writing.

204 Directions in notices

A direction included in an improvement notice or prohibition notice may:

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

205 Recommendations in notice

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

206 Changes to notice by inspector

- (1) An inspector may make minor changes to a notice:
 - (a) for clarification; or
 - (b) to correct errors or references; or
 - (c) to reflect changes of address or other circumstances.
- (2) An inspector may also, in accordance with section 194, extend the compliance period for an improvement notice.

207 Regulator may vary or cancel notice

Except as provided in section 206, a notice issued by an inspector 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 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:

In the case of an individual—\$5000.

In the case of a body corporate—\$25 000.

- (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:

In the case of an individual—\$5000.

In the case of a body corporate—\$25 000.

Division 5 Remedial action

211 When regulator may carry out action

- (1) This section applies if a person to whom a prohibition 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 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 can be issued exist; and
 - (b) a prohibition notice cannot be issued at a workplace because, after taking reasonable steps, the person with management or control of 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 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 or non-disturbance 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:

In the case of an individual—\$50 000.

In the case of a body corporate—\$250 000.

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.

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Part 11 Enforceable undertakings

- (3) The regulator may accept a WHS undertaking in relation to a contravention or alleged 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">(1) A worker whose interests are affected by the decision or his or her representative appointed for the purpose of section 52(1)(b).(2) A person conducting a business or undertaking whose interests are affected by the decision.(3) A health and safety representative who represents a worker whose interests are affected by the decision.
2	Section 72(6) (decision in relation to training of health and safety representative)	<ul style="list-style-type: none">(1) A person conducting a business or undertaking whose interests are affected by the decision.(2) A health and safety representative whose interests are affected by the decision.

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Part 12 Review of decisions

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">(1) A worker whose interests are affected by the decision.(2) A person conducting a business or undertaking whose interests are affected by the decision.(3) A health and safety representative who represents a worker whose interests are affected by the decision.
4	Section 102 (decision on review of provisional improvement notice)	<ul style="list-style-type: none">(1) The person to whom the provisional improvement notice was issued.(2) The health and safety representative who issued the provisional improvement notice.(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.(5) A person conducting a business or undertaking whose interests are affected by the decision.
5	Section 179 (forfeiture of thing)	The person entitled to the thing.
6	Section 180 (Return of seized things)	The person entitled to the thing.
7	Section 191 (issue of improvement notice)	<ul style="list-style-type: none">(1) The person to whom the notice was issued.

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Part 12 Review of decisions

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
8	Section 194 (extension of time for compliance with improvement notice)	<ul style="list-style-type: none"> (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)	<ul style="list-style-type: none"> (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.
		<ul style="list-style-type: none"> (1) The person to whom the notice was issued. (2) The person with management or control of the workplace, plant or substance. (3) A person conducting a business or undertaking whose interests are affected by the decision. (4) A worker whose interests are affected by the decision.

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Part 12 Review of decisions

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
10	Section 198 (issue of a non-disturbance notice)	<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> <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>
11	Section 201 (issue of subsequent 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>

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Part 12 Review of decisions

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
		(5) A health and safety representative who represents a worker whose interests are affected by the decision.
12	Section 207 (Decision of regulator to vary or cancel 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> <p>(6) In the case of a prohibition notice, a health and safety representative whose direction under section 85 to cease work gave rise to the notice.</p>
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:
- (a) making, suspending, revoking or refusing to make an order, determination or decision;
 - (b) giving, suspending, revoking or refusing to give a direction, approval, consent or permission;

- (c) issuing, suspending, revoking or refusing to issue an authorisation;
 - (d) imposing a condition;
 - (e) making a declaration, demand or requirement;
 - (f) retaining, or refusing to deliver up, a thing;
or
 - (g) 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) If:
 - (a) a person reasonably considers that the occurrence of an act, matter or thing constitutes a Category 1 offence or a Category 2 offence; and
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- (b) no prosecution has been brought in relation to the occurrence of the act, matter or thing after 6 months but not later than 12 months after that occurrence,
- the person may make a written request to the regulator that a prosecution be brought.
- (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 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).
- (3) If the regulator advises the person 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
 - (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.
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- (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*).
 - (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.
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- (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:

In the case of an individual—\$50 000.

In the case of a body corporate—\$250 000.

- (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 Imputing conduct to bodies corporate

- (1) For the purposes of this Act, any conduct engaged in on behalf of a body corporate by an employee, agent or officer of the body corporate 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 body corporate.
- (2) If an offence under this Act requires proof of knowledge, intention or recklessness, it is sufficient in proceedings against a body corporate 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 a body corporate for that offence if the person referred to in subsection (1) made that mistake of fact.

Note

See the jurisdictional note in the Appendix.

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, 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
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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 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
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- (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 1 or more amounts by way of monetary penalty 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 1 or more amounts by way of monetary penalty 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.
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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 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:

In the case of an individual—\$10 000.

In the case of a body corporate—\$50 000.

- (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:

In the case of an individual—\$10 000.

In the case of a body corporate—\$50 000.

- (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:
 - (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:

In the case of an individual—\$10 000.

In the case of a body corporate—\$50 000.

- (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 made or given by the regulator or a person authorised by the regulator if the regulator reasonably believes the disclosure, access or use:
 - (i) is necessary for administering, or monitoring or enforcing compliance with, this Act; or
 - (ii) is necessary for the administration or enforcement of another Act prescribed by the regulations; or

- (iii) 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
 - (iv) is necessary for the recognition of authorisations under a corresponding WHS law; or
 - (v) is required for the exercise of a power or function under a corresponding WHS law; 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:

In the case of an individual—\$10 000.

In the case of a body corporate—\$50 000.

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.

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:

In the case of an individual—\$5000.

In the case of a body corporate—\$25 000.

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:
 - (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 a penalty for any contravention of the regulations not exceeding \$30 000; or
- (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.

Note

See the jurisdictional notes in the Appendix.

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.

Note

See the jurisdictional notes in the Appendix.

APPENDIX

JURISDICTIONAL NOTES

Section	Jurisdictional note
1	<p>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>.</p> <p>In Victoria a purpose provision will be used in place of the citation provision.</p>
2	<p>Appropriate local provisions to be inserted with a view to commencing the model provisions on the same date in each jurisdiction.</p>
3(1)	<p>The words in brackets are optional for jurisdictions. They may only be included if the relevant provisions of Schedule 1 are included.</p>
3(2)	<p>The words in brackets are optional for jurisdictions. They may only be included if the relevant provisions of Schedule 1 are included.</p>
4 <i>authorising authority</i>	<p>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.</p>
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>

Model Work Health and Safety Bill

Section	Jurisdictional note
4 <i>court</i>	Each jurisdiction will specify the relevant court or courts for the Act or specified provisions of the Act.
4 <i>local authority</i>	Each jurisdiction will determine the local authorities for its jurisdiction.
4 <i>medical treatment</i>	Each jurisdiction will specify the relevant registration Act which will be the Health Practitioner Regulation National Law of that 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.
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>

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Section	Jurisdictional note
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>.</p> <p>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>
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>
38	<p>A jurisdiction may remove this reporting requirement to the extent that similar reporting arrangements exist under local laws.</p>
<p>65 (and sections 112, 114, 215, 220, 236 and Schedule 3)</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 or the regulations and make any necessary consequential amendments including the amendment or addition of definitions.</p>
103	<p>Each jurisdiction may need to make appropriate amendments to this provision to ensure it conforms to local legislation.</p>
108	<p>Jurisdictions may need to include their own definitions of emergency services worker.</p>

Model Work Health and Safety Bill

Section	Jurisdictional note
110	<p>A jurisdiction may omit subsection (1)(c) and substitute the following for subsection (2):</p> <p>"(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."</p>
<p>Part 7 (and sections 138 and 142)</p>	<p>A jurisdiction may use <i>regulator</i> rather than <i>authorising authority</i> 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.</p>
<p>116 (and sections 124, 131, 133, 137, 138 and 150)</p>	<p>A State or Territory may insert its relevant industrial law. The Commonwealth may omit this definition and omit references to <i>relevant State or Territory industrial law</i> where they appear in sections 124, 131, 133, 137, 138 and 150.</p>
119	<p>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.</p>
152	<p>Jurisdictions may add to the list of functions.</p>
154	<p>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.</p>
156	<p>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.</p> <p>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.</p> <p>A jurisdiction may replace the term <i>public servant</i> with the corresponding or appropriate term used in the jurisdiction.</p>

Model Work Health and Safety Bill

Section	Jurisdictional note
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.
172	A jurisdiction may adjust this provision as necessary to accord with the legal or legislative or human rights principles applying in its jurisdiction.
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. A jurisdiction may include an alternative provision that deals with compensation for acquisition of property under this Act.
185	A jurisdiction may amend section 185 to align it with its human rights charter or other legislative protocols. A jurisdiction may amend or remove the offence in subsection (4) if this is inconsistent with the powers of police in that jurisdiction.
187	A jurisdiction may omit this provision if this matter is dealt with in other laws of its jurisdiction.
189	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

Section	Jurisdictional note
223	<p>A jurisdiction may provide for the following decisions to be reviewable decisions where the regulator is the authorising authority:</p> <ul style="list-style-type: none">(a) a decision under section 134 to refuse to issue a WHS permit;(b) a decision under section 140 to revoke, suspend or take other action in relation to a WHS entry permit. <p>The eligible persons in relation to the reviewable decision would be:</p> <ul style="list-style-type: none">(a) the relevant union;(b) the person for whom the entry permit is sought, in relation to section 134;(c) the WHS permit holder, in relation to section 140.
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> <p>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.</p> <p>A jurisdiction may confer jurisdiction on courts to hear prosecutions and appeals in relation to offences under this Act.</p>

Model Work Health and Safety Bill

Section	Jurisdictional note
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"> • enable an infringement scheme to be established in relation to this Act; and • prescribe the offences for which infringement notices may be issued consistent with the model regulations.
244	A jurisdiction may omit this section if the relevant laws of the jurisdiction already provide for this.
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.
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.

Model Work Health and Safety Bill

Section	Jurisdictional note
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

Section	Jurisdictional note
	<p>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.</p> <p>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.</p> <p>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.</p> <p>The Commonwealth may define Fair Work Australia as a relevant tribunal or the purposes of this Act.</p>

DRAFT BILL FOR PUBLIC COMMENT

The Government proposes to introduce into Parliament a Bill —

- to provide for the health, safety and welfare of persons at work or affected by work; and
- to repeal the *Occupational Safety and Health Act 1984*; and
- to repeal the *Occupational Safety and Health Regulations 1996*; and
- to make consequential amendments to certain Acts; and
- for related matters.

This draft Bill has been prepared for public comment but it does not necessarily represent the Government's settled position.

Work Health and Safety Bill 2014

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Western Australia

LEGISLATIVE COUNCIL

Work Health and Safety Bill 2014

**A draft for public comment of
A Bill for**

An Act —

- **to provide for the health, safety and welfare of persons at work or affected by work; and**
- **to repeal the *Occupational Safety and Health Act 1984*; and**
- **to repeal the *Occupational Safety and Health Regulations 1996*; and**
- **to make consequential amendments to certain Acts; and**
- **for related matters.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

Division 1 — Introduction

1. Short title

This is the *Work Health and Safety Act 2014*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

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; and
- (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 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

1 (g) providing a framework for continuous improvement and
2 progressively higher standards of work health and
3 safety.

4 (h)

5 Note: Paragraph (h) is not required in WA.

6 (2) In furthering subsection (1)(a), regard must be had to the
7 principle that workers and other persons should be given the
8 highest level of protection against harm to their health, safety
9 and welfare from hazards and risks arising from work as is
10 reasonably practicable.

11 Division 3 — Interpretation

12 Subdivision 1 — Definitions

13 4. Definitions

14 In this Act:

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

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

18 Note: A definition of *authorising authority* is not required in WA.

19 *Category 1 offence* — see section 31.

20 *Category 2 offence* — see section 32.

21 *Category 3 offence* — see section 33.

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

24 *condition* includes limitation and restriction.

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

27 *corresponding regulator*:

28 (a) in relation to the *Mines Safety and Inspection Act 1994*
29 means the State mining engineer or the State coal
30 mining engineer as defined in section 4(1) of that Act, as
31 is applicable in the case; and

32 (b) in relation to the *Dangerous Goods Safety Act 2004*
33 means the Chief Officer as defined in section 3(1) of
34 that Act; and

35 (c) in relation to any other law of this State that is
36 prescribed as a corresponding WHS law, means the

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Part 1 Preliminary

Division 3 Interpretation

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1 person prescribed as the corresponding regulator for the
2 purposes of that law; and

3 (d) otherwise means the holder of a public office, or a
4 public authority, of the Commonwealth, or of a State,
5 who or which is responsible for administering a
6 corresponding WHS law.

7 **corresponding WHS law:**

8 (a) in this section in the definition of **corresponding**
9 **regulator** and in sections 113(3)(b) and 271(3)(c)(v)
10 means any of the following:

11 (i) the *Work Health and Safety Act* or occupational
12 health and safety Act of another State;

13 (ii) the *Mines Safety and Inspection Act 1994*;

14 (iii) the *Mine Health and Safety Act 2004* (New South
15 Wales) or the Act that replaces that Act;

16 (iv) the *Mining and Quarrying Safety and Health*
17 *Act 1999* (Queensland) or the Act that replaces
18 that Act;

19 (v) the *Dangerous Goods Safety Act 2004*;

20 (vi) any other law prescribed as a corresponding
21 WHS law for the purposes of this paragraph;

22 (b) in sections 90(4)(c), 156(d) and 271(3)(c)(iv) and in
23 Schedule 3 item 7.2 means any of the following:

24 (i) the *Work Health and Safety Act* or occupational
25 health and safety Act of another State;

26 (ii) the *Mines Safety and Inspection Act 1994*;

27 (iii) the *Mine Health and Safety Act 2004* (New South
28 Wales) or the Act that replaces that Act;

29 (iv) the *Mining and Quarrying Safety and Health*
30 *Act 1999* (Queensland) or the Act that replaces
31 that Act;

32 (v) any other law prescribed as a corresponding
33 WHS law for the purposes of this paragraph.

34 **court** means a court constituted by a health and safety
35 magistrate, except in references to a court of competent
36 jurisdiction and in section 271(3)(d).

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

38 **demolition** includes deconstruction.

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

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

3 (b) redesign or modify a design.

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

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

7 **document** includes record.

8 Note: A definition of **employee record** is not required in WA.

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

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

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

13 **handling** includes transport.

14 **health** means physical and psychological health.

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

16 **health and safety magistrate** means a person holding office as a
17 health and safety magistrate under Schedule 5 clause 1.

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

21 **import** means to bring into the State, whether from outside
22 Australia or otherwise.

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

24 **internal reviewer** means:

25 (a) the regulator; or

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

27 **legal practitioner** means an Australian legal practitioner within
28 the meaning of that term in the *Legal Profession Act 2008*
29 section 3.

30 **local authority** means a local government or a regional local
31 government.

32 **medical treatment** means treatment by a medical practitioner
33 registered under the *Health Practitioner Regulation National*
34 *Law (WA) Act 2010*.

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

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- 1 **officer** means:
- 2 (a) an officer within the meaning of section 9 of the
- 3 *Corporations Act 2001* of the Commonwealth other than
- 4 a partner in a partnership; or
- 5 (b) an officer of the Crown within the meaning of
- 6 section 247; or
- 7 (c) an officer of a public authority within the meaning of
- 8 section 252,
- 9 other than an elected member of a local authority acting in that
- 10 other capacity.
- 11 Note: A definition of **official of a union** is not required in WA.
- 12 **person conducting a business or undertaking** — see section 5.
- 13 Note: A definition of **personal information** is not required in WA.
- 14 **plant** includes:
- 15 (a) any machinery, equipment, appliance, container,
- 16 implement and tool; and
- 17 (b) any component of any of those things; and
- 18 (c) anything fitted or connected to any of those things.
- 19 **prohibited reason**, in Part 6 — see section 106.
- 20 **public authority**:
- 21 (a) in section 156(b) means:
- 22 (i) a body, whether incorporated or not, or the
- 23 holder of an office, that is established or
- 24 continued for a public purpose under a written
- 25 law and that, under the authority of a written law,
- 26 performs a statutory function on behalf of the
- 27 State; or
- 28 (ii) a local government;
- 29 (b) in Part 13 Division 6 means a body corporate:
- 30 (i) listed in the *Financial Management Act 2006*
- 31 Schedule 1; or
- 32 (ii) listed in the *Public Sector Management Act 1994*
- 33 Schedule 1 column 2 or Schedule 2 column 2; or
- 34 (iii) established or continued for a public purpose
- 35 under a written law; or
- 36 (iv) established by the Governor or a Minister; or
- 37 (v) over which control can be exercised by a
- 38 Minister.

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

3 *regulator* means the person appointed under Schedule 2
4 Division 2 as the WorkSafe Western Australia Commissioner.

5 Note: A definition of *relevant person conducting a business or*
6 *undertaking* is not required in WA.

7 Note: A definition of *relevant State or Territory industrial law* is not
8 required in WA.

9 Note: A definition of *relevant union* is not required in WA.

10 Note: A definition of *relevant worker* is not required in WA.

11 *representative*:

12 (a) in relation to workers in section 52(1)(b) and in relation
13 to a health and safety representative in section 80(1) in
14 the definition of *parties* paragraph (c) (the
15 *HS representative*), means any of the following:

16 (i) an authorised representative, as defined in the
17 *Industrial Relations Act 1979* section 49G, of an
18 organisation of which at least 1 of the workers,
19 or the HS representative, is a member;

20 (ii) an official of an organisation to whom a current
21 entry permit has been issued under the Fair Work
22 Act if at least 1 of the workers, or the
23 HS representative, is a member of that
24 organisation;

25 (iii) a legal practitioner who is authorised by at least
26 1 of the workers, or the HS representative, to
27 represent him or her;

28 (b) in relation to a worker in sections 52(5) and 56(2) and in
29 relation to a worker or workers in section 80(1) in the
30 definition of *parties* paragraph (d), means any of the
31 following:

32 (i) an authorised representative, as defined in the
33 *Industrial Relations Act 1979* section 49G, of an
34 organisation of which the worker, or at least 1 of
35 the workers, is a member;

36 (ii) an official of an organisation to whom a current
37 entry permit has been issued under the Fair Work
38 Act if the worker, or at least 1 of the workers, is
39 a member of that organisation;

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- 1 (iii) a legal practitioner who is authorised by the
2 worker, or at least 1 of the workers, to represent
3 him or her;
- 4 (iv) another worker at the workplace who is
5 authorised by the worker, or at least 1 of the
6 workers, to represent him or her;
- 7 (c) in relation to persons in section 152(e) means any of the
8 following:
- 9 (i) the health and safety representative for at least
10 1 of the persons;
- 11 (ii) a union representing at least 1 of the persons;
- 12 (iii) any other person who is authorised by at least
13 1 of the persons to represent him or her;
- 14 (d) in relation to a person in section 171(4) means any of
15 the following:
- 16 (i) an authorised representative, as defined in the
17 *Industrial Relations Act 1979* section 49G, of an
18 organisation of which the person is a member;
- 19 (ii) an official of an organisation to whom a current
20 entry permit has been issued under the Fair Work
21 Act if the person is a member of that
22 organisation;
- 23 (iii) a legal practitioner who is authorised by the
24 person to represent him or her;
- 25 (iv) the health and safety representative for the
26 person;
- 27 (v) a worker at the workplace who is authorised by
28 the person to represent him or her.

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

30 ***State*** includes Territory.

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

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

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

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

3 **supply** — see section 6.

4 Note: A definition of **this Act** is not required in WA because of the
5 *Interpretation Act 1984 s. 46*.

6 **Tribunal** has the meaning given to that term in Schedule 4
7 clause 2(2).

8 **union** means:

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

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

19 Note: A definition of **WHS entry permit** is not required in WA.

20 Note: A definition of **WHS entry permit holder** is not required in WA.

21 Note: A definition of **WHS undertaking** is not required in WA.

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

23 **worker** — see section 7.

24 **workplace** — see section 8.

25 Subdivision 2 — Other important terms

26 5. Meaning of *person conducting a business or undertaking*

- 27 (1) For the purposes of this Act, a person conducts a business or
28 undertaking:
- 29 (a) whether the person conducts the business or undertaking
30 alone or with others; and
31 (b) whether or not the business or undertaking is conducted
32 for profit or gain.
- 33 (2) A business or undertaking conducted by a person includes a
34 business or undertaking conducted by a partnership or an
35 unincorporated association.
- 36 (3) If a business or undertaking is conducted by a partnership (other
37 than an incorporated partnership), a reference in this Act to a

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1 person conducting the business or undertaking is to be read as a
2 reference to each partner in the partnership.

3 (4) A person does not conduct a business or undertaking to the
4 extent that the person is engaged solely as a worker in, or as an
5 officer of, that business or undertaking.

6 (5) An elected member of a local authority does not in that capacity
7 conduct a business or undertaking.

8 (6) The regulations may specify the circumstances in which a
9 person may be taken not to be a person who conducts a business
10 or undertaking for the purposes of this Act or any provision of
11 this Act.

12 (7) A volunteer association does not conduct a business or
13 undertaking for the purposes of this Act.

14 (8) In this section:

15 *volunteer association* means a group of volunteers working
16 together for 1 or more community purposes where none of the
17 volunteers, whether alone or jointly with any other volunteers,
18 employs any person to carry out work for the volunteer
19 association.

20 **6. Meaning of *supply***

21 (1) A *supply* of a thing includes a supply and a resupply of the thing
22 by way of sale, exchange, lease, hire or hire-purchase, whether
23 as principal or agent.

24 (2) A supply of a thing occurs on the passing of possession of the
25 thing to the person or an agent of the person to be supplied.

26 (3) A supply of a thing does not include:

27 (a) the return of possession of a thing to the owner of the
28 thing at the end of a lease or other agreement; or

29 (b) a prescribed supply.

30 (4) A financier is taken not to supply plant, a substance or a
31 structure for the purposes of this Act if:

32 (a) the financier has, in the course of the financier's
33 business as a financier, acquired ownership of, or
34 another right in, the plant, substance or structure on
35 behalf of a customer of the financier; and

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

10 **7. Meaning of *worker***

- 11 (1) A person is a *worker* if the person carries out work in any
12 capacity for a person conducting a business or undertaking,
13 including work as:
- 14 (a) an employee; or
 - 15 (b) a contractor or subcontractor; or
 - 16 (c) an employee of a contractor or subcontractor; or
 - 17 (d) an employee of a labour hire company who has been
18 assigned to work in the person's business or
19 undertaking; or
 - 20 (e) an outworker; or
 - 21 (f) an apprentice or trainee; or
 - 22 (g) a student gaining work experience; or
 - 23 (h)

24 Note: Paragraph (h) is not required in WA.

- 25 (i) a person of a prescribed class.
- 26 (2) For the purposes of this Act:
- 27 (a) a police officer is taken to be a worker employed by the
28 Crown; and
 - 29 (b) the Crown is taken to be the employer of a police
30 officer; and
 - 31 (c) a police officer is at work throughout the time when the
32 officer is on duty or lawfully performing the functions
33 of a police officer, but not otherwise; and
 - 34 (d) the functions that the Crown has under this Act because
35 a police officer is taken to be a worker employed by the
36 Crown are, so far as they concern a police officer, to be
37 performed by the person holding the office of
38 Commissioner of Police under the *Police Act 1892*.

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- 1 (3) The person conducting the business or undertaking is also a
2 **worker** if the person is an individual who carries out work in
3 that business or undertaking.
- 4 (4) A person is not a **worker** if the person:
- 5 (a) is a volunteer; or
- 6 (b) is a prisoner as defined in the *Prisons Act 1981*
7 section 3(1); or
- 8 (c) is a detainee as defined in the *Young Offenders Act 1994*
9 section 3; or
- 10 (d) is an offender as defined in the *Sentence Administration*
11 *Act 2003* section 76(1) who, under the pre-sentence
12 order or community corrections order, carries out
13 community work or community corrections activities of
14 a kind mentioned in section 85(2)(a) of that Act; or
- 15 (e) is a young person to whom the *Young Offenders*
16 *Act 1994* section 50 or 50A applies and who carries out
17 community work under a youth community based order
18 or an intensive youth supervision order as defined in
19 section 3 of that Act; or
- 20 (f) is a young person to whom the *Young Offenders*
21 *Act 1994* section 65 applies and who carries out
22 community work under a community work order as
23 defined in section 63 of that Act.

24 **8. Meaning of workplace**

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

33 **9. Examples and notes**

- 34 (1) An example at the foot of a provision forms part of this Act.
- 35 (2) Despite the *Interpretation Act 1984* section 32(2), a note at the
36 foot of a provision forms part of this Act.

- 1 (3) A reference in a note to a provision that is not required in WA is
2 a reference to the corresponding provision of the document
3 entitled the *Model Work Health and Safety Bill* prepared under
4 the Inter-Governmental Agreement for Regulatory and
5 Operational Reform in Occupational Health and Safety that was
6 entered into by members of the Council of Australian
7 Governments on 3 July 2008.

8 **Division 4 — Application of Act**

9 **10. Act binds the Crown**

- 10 (1) This Act binds the Crown in right of the State and also, so far as
11 the legislative power of the State extends, in all its other
12 capacities.
- 13 (2) The Crown is liable for an offence against this Act.
- 14 (3)

15 Note: Subsection (3) is not required in WA.

16 **11. Extraterritorial application**

17 Note: Section 11 is not required in WA.

18 **12. Scope**

- 19 (1) In this section:
20 ***instrument***, except in subsection (3), means an instrument under
21 subsection (4) or (5).
22 ***specified*** means specified in an instrument.
- 23 (2) This Act does not apply to or in relation to a workplace:
- 24 (a) at which mining operations, as defined in the *Mines*
25 *Safety and Inspection Act 1994* section 4(1), are carried
26 on; or
- 27 (b) at which a petroleum operation or geothermal energy
28 operation, as defined in the *Petroleum and Geothermal*
29 *Energy Resources Act 1967* section 5(1), is carried on;
30 or
- 31 (c) at which a pipeline operation, as defined in the
32 *Petroleum Pipelines Act 1969* section 4(1), is carried on;
33 or
- 34 (d) at which an offshore petroleum operation, as defined in
35 the *Petroleum (Submerged Lands) Act 1982* section 4, is
36 carried on.

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- 1 (3) This Act has effect subject to any instrument for the time being
2 in force under the *Mines Safety and Inspection Act 1994*
3 section 6A.
- 4 (4) The Minister and the Minister for the time being administering
5 an Act referred to in subsection (2)(a), (b), (c) or (d) (the *other*
6 *Act*) may, by instrument in writing, jointly declare that for a
7 specified period this Act or a specified provision of this Act
8 applies to or in relation to:
- 9 (a) a specified workplace or a specified part of a workplace
10 at which an operation under the other Act is carried on,
11 as if it were a workplace or a part of a workplace to
12 which this Act applies; and
- 13 (b) a specified operation under the other Act as if it were an
14 activity in carrying out work to which this Act applies;
15 and
- 16 (c) a specified act, matter or thing as if it were an act, matter
17 or thing to which this Act applies.
- 18 (5) An instrument may be revoked or amended by instrument in
19 writing made by the Minister and the Minister for the time being
20 administering the other Act that is the subject of the instrument
21 to be revoked or amended.
- 22 (6) An instrument may contain provisions of a savings or
23 transitional nature in relation to the application of this Act or the
24 other Act to any person, activity, matter or thing.
- 25 (7) An instrument is subsidiary legislation for the purposes of the
26 *Interpretation Act 1984*.

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 transferrable

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

- (1) 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

1 (b) if it is not reasonably practicable to eliminate risks to
2 health and safety, to minimise those risks so far as is
3 reasonably practicable.

4 (2) A person must comply with subsection (1) to the extent to
5 which the person has the capacity to influence and control the
6 matter or would have had that capacity but for an agreement or
7 arrangement purporting to limit or remove that capacity.

8 **Subdivision 2 — What is reasonably practicable**

9 **18. What is *reasonably practicable* in ensuring health and safety**

10 In this Act:

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

- 16 (a) the likelihood of the hazard or the risk concerned
17 occurring; and
- 18 (b) the degree of harm that might result from the hazard or
19 the risk; and
- 20 (c) what the person concerned knows, or ought reasonably
21 to know, about:
- 22 (i) the hazard or the risk; and
23 (ii) ways of eliminating or minimising the risk; and
- 24 (d) the availability and suitability of ways to eliminate or
25 minimise the risk; and
- 26 (e) after assessing the extent of the risk and the available
27 ways of eliminating or minimising the risk, the cost
28 associated with available ways of eliminating or
29 minimising the risk, including whether the cost is
30 grossly disproportionate to the risk.

31 **Division 2 — Primary duty of care**

32 **19. Primary duty of care**

- 33 (1) A person conducting a business or undertaking must ensure, so
34 far as is reasonably practicable, the health and safety of:
- 35 (a) workers engaged, or caused to be engaged by the
36 person; and

- 1 (b) workers whose activities in carrying out work are
2 influenced or directed by the person,
3 while the workers are at work in the business or undertaking.
- 4 (2) A person conducting a business or undertaking must ensure, so
5 far as is reasonably practicable, that the health and safety of
6 other persons is not put at risk from work carried out as part of
7 the conduct of the business or undertaking.
- 8 (3) Without limiting subsections (1) and (2), a person conducting a
9 business or undertaking must ensure, so far as is reasonably
10 practicable:
- 11 (a) the provision and maintenance of a work environment
12 without risks to health and safety; and
- 13 (b) the provision and maintenance of safe plant and
14 structures; and
- 15 (c) the provision and maintenance of safe systems of work;
16 and
- 17 (d) the safe use, handling and storage of plant, structures
18 and substances; and
- 19 (e) the provision of adequate facilities for the welfare at
20 work of workers in carrying out work for the business or
21 undertaking, including ensuring access to those
22 facilities; and
- 23 (f) the provision of any information, training, instruction or
24 supervision that is necessary to protect all persons from
25 risks to their health and safety arising from work carried
26 out as part of the conduct of the business or undertaking;
27 and
- 28 (g) that the health of workers and the conditions at the
29 workplace are monitored for the purpose of preventing
30 illness or injury of workers arising from the conduct of
31 the business or undertaking.
- 32 (4) If:
- 33 (a) a worker occupies accommodation that is owned by or
34 under the management or control of the person
35 conducting the business or undertaking; and

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1 (b) the occupancy is necessary for the purposes of the
2 worker's engagement because other accommodation is
3 not reasonably available,

4 the person conducting the business or undertaking must, so far
5 as is reasonably practicable, maintain the premises so that the
6 worker occupying the premises is not exposed to risks to health
7 and safety.

8 (5A) Subsection (4) does not apply:

9 (a) if the occupancy is under a written agreement containing
10 terms that might reasonably be expected to apply to a
11 letting of the premises to a tenant; or

12 (b) to the occupation of accommodation by a person who
13 works at a workplace referred to in section 12(2).

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

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

18 **Division 3 — Further duties of persons conducting businesses**
19 **or undertakings**

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

22 (1) In this section:

23 *person with management or control of a workplace* means a
24 person conducting a business or undertaking to the extent that
25 the business or undertaking involves the management or control,
26 in whole or in part, of the workplace but does not include:

27 (a) the occupier of a residence, unless the residence is
28 occupied for the purposes of, or as part of, the conduct
29 of a business or undertaking; or

30 (b) a prescribed person.

31 (2) The person with management or control of a workplace must
32 ensure, so far as is reasonably practicable, that the workplace,
33 the means of entering and exiting the workplace and anything
34 arising from the workplace are without risks to the health and
35 safety of any person.

- 1 **21. Duty of persons conducting businesses or undertakings**
2 **involving management or control of fixtures, fittings or**
3 **plant at workplaces**
- 4 (1) In this section:
5 ***person with management or control of fixtures, fittings or***
6 ***plant at a workplace*** means a person conducting a business or
7 undertaking to the extent that the business or undertaking
8 involves the management or control of fixtures, fittings or plant,
9 in whole or in part, at a workplace, but does not include:
10 (a) the occupier of a residence, unless the residence is
11 occupied for the purposes of, or as part of, the conduct
12 of a business or undertaking; or
13 (b) a prescribed person.
- 14 (2) The person with management or control of fixtures, fittings or
15 plant at a workplace must ensure, so far as is reasonably
16 practicable, that the fixtures, fittings and plant are without risks
17 to the health and safety of any person.
- 18 **22. Duties of persons conducting businesses or undertakings**
19 **that design plant, substances or structures**
- 20 (1) This section applies to a person (the ***designer***) who conducts a
21 business or undertaking that designs:
22 (a) plant that is to be used, or could reasonably be expected
23 to be used, as, or at, a workplace; or
24 (b) a substance that is to be used, or could reasonably be
25 expected to be used, at a workplace; or
26 (c) a structure that is to be used, or could reasonably be
27 expected to be used, as, or at, a workplace.
- 28 (2) The designer must ensure, so far as is reasonably practicable,
29 that the plant, substance or structure is designed to be without
30 risks to the health and safety of persons:
31 (a) who, at a workplace, use the plant, substance or
32 structure for a purpose for which it was designed; or
33 (b) who handle the substance at a workplace; or
34 (c) who store the plant or substance at a workplace; or
35 (d) who construct the structure at a workplace; or

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- 1 (e) who carry out any reasonably foreseeable activity at a
2 workplace in relation to:
- 3 (i) the manufacture, assembly or use of the plant for
4 a purpose for which it was designed, or the
5 proper storage, decommissioning, dismantling or
6 disposal of the plant; or
- 7 (ii) the manufacture or use of the substance for a
8 purpose for which it was designed or the proper
9 handling, storage or disposal of the substance; or
- 10 (iii) the manufacture, assembly or use of the structure
11 for a purpose for which it was designed or the
12 proper demolition or disposal of the structure; or

13 **Example**

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

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

20 (3) The designer must carry out, or arrange the carrying out of, any
21 calculations, analysis, testing or examination that may be
22 necessary for the performance of the duty imposed by
23 subsection (2).

24 (4) The designer must give adequate information to each person
25 who is provided with the design for the purpose of giving effect
26 to it concerning:

- 27 (a) each purpose for which the plant, substance or structure
28 was designed; and
- 29 (b) the results of any calculations, analysis, testing or
30 examination referred to in subsection (3), including, in
31 relation to a substance, any hazardous properties of the
32 substance identified by testing; and
- 33 (c) any conditions necessary to ensure that the plant,
34 substance or structure is without risks to health and
35 safety when used for a purpose for which it was
36 designed or when carrying out any activity referred to in
37 subsection (2)(a) to (e).

38 (5) The designer, on request, must, so far as is reasonably
39 practicable, give current relevant information on the matters
40 referred to in subsection (4) to a person who carries out, or is to

1 carry out, any of the activities referred to in subsection (2)(a)
2 to (e).

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

5 (1) This section applies to a person (the *manufacturer*) who
6 conducts a business or undertaking that manufactures:

- 7 (a) plant that is to be used, or could reasonably be expected
8 to be used, as, or at, a workplace; or
9 (b) a substance that is to be used, or could reasonably be
10 expected to be used, at a workplace; or
11 (c) a structure that is to be used, or could reasonably be
12 expected to be used, as, or at, a workplace.

13 (2) The manufacturer must ensure, so far as is reasonably
14 practicable, that the plant, substance or structure is
15 manufactured to be without risks to the health and safety of
16 persons:

- 17 (a) who, at a workplace, use the plant, substance or
18 structure for a purpose for which it was designed or
19 manufactured; or
20 (b) who handle the substance at a workplace; or
21 (c) who store the plant or substance at a workplace; or
22 (d) who construct the structure at a workplace; or
23 (e) who carry out any reasonably foreseeable activity at a
24 workplace in relation to:
25 (i) the assembly or use of the plant for a purpose for
26 which it was designed or manufactured or the
27 proper storage, decommissioning, dismantling or
28 disposal of the plant; or
29 (ii) the use of the substance for a purpose for which
30 it was designed or manufactured or the proper
31 handling, storage or disposal of the substance; or
32 (iii) the assembly or use of the structure for a purpose
33 for which it was designed or manufactured or the
34 proper demolition or disposal of the structure; or

35 **Example**

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

- 37 (f) who are at or in the vicinity of a workplace and who are
38 exposed to the plant, substance or structure at the

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1 workplace or whose health or safety may be affected by
2 a use or activity referred to in paragraph (a), (b), (c), (d)
3 or (e).

4 (3) The manufacturer must carry out, or arrange the carrying out of,
5 any calculations, analysis, testing or examination that may be
6 necessary for the performance of the duty imposed by
7 subsection (2).

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

11 (a) each purpose for which the plant, substance or structure
12 was designed or manufactured; and

13 (b) the results of any calculations, analysis, testing or
14 examination referred to in subsection (3), including, in
15 relation to a substance, any hazardous properties of the
16 substance identified by testing; and

17 (c) any conditions necessary to ensure that the plant,
18 substance or structure is without risks to health and
19 safety when used for a purpose for which it was
20 designed or manufactured or when carrying out any
21 activity referred to in subsection (2)(a) to (e).

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

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

29 (1) This section applies to a person (the *importer*) who conducts a
30 business or undertaking that imports:

31 (a) plant that is to be used, or could reasonably be expected
32 to be used, as, or at, a workplace; or

33 (b) a substance that is to be used, or could reasonably be
34 expected to be used, at a workplace; or

35 (c) a structure that is to be used, or could reasonably be
36 expected to be used, as, or at, a workplace.

- 1 (2) The importer must ensure, so far as is reasonably practicable,
2 that the plant, substance or structure is without risks to the
3 health and safety of persons:
- 4 (a) who, at a workplace, use the plant, substance or
5 structure for a purpose for which it was designed or
6 manufactured; or
- 7 (b) who handle the substance at a workplace; or
- 8 (c) who store the plant or substance at a workplace; or
- 9 (d) who construct the structure at a workplace; or
- 10 (e) who carry out any reasonably foreseeable activity at a
11 workplace in relation to:
- 12 (i) the assembly or use of the plant for a purpose for
13 which it was designed or manufactured or the
14 proper storage, decommissioning, dismantling or
15 disposal of the plant; or
- 16 (ii) the use of the substance for a purpose for which
17 it was designed or manufactured or the proper
18 handling, storage or disposal of the substance; or
- 19 (iii) the assembly or use of the structure for a purpose
20 for which it was designed or manufactured or the
21 proper demolition or disposal of the structure; or
- 22 **Example**
- 23 Inspection, operation, cleaning, maintenance or repair of plant.
- 24 (f) who are at or in the vicinity of a workplace and who are
25 exposed to the plant, substance or structure at the
26 workplace or whose health or safety may be affected by
27 a use or activity referred to in paragraph (a), (b), (c), (d)
28 or (e).
- 29 (3) The importer must:
- 30 (a) carry out, or arrange the carrying out of, any
31 calculations, analysis, testing or examination that may
32 be necessary for the performance of the duty imposed by
33 subsection (2); or
- 34 (b) ensure that the calculations, analysis, testing or
35 examination have been carried out.

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- 1 (4) The importer must give adequate information to each person to
2 whom the importer provides the plant, substance or structure
3 concerning:
4 (a) each purpose for which the plant, substance or structure
5 was designed or manufactured; and
6 (b) the results of any calculations, analysis, testing or
7 examination referred to in subsection (3), including, in
8 relation to a substance, any hazardous properties of the
9 substance identified by testing; and
10 (c) any conditions necessary to ensure that the plant,
11 substance or structure is without risks to health and
12 safety when used for a purpose for which it was
13 designed or manufactured or when carrying out any
14 activity referred to in subsection (2)(a) to (e).
15 (5) The importer, on request, must, so far as is reasonably
16 practicable, give current relevant information on the matters
17 referred to in subsection (4) to a person who carries out, or is to
18 carry out, any of the activities referred to in subsection (2)(a)
19 to (e).

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

- 22 (1) This section applies to a person (the *supplier*) who conducts a
23 business or undertaking that supplies:
24 (a) plant that is to be used, or could reasonably be expected
25 to be used, as, or at, a workplace; or
26 (b) a substance that is to be used, or could reasonably be
27 expected to be used, at a workplace; or
28 (c) a structure that is to be used, or could reasonably be
29 expected to be used, as, or at, a workplace.
30 (2) The supplier must ensure, so far as is reasonably practicable,
31 that the plant, substance or structure is without risks to the
32 health and safety of persons:
33 (a) who, at a workplace, use the plant or substance or
34 structure for a purpose for which it was designed or
35 manufactured; or
36 (b) who handle the substance at a workplace; or
37 (c) who store the plant or substance at a workplace; or
38 (d) who construct the structure at a workplace; or

- 1 (e) who carry out any reasonably foreseeable activity at a
2 workplace in relation to:
- 3 (i) the assembly or use of the plant for a purpose for
4 which it was designed or manufactured or the
5 proper storage, decommissioning, dismantling or
6 disposal of the plant; or
- 7 (ii) the use of the substance for a purpose for which
8 it was designed or manufactured or the proper
9 handling, storage or disposal of the substance; or
- 10 (iii) the assembly or use of the structure for a purpose
11 for which it was designed or manufactured or the
12 proper demolition or disposal of the structure; or

13 **Example**

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

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

21 (3) The supplier must:

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

28 (4) The supplier must give adequate information to each person to
29 whom the supplier supplies the plant, substance or structure
30 concerning:

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

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1 designed or manufactured or when carrying out any
2 activity referred to in subsection (2)(a) to (e).

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

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

10 (1) This section applies to a person who conducts a business or
11 undertaking that installs, constructs or commissions plant or a
12 structure that is to be used, or could reasonably be expected to
13 be used, as, or at, a workplace.

14 (2) The person must ensure, so far as is reasonably practicable, that
15 the way in which the plant or structure is installed, constructed
16 or commissioned ensures that the plant or structure is without
17 risks to the health and safety of persons:

18 (a) who install or construct the plant or structure at a
19 workplace; or

20 (b) who use the plant or structure at a workplace for a
21 purpose for which it was installed, constructed or
22 commissioned; or

23 (c) who carry out any reasonably foreseeable activity at a
24 workplace in relation to the proper use,
25 decommissioning or dismantling of the plant or
26 demolition or disposal of the structure; or

27 (d) who are at or in the vicinity of a workplace and whose
28 health or safety may be affected by a use or activity
29 referred to in paragraph (a), (b) or (c).

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

31 **27. Duty of officers**

32 (1) If a person conducting a business or undertaking has a duty or
33 obligation under this Act, an officer of the person conducting
34 the business or undertaking must exercise due diligence to
35 ensure that the person conducting the business or undertaking
36 complies with that duty or obligation.

37 (2) Subject to subsection (3), the penalty applicable under
38 Division 5 of this Part for an offence relating to the duty of an

1 officer under this section is the penalty fixed for an officer of a
2 person conducting a business or undertaking for that offence.

3 (3) Despite anything to the contrary in section 33, if the duty or
4 obligation of a person conducting a business or undertaking was
5 imposed under a provision other than a provision of Division 2
6 or 3 of this Part or this Division, the penalty under section 33
7 for an offence by an officer under section 33 in relation to the
8 duty or obligation is the penalty fixed under the provision
9 creating the duty or obligation for an individual who fails to
10 comply with the duty or obligation.

11 (4) An officer of a person conducting a business or undertaking
12 may be convicted or found guilty of an offence under this Act
13 relating to a duty under this section whether or not the person
14 conducting the business or undertaking has been convicted or
15 found guilty of an offence under this Act relating to the duty or
16 obligation.

17 (5) In this section:

18 ***due diligence*** includes taking reasonable steps:

19 (a) to acquire and keep up-to-date knowledge of work
20 health and safety matters; and

21 (b) to gain an understanding of the nature of the operations
22 of the business or undertaking of the person conducting
23 the business or undertaking and generally of the hazards
24 and risks associated with those operations; and

25 (c) to ensure that the person conducting the business or
26 undertaking has available for use, and uses, appropriate
27 resources and processes to eliminate or minimise risks to
28 health and safety from work carried out as part of the
29 conduct of the business or undertaking; and

30 (d) to ensure that the person conducting the business or
31 undertaking has appropriate processes for receiving and
32 considering information regarding incidents, hazards
33 and risks and responding in a timely way to that
34 information; and

35 (e) to ensure that the person conducting the business or
36 undertaking has, and implements, processes for
37 complying with any duty or obligation of the person
38 conducting the business or undertaking under this Act;
39 and

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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;
- 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

1 person conducting the business or undertaking to
2 comply with this Act.

3 **Division 5 — Offences and penalties**

4 **30. Health and safety duty**

5 In this Division:

6 **health and safety duty** means a duty imposed under Division 2,
7 3 or 4 of this Part.

8 **31. Reckless conduct — Category 1**

9 (1) A person commits a **Category 1** offence if:

- 10 (a) the person has a health and safety duty; and
11 (b) the person, without reasonable excuse, engages in
12 conduct that exposes an individual to whom that duty is
13 owed to a risk of death or serious injury or illness; and
14 (c) the person is reckless as to the risk to an individual of
15 death or serious injury or illness.

16 Penalty:

- 17 (a) in the case of an offence committed by an individual
18 (other than as a person conducting a business or
19 undertaking or as an officer of a person conducting a
20 business or undertaking), a fine of \$300 000 or
21 5 years imprisonment or both;
22 (b) in the case of an offence committed by an individual
23 as a person conducting a business or undertaking or
24 as an officer of a person conducting a business or
25 undertaking, a fine of \$600 000 or 5 years
26 imprisonment or both;
27 (c) in the case of an offence committed by a body
28 corporate, a fine of \$3 000 000.

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

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

32 A person commits a **Category 2** offence if:

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

- 1 Penalty:
- 2 (a) in the case of an offence committed by an individual
- 3 (other than as a person conducting a business or
- 4 undertaking or as an officer of a person conducting a
- 5 business or undertaking), a fine of \$150 000;
- 6 (b) in the case of an offence committed by an individual
- 7 as a person conducting a business or undertaking or
- 8 as an officer of a person conducting a business or
- 9 undertaking, a fine of \$300 000;
- 10 (c) in the case of an offence committed by a body
- 11 corporate, a fine of \$1 500 000.

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

13 A person commits a *Category 3* offence if:

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

16 Penalty:

- 17 (a) in the case of an offence committed by an individual
- 18 (other than as a person conducting a business or
- 19 undertaking or as an officer of a person conducting a
- 20 business or undertaking), a fine of \$50 000;
- 21 (b) in the case of an offence committed by an individual
- 22 as a person conducting a business or undertaking or
- 23 as an officer of a person conducting a business or
- 24 undertaking, a fine of \$100 000;
- 25 (c) in the case of an offence committed by a body
- 26 corporate, a fine of \$500 000.

27 **34. Exceptions**

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

- 1 (b) a member of an unincorporated association may be
2 liable for failure to comply with a duty under section 28
3 or 29.

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Part 3 — Incident notification

35. What is a *notifiable incident*

In this Act:

notifiable incident means:

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

36. What is a *serious injury or illness*

In this Part:

serious injury or illness of a person means an injury or illness requiring the person to have:

- (a) immediate treatment as an in-patient in a hospital; or
- (b) immediate treatment for:
 - (i) the amputation of any part of his or her body; or
 - (ii) a serious head injury; or
 - (iii) a serious eye injury; or
 - (iv) a serious burn; or
 - (v) the separation of his or her skin from an underlying tissue (such as degloving or scalping); or
 - (vi) a spinal injury; or
 - (vii) the loss of a bodily function; or
 - (viii) serious lacerations; or
- (c) medical treatment within 48 hours of exposure to a substance,

and includes any other injury or illness prescribed by the regulations but does not include an illness or injury of a prescribed kind.

37. What is a *dangerous incident*

In this Part:

dangerous incident means an incident in relation to a workplace that exposes a worker or any other person to a serious risk to a person's health or safety emanating from an immediate or imminent exposure to:

- (a) an uncontrolled escape, spillage or leakage of a substance; or

- 1 (b) an uncontrolled implosion, explosion or fire; or
2 (c) an uncontrolled escape of gas or steam; or
3 (d) an uncontrolled escape of a pressurised substance; or
4 (e) electric shock; or
5 (f) the fall or release from a height of any plant, substance
6 or thing; or
7 (g) the collapse, overturning, failure or malfunction of, or
8 damage to, any plant that is required to be authorised for
9 use in accordance with the regulations; or
10 (h) the collapse or partial collapse of a structure; or
11 (i) the collapse or failure of an excavation or of any shoring
12 supporting an excavation; or
13 (j) the inrush of water, mud or gas in workings, in an
14 underground excavation or tunnel; or
15 (k) the interruption of the main system of ventilation in an
16 underground excavation or tunnel; or
17 (l) any other event prescribed by the regulations,
18 but does not include an incident of a prescribed kind.

19 **38. Duty to notify of notifiable incidents**

- 20 (1) A person who conducts a business or undertaking must ensure
21 that the regulator is notified immediately after becoming aware
22 that a notifiable incident arising out of the conduct of the
23 business or undertaking has occurred.

24 Penalty:

- 25 (a) in the case of an individual, a fine of \$10 000;
26 (b) in the case of a body corporate, a fine of \$50 000.

- 27 (2) The notice must be given in accordance with this section and by
28 the fastest possible means.

- 29 (3) The notice must be given:

- 30 (a) by telephone; or
31 (b) in writing.

32 **Example**

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

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- 1 (4) A person giving notice by telephone must:
2 (a) give the details of the incident requested by the
3 regulator; and
4 (b) if required by the regulator, give a written notice of the
5 incident within 48 hours of that requirement being
6 made.
- 7 (5) A written notice must be in a form, or contain the details,
8 approved by the regulator.
- 9 (6) If the regulator receives a notice by telephone and a written
10 notice is not required, the regulator must give the person
11 conducting the business or undertaking:
12 (a) details of the information received; or
13 (b) an acknowledgement of receiving the notice.
- 14 (7)

15 Note: Subsection (7) is not required in WA.

16 **39. Duty to preserve incident sites**

- 17 (1) The person with management or control of a workplace at
18 which a notifiable incident has occurred must ensure so far as is
19 reasonably practicable, that the site where the incident occurred
20 is not disturbed until an inspector arrives at the site or any
21 earlier time that an inspector directs.

22 Penalty:

- 23 (a) in the case of an individual, a fine of \$10 000;
24 (b) in the case of a body corporate, a fine of \$50 000.

- 25 (2) In subsection (1) a reference to a site includes any plant,
26 substance, structure or thing associated with the notifiable
27 incident.

- 28 (3) Subsection (1) does not prevent any action:
29 (a) to assist an injured person; or
30 (b) to remove a deceased person; or
31 (c) that is essential to make the site safe or to minimise the
32 risk of a further notifiable incident; or
33 (d) that is associated with a police investigation; or
34 (e) for which an inspector or the regulator has given
35 permission.

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.

Penalty:

- (a) in the case of an individual, a fine of \$50 000;
- (b) in the case of a body corporate, a fine of \$250 000.

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.

Penalty:

- (a) in the case of an individual, a fine of \$20 000;
- (b) in the case of a body corporate, a fine of \$100 000.

(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:

- (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.

Penalty:

- (a) in the case of an individual, a fine of \$20 000;

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1 (b) in the case of a body corporate, a fine of \$100 000.

2 **43. Requirements for authorisation of work**

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

4 (a) the regulations require the work, or class of work, to be
5 carried out by, or on behalf of, a person who is
6 authorised; and

7 (b) the person, or the person on whose behalf the work is
8 carried out, is not authorised in accordance with the
9 regulations.

10 Penalty:

11 (a) in the case of an individual, a fine of \$20 000;

12 (b) in the case of a body corporate, a fine of \$100 000.

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

15 (a) the regulations require the work, or class of work, to be
16 carried out by, or on behalf of, a person who is
17 authorised; and

18 (b) the person, or the person on whose behalf the work is to
19 be carried out, is not authorised in accordance with the
20 regulations.

21 Penalty:

22 (a) in the case of an individual, a fine of \$20 000;

23 (b) in the case of a body corporate, a fine of \$100 000.

24 **44. Requirements for prescribed qualifications or experience**

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

26 (a) the regulations require the work, or class of work, to be
27 carried out by, or under the supervision of, a person who
28 has prescribed qualifications or experience; and

29 (b) the person does not have the prescribed qualifications or
30 experience or the work is not carried out under the
31 supervision of a person who has the prescribed
32 qualifications or experience.

33 Penalty:

34 (a) in the case of an individual, a fine of \$20 000;

35 (b) in the case of a body corporate, a fine of \$100 000.

- 1 (2) A person who conducts a business or undertaking must not
2 direct or allow a worker to carry out work at a workplace if:
- 3 (a) the regulations require the work, or class of work, to be
4 carried out by, or under the supervision of, a person who
5 has prescribed qualifications or experience; and
- 6 (b) the worker does not have the prescribed qualifications or
7 experience or the work is not carried out under the
8 supervision of a person who has the prescribed
9 qualifications or experience.

10 Penalty:

- 11 (a) in the case of an individual, a fine of \$20 000;
- 12 (b) in the case of a body corporate, a fine of \$100 000.

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

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

16 Penalty:

- 17 (a) in the case of an individual, a fine of \$20 000;
- 18 (b) in the case of a body corporate, a fine of \$100 000.

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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.

Penalty:

- (a) in the case of an individual, a fine of \$20 000;
- (b) in the case of a body corporate, a fine of \$100 000.

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.

Penalty:

- (a) in the case of an individual, a fine of \$20 000;
- (b) in the case of a body corporate, a fine of \$100 000.

- (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

- 1 (ii) to contribute to the decision-making process
2 relating to the matter; and
3 (c) that the views of workers are taken into account by the
4 person conducting the business or undertaking; and
5 (d) that the workers consulted are advised of the outcome of
6 the consultation in a timely manner.
- 7 (2) If the workers are represented by a health and safety
8 representative, the consultation must involve that representative.

9 **49. When consultation is required**

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

- 12 (a) when identifying hazards and assessing risks to health
13 and safety arising from the work carried out or to be
14 carried out by the business or undertaking;
- 15 (b) when making decisions about ways to eliminate or
16 minimise those risks;
- 17 (c) when making decisions about the adequacy of facilities
18 for the welfare of workers;
- 19 (d) when proposing changes that may affect the health or
20 safety of workers;
- 21 (e) when making decisions about the procedures for:
22 (i) consulting with workers; or
23 (ii) resolving work health or safety issues at the
24 workplace; or
25 (iii) monitoring the health of workers; or
26 (iv) monitoring the conditions at any workplace
27 under the management or control of the person
28 conducting the business or undertaking; or
29 (v) providing information and training for workers;
30 or
31 (f) when carrying out any other activity prescribed by the
32 regulations for the purposes of this section.

1 **Division 3 — Health and safety representatives**

2 **Subdivision 1 — Request for election of health and safety**
3 **representatives**

4 **50. Request for election of health and safety representative**

5 A worker who carries out work for a business or undertaking
6 may ask the person conducting the business or undertaking to
7 facilitate the conduct of an election for 1 or more health and
8 safety representatives to represent workers who carry out work
9 for the business or undertaking.

10 **Subdivision 2 — Determination of work groups**

11 **51. Determination of work groups**

12 (1) If a request is made under section 50, the person conducting the
13 business or undertaking must facilitate the determination of 1 or
14 more work groups of workers.

15 (2) The purpose of determining a work group is to facilitate the
16 representation of workers in the work group by 1 or more health
17 and safety representatives.

18 (3) A work group may be determined for workers at 1 or more
19 workplaces.

20 **52. Negotiations for agreement for work group**

21 (1) A work group is to be determined by negotiation and agreement
22 between:

- 23 (a) the person conducting the business or undertaking; and
24 (b) the workers who will form the work group or their
25 representatives.

26 (2) The person conducting the business or undertaking must take all
27 reasonable steps to commence negotiations with the workers
28 within 14 days after a request is made under section 50.

29 (3) The purpose of the negotiations is to determine:

- 30 (a) the number and composition of work groups to be
31 represented by health and safety representatives; and
32 (b) the number of health and safety representatives to be
33 elected; and
34 (c) the workplace or workplaces to which the work groups
35 will apply.

- 1 (4) The parties to an agreement concerning the determination of a
2 work group or groups may, at any time, negotiate a variation of
3 the agreement.
- 4 (5) The person conducting the business or undertaking must, if
5 asked by a worker, negotiate with the worker's representative in
6 negotiations under this section (including negotiations for a
7 variation of an agreement) and must not exclude the
8 representative from those negotiations.
- 9 Penalty:
- 10 (a) in the case of an individual, a fine of \$10 000;
11 (b) in the case of a body corporate, a fine of \$50 000.
- 12 (6) The regulations may prescribe the matters that must be taken
13 into account in negotiations for and determination of work
14 groups and variations of agreements concerning work groups.

15 **53. Notice to workers**

- 16 (1) The person conducting a business or undertaking involved in
17 negotiations to determine a work group must, as soon as
18 practicable after the negotiations are completed, notify the
19 workers of the outcome of the negotiations and of any work
20 groups determined by agreement.
- 21 Penalty:
- 22 (a) in the case of an individual, a fine of \$2 000;
23 (b) in the case of a body corporate, a fine of \$10 000.
- 24 (2) The person conducting a business or undertaking involved in
25 negotiations for the variation of an agreement concerning the
26 determination of a work group or groups must, as soon as
27 practicable after the negotiations are completed, notify the
28 workers of the outcome of the negotiations and of the variation
29 (if any) to the agreement.
- 30 Penalty:
- 31 (a) in the case of an individual, a fine of \$2 000;
32 (b) in the case of a body corporate, a fine of \$10 000.

33 **54. Failure of negotiations**

- 34 (1) If there is a failure of negotiations (including negotiations
35 concerning the variation of an agreement), any person who is or
36 would be a party to the negotiations may ask the regulator to
37 appoint an inspector for the purposes of this section.

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- 1 (2) An inspector appointed under subsection (1) may decide:
- 2 (a) the matters referred to in section 52(3), or any of those
- 3 matters which is the subject of the proposed variation
- 4 (as the case requires); or
- 5 (b) that work groups should not be determined or that the
- 6 agreement should not be varied (as the case requires).
- 7 (3) For the purposes of this section, there is a failure of negotiations
- 8 if:
- 9 (a) the person conducting the business or undertaking has
- 10 not taken all reasonable steps to commence negotiations
- 11 with the workers and negotiations have not commenced
- 12 within 14 days after —
- 13 (i) a request is made under section 50; or
- 14 (ii) a party to the agreement requests the variation of
- 15 the agreement; or
- 16 (b) agreement cannot be reached on a matter relating to the
- 17 determination of a work group (or the variation of an
- 18 agreement concerning a work group) within a
- 19 reasonable time after negotiations commence.
- 20 (4) A decision under this section is taken to be an agreement under
- 21 section 52.

22 **Subdivision 3 — Multiple-business work groups**

23 **55. Determination of work groups of multiple businesses**

- 24 (1) Work groups may be determined for workers carrying out work
- 25 for 2 or more persons conducting businesses or undertakings at
- 26 1 or more workplaces.
- 27 (2) The particulars of the work groups are to be determined by
- 28 negotiation and agreement, in accordance with section 56,
- 29 between each of the persons conducting the businesses or
- 30 undertakings and the workers.
- 31 (3) The parties to an agreement concerning the determination of a
- 32 work group or groups may, at any time, negotiate a variation of
- 33 the agreement.
- 34 (4) The determination of 1 or more work groups under this
- 35 Subdivision does not:
- 36 (a) prevent the determination under this Subdivision or
- 37 Subdivision 2 of any other work group of the workers
- 38 concerned; or

- 1 (b) affect any work groups of those workers that have
2 already been determined under this Subdivision or
3 Subdivision 2.

4 **56. Negotiation of agreement for work groups of multiple**
5 **businesses**

- 6 (1) Negotiations concerning work groups under this Subdivision
7 must be directed only at the following:
- 8 (a) the number and composition of work groups to be
9 represented by health and safety representatives;
- 10 (b) the number of health and safety representatives for each
11 work group;
- 12 (c) the workplace or workplaces to which the work groups
13 will apply;
- 14 (d) the businesses or undertakings to which the work groups
15 will apply.
- 16 (2) A person conducting a business or undertaking must, if asked by
17 a worker, negotiate with the worker’s representative in
18 negotiations under this section (including negotiations for a
19 variation of an agreement) and must not exclude the
20 representative from those negotiations.
- 21 Penalty:
- 22 (a) in the case of an individual, a fine of \$10 000;
- 23 (b) in the case of a body corporate, a fine of \$50 000.
- 24 (3) If agreement cannot be reached on a matter relating to the
25 determination of a work group (or a variation of an agreement)
26 within a reasonable time after negotiations commence under this
27 Subdivision, any party to the negotiations may ask the regulator
28 to appoint an inspector to assist the negotiations in relation to
29 that matter.
- 30 (4) The regulations may prescribe the matters that must be taken
31 into account in negotiations for and determination of work
32 groups and variations of agreements.

33 **57. Notice to workers**

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

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- 1 Penalty:
- 2 (a) in the case of an individual, a fine of \$2 000;
- 3 (b) in the case of a body corporate, a fine of \$10 000.
- 4 (2) A person conducting a business or undertaking involved in
- 5 negotiations for the variation of an agreement concerning the
- 6 determination of a work group or groups must, as soon as
- 7 practicable after the negotiations are completed, notify the
- 8 workers of the outcome of the negotiations and of the variation
- 9 (if any) to the agreement.

- 10 Penalty:
- 11 (a) in the case of an individual, a fine of \$2 000;
- 12 (b) in the case of a body corporate, a fine of \$10 000.

13 **58. Withdrawal from negotiations or agreement involving**

14 **multiple businesses**

- 15 (1) A party to a negotiation for an agreement, or to an agreement,
- 16 concerning a work group under this Subdivision may withdraw
- 17 from the negotiation or agreement at any time by giving
- 18 reasonable notice (in writing) to the other parties.
- 19 (2) If a party withdraws from an agreement concerning a work
- 20 group under this Subdivision:
- 21 (a) the other parties must negotiate a variation to the
- 22 agreement in accordance with section 56; and
- 23 (b) the withdrawal does not affect the validity of the
- 24 agreement between the other parties in the meantime.

25 **59. Effect of Subdivision on other arrangements**

26 To avoid doubt, nothing in this Subdivision affects the capacity

27 of 2 or more persons conducting businesses or undertakings and

28 their workers to enter into other agreements or make other

29 arrangements, in addition to complying with this Part,

30 concerning the representation of those workers.

31 **Subdivision 4 — Election of health and safety representatives**

32 **60. Eligibility to be elected**

- 33 A worker is:
- 34 (a) eligible to be elected as a health and safety
- 35 representative for a work group only if he or she is a
- 36 member of that work group; and

- 1 (b) not eligible to be elected as a health and safety
2 representative if he or she is disqualified under
3 section 65 from being a health and safety representative.

4 **61. Procedure for election of health and safety representatives**

- 5 (1) The workers in a work group may determine how an election of
6 a health and safety representative for the work group is to be
7 conducted.
- 8 (2) However, an election must comply with the procedures (if any)
9 prescribed by the regulations.
- 10 (3) If a majority of the workers in a work group (the *workers*) so
11 determine, the election may be conducted with the assistance of
12 the following persons:
- 13 (a) if entry to a workplace is required for the assistance to
14 be given:
- 15 (i) a person who is ordinarily entitled to be at the
16 workplace and who the workers authorise to
17 assist them;
- 18 (ii) an authorised representative, as defined in the
19 *Industrial Relations Act 1979* section 49G, of an
20 organisation of which at least 1 of the workers is
21 a member;
- 22 (iii) an official of an organisation to whom a current
23 entry permit has been issued under the Fair Work
24 Act if the organisation is entitled to represent the
25 industrial interests under that Act of at least 1 of
26 the workers;
- 27 (iv) a legal practitioner the workers authorise to assist
28 them;
- 29 (b) otherwise, a union or other person or organisation.
- 30 (4) The person conducting the business or undertaking to which the
31 work group relates must provide any resources, facilities and
32 assistance that are reasonably necessary or are prescribed by the
33 regulations to enable elections to be conducted.
- 34 Penalty:
- 35 (a) in the case of an individual, a fine of \$10 000;
- 36 (b) in the case of a body corporate, a fine of \$50 000.

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1 **62. Eligibility to vote**

2 (1) A health and safety representative for a work group is to be
3 elected by members of that work group.

4 (2) All workers in a work group are entitled to vote for the election
5 of a health and safety representative for that work group.

6 **63. When election not required**

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

12 **64. Term of office of health and safety representative**

13 (1) A health and safety representative for a work group holds office
14 for 3 years.

15 (2) However a person ceases to hold office as a health and safety
16 representative for a work group if:

17 (a) the person resigns as a health and safety representative
18 for the work group by written notice given to the person
19 conducting the relevant business or undertaking; or

20 (b) the person ceases to be a worker in the work group for
21 which he or she was elected as a health and safety
22 representative; or

23 (c) the person is disqualified under section 65 from acting
24 as a health and safety representative; or

25 (d) the person is removed from that position by a majority
26 of the members of the work group in accordance with
27 the regulations.

28 (3) A health and safety representative is eligible for re-election.

29 **65. Disqualification of health and safety representatives**

30 (1) An application may be made to the Tribunal to disqualify a
31 health and safety representative on the ground that the
32 representative has:

33 (a) exercised a power or performed a function as a health
34 and safety representative for an improper purpose; or

35 (b) used or disclosed any information he or she acquired as
36 a health and safety representative for a purpose other

1 than in connection with the role of health and safety
2 representative.

3 (2) The following persons may make an application under this
4 section:

5 (a) any person adversely affected by:

6 (i) the exercise of a power or the performance of a
7 function referred to in subsection (1)(a); or

8 (ii) the use or disclosure of information referred to in
9 subsection (1)(b);

10 (b) the regulator.

11 (3) If the Tribunal is satisfied that a ground in subsection (1) is
12 made out, the Tribunal may disqualify the health and safety
13 representative for a specified period or indefinitely.

14 **66. Immunity of health and safety representatives**

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

17 (a) in exercising a power or performing a function under
18 this Act; or

19 (b) in the reasonable belief that the thing was done or
20 omitted to be done in the exercise of a power or the
21 performance of a function under this Act.

22 **67. Deputy health and safety representatives**

23 Note: Section 67 is not required in WA.

24 **Subdivision 5 — Powers and functions of health and**
25 **safety representatives**

26 **68. Powers and functions of health and safety representatives**

27 (1) The powers and functions of a health and safety representative
28 for a work group are:

29 (a) to represent the workers in the work group in matters
30 relating to work health and safety; and

31 (b) to monitor the measures taken by the person conducting
32 the relevant business or undertaking or that person's
33 representative in compliance with this Act in relation to
34 workers in the work group; and

35 (c) to investigate complaints from members of the work
36 group relating to work health and safety; and

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- 1 (d) to inquire into anything that appears to be a risk to the
2 health or safety of workers in the work group, arising
3 from the conduct of the business or undertaking.
- 4 (2) In exercising a power or performing a function, the health and
5 safety representative may:
- 6 (a) inspect the workplace or any part of the workplace at
7 which a worker in the work group works:
- 8 (i) at any time after giving reasonable notice to the
9 person conducting the business or undertaking at
10 that workplace; and
- 11 (ii) at any time, without notice, in the event of an
12 incident, or any situation involving a serious risk
13 to the health or safety of a person emanating
14 from an immediate or imminent exposure to a
15 hazard; and
- 16 (b) accompany an inspector during an inspection of the
17 workplace or part of the workplace at which a worker in
18 the work group works; and
- 19 (c) with the consent of a worker that the health and safety
20 representative represents, be present at an interview
21 concerning work health and safety between the worker
22 and:
- 23 (i) an inspector; or
24 (ii) the person conducting the business or
25 undertaking at that workplace or the person's
26 representative; and
- 27 (d)
- 28 Note: Paragraph (d) is not required in WA.
- 29 (e) request the establishment of a health and safety
30 committee; and
- 31 (f) receive information concerning the work health and
32 safety of workers in the work group; and
- 33 (g) whenever necessary, request the assistance of any
34 person, but if entry to a workplace is required for the
35 assistance to be given, from the following persons only:
- 36 (i) a person who is ordinarily entitled to be at the
37 workplace;
- 38 (ii) an authorised representative, as defined in the
39 *Industrial Relations Act 1979* section 49G, of an

- 1 organisation of which at least 1 of the workers in
2 the work group is a member;
- 3 (iii) an official of an organisation to whom a current
4 entry permit has been issued under the Fair Work
5 Act if the organisation is entitled to represent the
6 industrial interests under that Act of at least 1 of
7 the workers in the work group.

8 Note: A health and safety representative also has a power under Division 7
9 of this Part to issue provisional improvement notices.

- 10 (3) Despite subsection (2)(f), a health and safety representative is
11 not entitled to have access to any personal or medical
12 information concerning a worker without the worker's consent
13 unless the information is in a form that:
- 14 (a) does not identify the worker; and
15 (b) could not reasonably be expected to lead to the
16 identification of the worker.
- 17 (4) Nothing in this Act imposes or is taken to impose a duty on a
18 health and safety representative in that capacity.

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

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

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

8 (a) there is a serious risk to health or safety emanating from
9 an immediate or imminent exposure to a hazard that
10 affects or may affect a member of another work group;

11 or

12 (b) a member of another work group asks for the
13 representative's assistance,

14 and the health and safety representative for that other work
15 group is found, after reasonable inquiry, to be unavailable.

16 (3) In this section:

17 *another work group* means another work group of workers
18 carrying out work for a business or undertaking to which the
19 work group that the health and safety representative represents
20 relates.

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

23 **70. General obligations of person conducting business or**
24 **undertaking**

25 (1) The person conducting a business or undertaking must:

26 (a) consult, so far as is reasonably practicable, on work
27 health and safety matters with any health and safety
28 representative for a work group of workers carrying out
29 work for the business or undertaking; and

30 (b) confer with a health and safety representative for a work
31 group, whenever reasonably requested by the
32 representative, for the purpose of ensuring the health
33 and safety of the workers in the work group; and

- 1 (c) allow any health and safety representative for the work
2 group to have access to information that the person has
3 relating to:
- 4 (i) hazards (including associated risks) at the
5 workplace affecting workers in the work group;
6 and
- 7 (ii) the health and safety of the workers in the work
8 group; and
- 9 (d) with the consent of a worker that the health and safety
10 representative represents, allow the health and safety
11 representative to be present at an interview concerning
12 work health and safety between the worker and:
- 13 (i) an inspector; or
- 14 (ii) the person conducting the business or
15 undertaking at that workplace or the person's
16 representative; and
- 17 (e)
- 18 Note: Paragraph (e) is not required in WA.
- 19 (f) provide any resources, facilities and assistance to a
20 health and safety representative for the work group that
21 are reasonably necessary or prescribed by the
22 regulations to enable the representative to exercise his or
23 her powers or perform his or her functions under this
24 Act; and
- 25 (g) allow a person assisting a health and safety
26 representative for the work group to have access to the
27 workplace if that is necessary to enable the assistance to
28 be provided, but only if the person:
- 29 (i) is ordinarily entitled to be at the workplace; or
- 30 (ii) is an authorised representative, as defined in the
31 *Industrial Relations Act 1979* section 49G, of an
32 organisation of which at least 1 of the workers in
33 the work group is a member; or
- 34 (iii) is an official of an organisation to whom a
35 current entry permit has been issued under the
36 Fair Work Act if the organisation is entitled to
37 represent the industrial interests under that Act of
38 at least 1 of the workers in the work group; and
- 39 (h) permit a health and safety representative for the work
40 group to accompany an inspector during an inspection of

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- 1 any part of the workplace where a worker in the work
2 group works; and
- 3 (i) provide any other assistance to the health and safety
4 representative for the work group that may be required
5 by the regulations.
- 6 Penalty:
- 7 (a) in the case of an individual, a fine of \$10 000;
8 (b) in the case of a body corporate, a fine of \$50 000.
- 9 (2) The person conducting a business or undertaking must allow a
10 health and safety representative to spend such time as is
11 reasonably necessary to exercise his or her powers and perform
12 his or her functions under this Act.
- 13 Penalty:
- 14 (a) in the case of an individual, a fine of \$10 000;
15 (b) in the case of a body corporate, a fine of \$50 000.
- 16 (3) Any time that a health and safety representative spends for the
17 purposes of exercising his or her powers or performing his or
18 her functions under this Act must be with the pay that he or she
19 would otherwise be entitled to receive for performing his or her
20 normal duties during that period.

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

- 2 (1) This section applies despite section 70(1).
- 3 (2) The person conducting a business or undertaking must not allow
4 a health and safety representative to have access to any personal
5 or medical information concerning a worker without the
6 worker's consent unless the information is in a form that:
- 7 (a) does not identify the worker; and
8 (b) could not reasonably be expected to lead to the
9 identification of the worker.
- 10 Penalty:
- 11 (a) in the case of an individual, a fine of \$10 000;
12 (b) in the case of a body corporate, a fine of \$50 000.
- 13 (3) The person conducting a business or undertaking is not required
14 to give financial assistance to a health and safety representative
15 for the purpose of the assistance referred to in section 70(1)(g).
- 16 (4)
- 17 Note: Subsection (4) is not required in WA.
- 18 (5) The person conducting a business or undertaking may refuse on
19 reasonable grounds to grant access to the workplace to a person
20 assisting a health and safety representative for a work group.
- 21 (6) If access is refused to a person assisting a health and safety
22 representative under subsection (5), the health and safety
23 representative may ask the regulator to appoint an inspector to
24 assist in resolving the matter.

25 **72. Obligation to train health and safety representatives**

- 26 (1) The person conducting a business or undertaking must, if
27 requested by a health and safety representative for a work group
28 for that business or undertaking, allow the health and safety
29 representative to attend a course of training in work health and
30 safety that is —
- 31 (a) approved by the Commission for Occupational Health
32 and Safety established under Schedule 2 clause 4; and
33 (b) a course that the health and safety representative is
34 entitled under the regulations to attend; and
35 (c) subject to subsection (5), chosen by the health and safety
36 representative, in consultation with the person
37 conducting the business or undertaking.

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- 1 (2) The person conducting the business or undertaking must:
- 2 (a) as soon as practicable within the period of 3 months
- 3 after the request is made, allow the health and safety
- 4 representative time off work to attend the course of
- 5 training; and
- 6 (b) pay the course fees and any other reasonable costs
- 7 associated with the health and safety representative's
- 8 attendance at the course of training.
- 9 (3) If:
- 10 (a) a health and safety representative represents a work
- 11 group of the workers of more than 1 business or
- 12 undertaking; and
- 13 (b) the person conducting any of those businesses or
- 14 undertakings has complied with this section in relation
- 15 to the representative,
- 16 each of the persons conducting those businesses or undertakings
- 17 is to be taken to have complied with this section in relation to
- 18 the representative.
- 19 (4) Any time that a health and safety representative is given off
- 20 work to attend the course of training must be with the pay that
- 21 he or she would otherwise be entitled to receive for performing
- 22 his or her normal duties during that period.
- 23 (5) If agreement cannot be reached between the person conducting
- 24 the business or undertaking and the health and safety
- 25 representative within the time required by subsection (2) as to
- 26 the matters set out in subsections (1)(c) and (2), either party
- 27 may ask the regulator to appoint an inspector to decide the
- 28 matter.
- 29 (6) The inspector may decide the matter in accordance with this
- 30 section.
- 31 (7) A person conducting a business or undertaking must allow a
- 32 health and safety representative to attend a course decided by
- 33 the inspector and pay the costs decided by the inspector under
- 34 subsection (6).
- 35 Penalty:
- 36 (a) in the case of an individual, a fine of \$10 000;
- 37 (b) in the case of a body corporate, a fine of \$50 000.

1 **73. Obligation to share costs if multiple businesses or**
2 **undertakings**

3 (1) If a health and safety representative represents a work group of
4 workers carrying out work for 2 or more persons conducting
5 businesses or undertakings:

6 (a) the costs of the representative exercising powers and
7 performing functions under this Act; and

8 (b) the costs referred to in section 72(2)(b),

9 for which any of the persons conducting those businesses or
10 undertakings are liable must be apportioned equally between
11 each of those persons unless they agree otherwise.

12 (2) An agreement to apportion the costs in another way may be
13 varied at any time by negotiation and agreement between each
14 of the persons conducting the businesses or undertakings.

15 **74. List of health and safety representatives**

16 (1) A person conducting a business or undertaking must ensure that:

17 (a) a list of each health and safety representative for each
18 work group of workers carrying out work for the
19 business or undertaking is prepared and kept up to date;
20 and

21 (b) a copy of the up-to-date list is displayed:

22 (i) at the principal place of business of the business
23 or undertaking; and

24 (ii) at any other workplace that is appropriate taking
25 into account the constitution of the relevant work
26 group or work groups,

27 in a manner that is readily accessible to workers in the
28 relevant work group or work groups.

29 Penalty:

30 (a) in the case of an individual, a fine of \$2 000;

31 (b) in the case of a body corporate, a fine of \$10 000.

32 (2) A person conducting a business or undertaking must notify the
33 regulator each time a person is elected, or is taken to be elected,
34 as a health and safety representative for a work group.

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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.

Penalty:

- (a) in the case of an individual, a fine of \$5 000;
- (b) in the case of a body corporate, a fine of \$25 000.

- (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.

1 (6) An inspector appointed on a request under subsection (5) may
2 decide the constitution of the health and safety committee or
3 that the committee should not be established.

4 (7) A decision of an inspector under this section is taken to be an
5 agreement under this section between the parties.

6 **77. Functions of committee**

7 The functions of a health and safety committee are:

- 8 (a) to facilitate co-operation between the person conducting
9 a business or undertaking and workers in instigating,
10 developing and carrying out measures designed to
11 ensure the workers' health and safety at work; and
12 (b) to assist in developing standards, rules and procedures
13 relating to health and safety that are to be followed or
14 complied with at the workplace; and
15 (c) any other functions prescribed by the regulations or
16 agreed between the person conducting the business or
17 undertaking and the committee.

18 **78. Meetings of committee**

19 A health and safety committee may determine its own
20 procedures, subject to the regulations.

21 **79. Duties of person conducting business or undertaking**

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

27 Penalty:

- 28 (a) in the case of an individual, a fine of \$10 000;
29 (b) in the case of a body corporate, a fine of \$50 000.

30 (2) Any time that a member of a health and safety committee
31 spends for the purposes set out in subsection (1) must be with
32 the pay that he or she would otherwise be entitled to receive for
33 performing his or her normal duties during that period.

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Division 5 Issue resolution

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- 1 (3) The person conducting a business or undertaking must allow the
2 health and safety committee for a workplace to have access to
3 information that the person has relating to:
- 4 (a) hazards (including associated risks) at the workplace;
5 and
6 (b) the health and safety of the workers at the workplace.
- 7 Penalty:
- 8 (a) in the case of an individual, a fine of \$10 000;
9 (b) in the case of a body corporate, a fine of \$50 000.
- 10 (4) Despite subsection (3), the person conducting a business or
11 undertaking must not allow the health and safety committee to
12 have access to any personal or medical information concerning
13 a worker without the worker's consent unless the information is
14 in a form that:
- 15 (a) does not identify the worker; and
16 (b) could not reasonably be expected to lead to the
17 identification of the worker.
- 18 Penalty:
- 19 (a) in the case of an individual, a fine of \$10 000;
20 (b) in the case of a body corporate, a fine of \$50 000.

21 **Division 5 — Issue resolution**

22 **80. Parties to an issue**

- 23 (1) In this Division:
24 *parties*, in relation to an issue, means the following:
- 25 (a) the person conducting the business or undertaking or the
26 person's representative;
- 27 (b) if the issue involves more than 1 business or
28 undertaking, the person conducting each business or
29 undertaking or the person's representative;
- 30 (c) if the worker or workers affected by the issue are in a
31 work group, the health and safety representative for that
32 work group or his or her representative;
- 33 (d) if the worker or workers affected by the issue are not in
34 a work group, the worker or workers or their
35 representative.

- 1 (2) A person conducting a business or undertaking must ensure that
2 the person's representative (if any) for the purposes of this
3 Division:
4 (a) is not a health and safety representative; and
5 (b) has an appropriate level of seniority, and is sufficiently
6 competent, to act as the person's representative.

7 **81. Resolution of health and safety issues**

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

18 **82. Referral of issue to regulator for resolution by inspector**

- 19 (1) This section applies if an issue has not been resolved after
20 reasonable efforts have been made to achieve an effective
21 resolution of the issue.
22 (2) A party to the issue may ask the regulator to appoint an
23 inspector to attend the workplace to assist in resolving the issue.
24 (3) A request to the regulator under this section does not prevent:
25 (a) a worker from exercising the right under Division 6 of
26 this Part to cease work; or
27 (b) a health and safety representative from issuing a
28 provisional improvement notice.
29 (4) On attending a workplace under this section, an inspector may
30 exercise any of the inspector's compliance powers under this
31 Act in relation to the workplace.

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Division 6 — Right to cease 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.
- (b)

Note: Paragraph (b) is not required in WA.

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

Note: Section 85 is not required in WA.

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; 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

1 (b) that was safe and appropriate for the worker to carry out.

2 **89. Request to regulator to appoint inspector to assist**

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

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

9 **Division 7 — Provisional improvement notices**

10 **90. Provisional improvement notices**

11 (1) This section applies if a health and safety representative
12 reasonably believes that a person:

- 13 (a) is contravening a provision of this Act; or
14 (b) has contravened a provision of this Act in circumstances
15 that make it likely that the contravention will continue
16 or be repeated.

17 (2) The health and safety representative may issue a provisional
18 improvement notice requiring the person to:

- 19 (a) remedy the contravention; or
20 (b) prevent a likely contravention from occurring; or
21 (c) remedy the things or operations causing the
22 contravention or likely contravention.

23 (3) However, the health and safety representative must not issue a
24 provisional improvement notice to a person unless he or she has
25 first consulted the person.

26 (4) A health and safety representative cannot issue a provisional
27 improvement notice unless the representative has:

- 28 (a) completed initial training prescribed by the regulations
29 referred to in section 72(1)(b); or
30 (b) previously completed that training when acting as a
31 health and safety representative for another work group;
32 or
33 (c) completed training equivalent to that training under a
34 corresponding WHS law.

35 (5) A health and safety representative cannot issue a provisional
36 improvement notice in relation to a matter if an inspector has

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Division 7 Provisional improvement notices

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1 already issued (or decided not to issue) an improvement notice
2 or prohibition notice in relation to the same matter.

3 **91. Provisional improvement notice to be in writing**

4 A provisional improvement notice must be in writing.

5 **92. Contents of provisional improvement notice**

6 A provisional improvement notice must state:

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

20 **93. Provisional improvement notice may give directions to
21 remedy contravention**

22 (1) A provisional improvement notice may include directions
23 concerning the measures to be taken to remedy the
24 contravention or prevent the likely contravention or the matters
25 or activities causing the contravention or likely contravention to
26 which the notice relates.

27 (2) A direction included in a provisional improvement notice may:
28 (a) refer to a code of practice; and
29 (b) offer the person to whom it is issued a choice of ways in
30 which to remedy the contravention.

31 **94. Minor changes to provisional improvement notice**

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

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

1 **95. Issue of provisional improvement notice**

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

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

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

8 **97. Display of provisional improvement notice**

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

14 Penalty:

- 15 (a) in the case of an individual, a fine of \$5 000;
16 (b) in the case of a body corporate, a fine of \$25 000.

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

20 Penalty:

- 21 (a) in the case of an individual, a fine of \$5 000;
22 (b) in the case of a body corporate, a fine of \$25 000.

23 **98. Formal irregularities or defects in notice**

24 A provisional improvement notice is not invalid only because
25 of:

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

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

33 (1) This section applies if a provisional improvement notice has
34 been issued to a person and an inspector has not been required
35 under section 101 to attend at the workplace.

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Part 5 Consultation, representation and participation

Division 7 Provisional improvement notices

s. 100

1 (2) The person must comply with the provisional improvement
2 notice within the time specified in the notice.

3 Penalty:

4 (a) in the case of an individual, a fine of \$50 000;

5 (b) in the case of a body corporate, a fine of \$250 000.

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

7 (1) If a provisional improvement notice is issued to a person:

8 (a) the person to whom it was issued; or

9 (b) if the person is a worker, the person conducting the
10 business or undertaking at the workplace at which the
11 worker carries out work,

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

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

17 (3) A request made under subsection (1) must be received by the
18 regulator not later than the time specified in the provisional
19 improvement notice for the purposes of section 99(2).

20 **101. Regulator to appoint inspector to review notice**

21 (1) The regulator must ensure that an inspector attends the
22 workplace as soon as practicable after a request is made under
23 section 100.

24 (2) The inspector must review the provisional improvement notice
25 and inquire into the circumstances that are the subject of the
26 provisional improvement notice.

27 (3) An inspector may review a provisional improvement notice
28 even if the period for compliance with the notice has expired.

29 **102. Decision of inspector on review of provisional improvement
30 notice**

31 (1) After reviewing the provisional improvement notice, the
32 inspector must:

33 (a) confirm the provisional improvement notice; or

34 (b) confirm the provisional improvement notice with
35 changes; or

36 (c) cancel the provisional improvement notice.

- 1 (2) The inspector must give a copy of his or her decision to:
2 (a) the applicant for the review of the provisional
3 improvement notice; and
4 (b) the health and safety representative who issued the
5 notice.
- 6 (3) A provisional improvement notice that is confirmed (with or
7 without changes) by an inspector is taken to be an improvement
8 notice issued by the inspector under this Act.

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

10 **103. Part does not apply to prisoners**

11 Note: Section 103 is not required in WA.

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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.

Penalty:

- (a) in the case of an individual, a fine of \$100 000;
- (b) in the case of a body corporate, a fine of \$500 000.

(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:
 - (i)

Note: Subparagraph (i) is not required in WA.

- (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.

1 (d)

2 Note: Paragraph (d) is not required in WA.

3 (2) For the purposes of this Part, a person also engages in
4 discriminatory conduct if the person organises to take any action
5 referred to in subsection (1) or threatens to organise or take that
6 action.

7 **106. What is a *prohibited reason***

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

12 (a) is, has been or proposes to be a health and safety
13 representative or a member of a health and safety
14 committee; or

15 (b) undertakes, has undertaken or proposes to undertake
16 another role under this Act; or

17 (c) exercises a power or performs a function or has
18 exercised a power or performed a function or proposes
19 to exercise a power or perform a function as a health and
20 safety representative or as a member of a health and
21 safety committee; or

22 (d) exercises, has exercised or proposes to exercise a power
23 under this Act or exercises, has exercised or proposes to
24 exercise a power under this Act in a particular way; or

25 (e) performs, has performed or proposes to perform a
26 function under this Act or performs, has performed or
27 proposes to perform a function under this Act in a
28 particular way; or

29 (f) refrains from, has refrained from or proposes to refrain
30 from exercising a power or performing a function under
31 this Act or refrains from, has refrained from or proposes
32 to refrain from exercising a power or performing a
33 function under this Act in a particular way; or

34 (g) assists or has assisted or proposes to assist, or gives or
35 has given or proposes to give any information to any
36 person exercising a power or performing a function
37 under this Act; or

Work Health and Safety Bill 2014

Part 6 Discriminatory, coercive and misleading conduct

Division 1 Prohibition of discriminatory, coercive or misleading conduct

s. 107

- 1 (h) raises or has raised or proposes to raise an issue or
2 concern about work health and safety with:
- 3 (i) the person conducting a business or undertaking;
4 or
5 (ii) an inspector; or
6 (iii)
- 7 Note: Subparagraph (iii) is not required in WA.
- 8 (iv) a health and safety representative; or
9 (v) a member of a health and safety committee; or
10 (vi) another worker; or
11 (vii) any other person who has a duty under this Act
12 in relation to the matter; or
13 (viii) any other person exercising a power or
14 performing a function under this Act; or
- 15 (i) is involved in, has been involved in or proposes to be
16 involved in resolving a work health and safety issue
17 under this Act; or
- 18 (j) is taking action, has taken action or proposes to take
19 action to seek compliance by any person with any duty
20 or obligation under this Act.

21 **107. Prohibition of requesting, instructing, inducing,**
22 **encouraging, authorising or assisting discriminatory**
23 **conduct**

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

27 Penalty:

- 28 (a) in the case of an individual, a fine of \$100 000;
29 (b) in the case of a body corporate, a fine of \$500 000.

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

1 **108. Prohibition of coercion or inducement**

2 (1) A person must not organise or take, or threaten to organise or
3 take, any action against another person with intent to coerce or
4 induce the other person, or a third person:

- 5 (a) to exercise or not to exercise a power, or to propose to
6 exercise or not to exercise a power, under this Act; or
7 (b) to perform or not to perform a function, or to propose to
8 perform or not to perform a function, under this Act; or
9 (c) to exercise or not to exercise a power or perform a
10 function, or to propose to exercise or not to exercise a
11 power or perform a function, in a particular way; or
12 (d) to refrain from seeking, or continuing to undertake, a
13 role under this Act.

14 Penalty:

- 15 (a) in the case of an individual, a fine of \$100 000;
16 (b) in the case of a body corporate, a fine of \$500 000.

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

19 (2) In this section, a reference to taking action or threatening to take
20 action against a person includes a reference to not taking a
21 particular action or threatening not to take a particular action in
22 relation to that person.

23 (3) To avoid doubt, a reasonable direction given by an emergency
24 services worker in an emergency is not an action with intent to
25 coerce or induce a person.

26 **109. Misrepresentation**

27 (1) A person must not knowingly or recklessly make a false or
28 misleading representation to another person about that other
29 person's:

- 30 (a) rights or obligations under this Act; or
31 (b) ability to initiate, or participate in, a process or
32 proceedings under this Act; or
33 (c) ability to make a complaint or inquiry to a person or
34 body empowered under this Act to seek compliance with
35 this Act.

36 Penalty:

- 37 (a) in the case of an individual, a fine of \$100 000;
38 (b) in the case of a body corporate, a fine of \$500 000.

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

3 **Division 2 — Criminal proceedings in relation to**
4 **discriminatory conduct**

5 **110. Proof of discriminatory conduct**

6 Note: Section 110 is not required in WA.

7 **111. Order for compensation or reinstatement**

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

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

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

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

- 26 (1) An eligible person may apply to the Tribunal for an order under
27 this section.
- 28 (2) The Tribunal may make 1 or more of the orders set out in
29 subsection (3) in relation to a person who has:
- 30 (a) engaged in discriminatory conduct for a prohibited
31 reason; or
- 32 (b) requested, instructed, induced, encouraged, authorised
33 or assisted another person to engage in discriminatory
34 conduct for a prohibited reason; or
- 35 (c) contravened section 108.

- 1 (3) For the purposes of subsection (2), the orders that the Tribunal
2 may make are:
- 3 (a) an injunction; or
4 (b) in the case of conduct referred to in subsection (2)(a) or
5 (b), an order that the person pay (within a specified
6 period) the compensation to the person who was the
7 subject of the discriminatory conduct that the Tribunal
8 considers appropriate; or
9 (c) in the case of conduct referred to in subsection (2)(a) in
10 relation to a worker who was or is an employee or
11 prospective employee, an order that:
- 12 (i) the worker be reinstated or re-employed in his or
13 her former position or, if that position is not
14 available, in a similar position; or
15 (ii) the prospective worker be employed in the
16 position for which he or she had applied or a
17 similar position; or
18 (d) any other order that the Tribunal considers appropriate.
- 19 (4) For the purposes of this section, a person may be found to have
20 engaged in discriminatory conduct for a prohibited reason only
21 if a reason referred to in section 106 was a substantial reason for
22 the conduct.
- 23 (5) Nothing in this section is to be construed as limiting any other
24 power of the Tribunal.
- 25 (6) For the purposes of this section, each of the following is an
26 eligible person:
- 27 (a) a person affected by the contravention;
28 (b) a person authorised by a person referred to in
29 paragraph (a).

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

- 31 (1) A proceeding brought under section 112 must be commenced
32 not more than 1 year after the date on which the applicant knew
33 or ought to have known that the cause of action accrued.
- 34 (2)

35 Note: Subsection (2) is not required in WA.

- 1 (3) It is a defence to a proceeding under section 112 in relation to
2 conduct referred to in section 112(2)(a) or (b) if the defendant
3 proves that:
- 4 (a) the conduct was reasonable in the circumstances; and
5 (b) a substantial reason for the conduct was to comply with
6 the requirements of this Act or a corresponding WHS
7 law.
- 8 (4) To avoid doubt, the burden of proof on the defendant under
9 subsection (3) is a legal burden of proof.

10 **Division 4 — General**

11 **114. General provisions relating to orders**

- 12 (1) The making of an order in a proceeding under section 112 in
13 relation to conduct referred to in section 112(2)(a) or (b) does
14 not prevent the bringing of a proceeding for an offence under
15 section 104 or 107 in relation to the same conduct.
- 16 (2) If the Tribunal makes an order under section 112 in a
17 proceeding in relation to conduct referred to in section 112(2)(a)
18 or (b), the court cannot make an order under section 111 in a
19 proceeding for an offence under section 104 or 107 in relation to
20 the same conduct.
- 21 (3) If the court makes an order under section 111 in a proceeding
22 for an offence under section 104 or 107, the Tribunal cannot
23 make an order under section 112 in a proceeding in relation to
24 conduct referred to in section 112(2)(a) or (b) that is the same
25 conduct.

26 **115. Prohibition of multiple actions**

- 27 A person cannot:
- 28 (a) commence a proceeding under Division 3 of this Part if
29 the person has commenced a proceeding or made an
30 application or complaint in relation to the same matter
31 under a law of the Commonwealth or a State and that
32 proceeding, application or complaint has not been
33 withdrawn; or
- 34 (b) recover any compensation under Division 3 of this Part
35 if the person has received compensation for the matter
36 under a law of the Commonwealth or a State; or
- 37 (c) commence or continue an application under Division 3
38 of this Part if the person has failed in a proceeding,

1 application or complaint in relation to the same matter
2 under a law of the Commonwealth or a State, other than
3 a proceeding, application or complaint relating to
4 workers' compensation.

1 **Part 7 — Workplace entry by WHS entry**
2 **permit holders**

3 Note: Part 7 (sections 116 to 151) is not required in WA.

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.

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 delegate to any person employed in the Public Sector by or under an employing authority, as those terms are defined in the *Public Sector Management Act 1994*,

1 any power or duty of the regulator under another provision of
2 this Act.

3 (2) The delegation must be in writing executed by the regulator.

4 (3) A person to whom a power or duty is delegated under this
5 section cannot delegate that power or duty.

6 (4) A person exercising or performing a power or duty that has been
7 delegated to the person under this section is to be taken to do so
8 in accordance with the terms of the delegation unless the
9 contrary is shown.

10 (5) Nothing in this section limits the ability of the regulator to
11 perform a function through an officer or agent.

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

13 **155. Powers of regulator to obtain information**

14 (1) This section applies if the regulator has reasonable grounds to
15 believe that a person is capable of giving information, providing
16 documents or giving evidence in relation to a possible
17 contravention of this Act or that will assist the regulator to
18 monitor or enforce compliance with this Act.

19 (2) The regulator may, by written notice served on the person,
20 require the person to do 1 or more of the following:

21 (a) to give the regulator, in writing signed by the person (or
22 in the case of a body corporate, by a competent officer
23 of the body corporate) and within the time and in the
24 manner specified in the notice, that information of
25 which the person has knowledge;

26 (b) to produce to the regulator, in accordance with the
27 notice, those documents;

28 (c) to appear before a person appointed by the regulator on
29 a day, and at a time and place, specified in the notice
30 (being a day, time and place that are reasonable in the
31 circumstances) and give either orally or in writing that
32 evidence and produce those documents.

33 (3) The notice must:

34 (a) state that the requirement is made under this section; and

35 (b) contain a statement to the effect that a failure to comply
36 with a requirement is an offence; and

- 1 (c) if the notice requires the person to provide information
2 or documents or answer questions:
- 3 (i) contain a statement about the effect of
4 sections 172 and 269; and
- 5 (ii) state that the person may attend with a legal
6 practitioner.
- 7 (4) The regulator must not make a requirement under
8 subsection (2)(c) unless the regulator has taken all reasonable
9 steps to obtain the information under subsections (2)(a) and (b)
10 and has been unable to do so.
- 11 (5) A person must not, without reasonable excuse, refuse or fail to
12 comply with a requirement under this section.
- 13 Penalty:
- 14 (a) in the case of an individual, a fine of \$10 000;
15 (b) in the case of a body corporate, a fine of \$50 000.
- 16 (6) Subsection (5) places an evidential burden on the accused to
17 show a reasonable excuse.
- 18 (7) Section 172 (with any necessary changes) applies to a
19 requirement under this section.

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Part 9 — Securing compliance

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Division 1 — Appointment of inspectors

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156. Appointment of inspectors

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

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(a) a public service officer;

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(b) an employee of a public authority;

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(ca) a person appointed under the *Main Roads Act 1930* section 10(1) to be an officer of the Commissioner of Main Roads;

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(c) the holder of a statutory office;

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(d) a person who is appointed as an inspector under a corresponding WHS law;

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(e) a person in a prescribed class of persons.

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157. Identity cards

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(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.

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(2) An inspector must produce his or her identity card for inspection on request when exercising compliance powers.

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(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.

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158. Accountability of inspectors

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(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.

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(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.

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

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

6 **Division 2 — Functions and powers of inspectors**

7 **160. Functions and powers of inspectors**

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

- 10 (a) to provide information and advice about compliance
11 with this Act;
- 12 (b) to assist in the resolution of:
- 13 (i) work health and safety issues at workplaces; and
14 (ii) issues related to access to a workplace by an
15 assistant to a health and safety representative;
16 and
17 (iii)

18 Note: Subparagraph (iii) is not required in WA.

- 19 (c) to review disputed provisional improvement notices;
20 (d) to require compliance with this Act through the issuing
21 of notices;
- 22 (e) to investigate contraventions of this Act and assist in the
23 prosecution of offences.
- 24 (f)

25 Note: Paragraph (f) is not required in WA.

26 **161. Conditions on inspectors' compliance powers**

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

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

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

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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.

1 **165. General powers on entry**

- 2 (1) An inspector who enters a workplace under section 163 may do
3 all or any of the following:
- 4 (a) inspect, examine and make inquiries at the workplace;
 - 5 (b) inspect and examine anything (including a document) at
6 the workplace;
 - 7 (c) bring to the workplace and use any equipment or
8 materials that may be required;
 - 9 (d) take measurements, conduct tests and make sketches or
10 recordings (including photographs, films, audio, video,
11 digital or other recordings);
 - 12 (e) take and remove for analysis a sample of any substance
13 or thing without paying for it;
 - 14 (f) require a person at the workplace to give the inspector
15 reasonable help to exercise the inspector's powers under
16 paragraphs (a) to (e);
 - 17 (g) exercise any compliance power or other power that is
18 reasonably necessary to be exercised by the inspector for
19 the purposes of this Act.
- 20 (2) A person required to give reasonable help under
21 subsection (1)(f) must not, without reasonable excuse, refuse or
22 fail to comply with the requirement.
- 23 Penalty:
- 24 (a) in the case of an individual, a fine of \$10 000;
 - 25 (b) in the case of a body corporate, a fine of \$50 000.
- 26 (3) Subsection (2) places an evidential burden on the accused to
27 show a reasonable excuse.

28 **166. Persons assisting inspectors**

- 29 (1) A person (the *assistant*), including an interpreter, may
30 accompany the inspector entering a workplace under
31 section 163 to assist the inspector if the inspector considers the
32 assistance is necessary.
- 33 (2) The assistant:
- 34 (a) may do the things at the place and in the manner that the
35 inspector reasonably requires to assist the inspector to
36 exercise compliance powers; but
 - 37 (b) must not do anything that the inspector does not have
38 power to do, except as permitted under a search warrant.

- 1 (3) Anything done lawfully by the assistant is taken for all purposes
2 to have been done by the inspector.

3 **Subdivision 2 — Search warrants**

4 **167. Search warrants**

- 5 (1A) In this section:

6 *remote communication* means any way of communicating at a
7 distance including by telephone, fax, email and radio.

- 8 (1B) A reference in this section to making an application includes a
9 reference to giving information in support of the application.

- 10 (1) An inspector may apply to a magistrate for a search warrant for
11 a place.

- 12 (2A) The application must be made in person before the magistrate
13 unless:

- 14 (a) the search warrant is needed urgently; and
15 (b) the inspector reasonably suspects that a magistrate is not
16 available within a reasonable distance of the inspector,

17 in which case:

- 18 (c) it may be made to a magistrate by remote
19 communication; and
20 (d) the magistrate must not grant it unless satisfied about the
21 matters in paragraphs (a) and (b).

- 22 (2B) The application must be made in writing unless:

- 23 (a) the application is made by remote communication; and
24 (b) it is not practicable to send the magistrate written
25 material,

26 in which case:

- 27 (c) it may be made orally; and
28 (d) the magistrate must make a written record of the
29 application and any information given in support of it.

- 30 (2C) The application must be made on oath unless:

- 31 (a) the application is made by remote communication; and
32 (b) it is not practicable for the magistrate to administer an
33 oath to the inspector,

34 in which case:

- 35 (c) it may be made in an unsworn form; and

- 1 (d) if the magistrate issues a search warrant, the inspector
2 must as soon as practicable send the magistrate an
3 affidavit verifying the application and any information
4 given in support of it.
- 5 (2D) If on an application made by remote communication a
6 magistrate issues a search warrant, the magistrate must, if
7 practicable, send a copy of the original search warrant to the
8 inspector by remote communication, but otherwise:
- 9 (a) the magistrate must give the inspector by remote
10 communication any information that must be stated in
11 the search warrant; and
- 12 (b) the inspector must complete a form of a search warrant
13 with the information received and give the magistrate a
14 copy of the form as soon as practicable after doing so;
15 and
- 16 (c) the magistrate must attach the copy of the form to the
17 original search warrant and any affidavit received from
18 the inspector and make them available for collection by
19 the inspector.
- 20 (2E) The copy of the original search warrant sent, or the form of the
21 search warrant completed, as the case may be, under
22 subsection (2D) has the same force and effect as the original
23 search warrant.
- 24 (2)
- 25 Note: Subsection (2) is not required in WA.
- 26 (3) The magistrate may refuse to consider the application until the
27 inspector gives the magistrate all the information the magistrate
28 requires about the application in the way the magistrate
29 requires.
- 30 **Example**
- 31 The magistrate may require additional information supporting the application
32 to be given by statutory declaration.
- 33 (4) The magistrate may issue a search warrant only if the magistrate
34 is satisfied there are reasonable grounds for suspecting:
- 35 (a) there is a particular thing or activity (the *evidence*) that
36 may provide evidence of an offence against this Act;
37 and
- 38 (b) the evidence is, or may be within the next 72 hours, at
39 the place.

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- 1 (5) The search warrant must state:
- 2 (a) that a stated inspector may, with necessary and
- 3 reasonable help and force, enter the place and exercise
- 4 the inspector's compliance powers; and
- 5 (b) the offence for which the search warrant is sought; and
- 6 (c) the evidence that may be seized under the search
- 7 warrant; and
- 8 (d) the hours of the day or night when the place may be
- 9 entered; and
- 10 (e) the date, within 7 days after the search warrant's issue,
- 11 the search warrant ends.

12 **168. Announcement before entry on warrant**

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

26 **169. Copy of warrant to be given to person with management or**

27 **control of place**

- 28 If the person who has or appears to have management or control
- 29 of a place is present at the place when a search warrant is being
- 30 executed, the inspector must:
- 31 (a) identify himself or herself to that person by producing
- 32 his or her identity card for inspection; and
- 33 (b) give that person a copy of the execution copy of the
- 34 warrant.

1 **Subdivision 3 — Limitation on entry powers**

2 **170. Places used for residential purposes**

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

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

17 **Subdivision 4 — Specific powers on entry**

18 **171. Power to require production of documents and answers to**
19 **questions**

- 20 (1) An inspector who enters a workplace under this Division may:
21 (a) require a person to tell the inspector who has custody of,
22 or access to, a document; or
23 (b) require a person who has custody of, or access to, a
24 document to produce that document to the inspector
25 while the inspector is at that workplace or within a
26 specified period; or
27 (c) require a person at the workplace to answer any
28 questions put by the inspector.
29 (2) A requirement under subsection (1)(b) must be made by written
30 notice unless the circumstances require the inspector to have
31 immediate access to the document.
32 (3) An interview conducted by an inspector under subsection (1)(c)
33 must be conducted in private if:
34 (a) the inspector considers it appropriate; or
35 (b) the person being interviewed so requests.

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- 1 (4) Subsection (3) does not limit the operation of section 166 or
2 prevent a representative of the person being interviewed from
3 being present at the interview.
- 4 (5) Subsection (3) may be invoked during an interview by:
5 (a) the inspector; or
6 (b) the person being interviewed,
7 in which case the subsection applies to the remainder of the
8 interview.
- 9 (6) A person must not, without reasonable excuse, refuse or fail to
10 comply with a requirement under this section.
11 Penalty:
12 (a) in the case of an individual, a fine of \$10 000;
13 (b) in the case of a body corporate, a fine of \$50 000.
- 14 Note: See sections 172 and 173 in relation to self-incrimination and
15 section 269 in relation to legal professional privilege.
- 16 (7) Subsection (6) places an evidential burden on the accused to
17 show a reasonable excuse.

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

- 19 (1) A person is not excused from answering a question or providing
20 information or a document under this Part on the ground that the
21 answer to the question, or the information or document, may
22 tend to incriminate the person or expose the person to a penalty.
- 23 (2) However, the answer to a question or information or a document
24 provided by an individual is not admissible as evidence against
25 that individual in civil or criminal proceedings other than
26 proceedings arising out of the false or misleading nature of the
27 answer, information or document.

28 **173. Warning to be given**

- 29 (1) Before requiring a person to answer a question or provide
30 information or a document under this Part, an inspector must:
31 (a) identify himself or herself to the person as an inspector
32 by producing the inspector's identity card or in some
33 other way; and
34 (b) warn the person that failure to comply with the
35 requirement or to answer the question, without
36 reasonable excuse, would constitute an offence; and
37 (c) warn the person about the effect of section 172; and

- 1 (d) advise the person about the effect of section 269.
- 2 (2) It is not an offence for an individual to refuse to answer a
3 question put by an inspector or provide information or a
4 document to an inspector under this Part on the ground that the
5 question, information or document might tend to incriminate
6 him or her, unless he or she was first given the warning in
7 subsection (1)(c).
- 8 (3) Nothing in this section prevents an inspector from obtaining and
9 using evidence given to the inspector voluntarily by any person.

10 **174. Powers to copy and retain documents**

- 11 (1) An inspector may:
- 12 (a) make copies of, or take extracts from, a document given
13 to the inspector in accordance with a requirement under
14 this Act; and
- 15 (b) keep that document for the period that the inspector
16 considers necessary.
- 17 (2) While an inspector retains custody of a document, the inspector
18 must permit the following persons to inspect or make copies of
19 the document at all reasonable times:
- 20 (a) the person who produced the document;
- 21 (b) the owner of the document;
- 22 (c) a person authorised by a person referred to in
23 paragraph (a) or (b).

24 **175. Power to seize evidence etc.**

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

1 **176. Inspector’s power to seize dangerous workplaces and things**

- 2 (1) This section applies if an inspector who enters a workplace
3 under this Part reasonably believes that:
- 4 (a) the workplace or part of the workplace; or
 - 5 (b) plant at the workplace; or
 - 6 (c) a substance at the workplace or part of the workplace; or
 - 7 (d) a structure at a workplace,
- 8 is defective or hazardous to a degree likely to cause serious
9 injury or illness or a dangerous incident to occur.
- 10 (2) The inspector may seize the workplace or part, the plant, the
11 substance or the structure.
- 12 (3) An inspector’s powers under this section may be exercised only
13 by:
- 14 (a) the regulator; or
 - 15 (b) a person to whom the regulator has, under section 154,
16 delegated the powers and functions that the regulator has
17 under section 153(2).

18 **177. Powers supporting seizure**

- 19 (1) Having seized a thing, an inspector may:
- 20 (a) move the thing from the place where it was seized (the
21 *place of seizure*); or
 - 22 (b) leave the thing at the place of seizure but take
23 reasonable action to restrict access to it; or
- 24 **Examples**
- 25 1 Sealing a thing and marking it to show access to it is
26 restricted.
 - 27 2 Sealing the entrance to a room where the seized thing is
28 situated and marking it to show access to it is restricted.
 - 29 (c) if the thing is plant or a structure—dismantle or cause to
30 be dismantled the plant or structure.
- 31 (2) If an inspector restricts access to a seized thing, a person must
32 not tamper, or attempt to tamper, with the thing or something
33 restricting access to the thing without an inspector’s approval.
- 34 **Penalty:**
- 35 (a) in the case of an individual, a fine of \$10 000;
 - 36 (b) in the case of a body corporate, a fine of \$50 000.

- 1 (3) To enable a thing to be seized, an inspector may require the
2 person in control of it:
- 3 (a) to take it to a stated reasonable place by a stated
4 reasonable time; and
- 5 (b) if necessary, to remain in control of it at the stated place
6 for a reasonable time.
- 7 (4) The requirement:
- 8 (a) must be made by written notice; or
- 9 (b) if for any reason it is not practicable to give the notice,
10 may be made orally and confirmed by written notice as
11 soon as practicable.
- 12 (5) A further requirement may be made under this section in
13 relation to the same thing if it is necessary and reasonable to
14 make the further requirement.
- 15 (6) The person must not, without reasonable excuse, refuse or fail
16 to comply with a requirement under subsection (3) or (5).
- 17 Penalty:
- 18 (a) in the case of an individual, a fine of \$10 000;
- 19 (b) in the case of a body corporate, a fine of \$50 000.
- 20 (7) Subsection (6) places an evidential burden on the accused to
21 show a reasonable excuse.
- 22 (8) An inspector's powers under this section in relation to a thing
23 seized under section 176(2) may be exercised only by:
- 24 (a) the regulator; or
- 25 (b) a person to whom the regulator has, under section 154,
26 delegated the powers and functions that the regulator has
27 under section 153(2).

28 **178. Receipt for seized things**

- 29 (1) As soon as practicable after an inspector seizes a thing, the
30 inspector must give a receipt for it to the person from whom it
31 was seized.
- 32 (2) However, if for any reason it is not practicable to comply with
33 subsection (1), the inspector must leave the receipt in a
34 conspicuous position and in a reasonably secure way at the
35 place of seizure.
- 36 (3) The receipt must describe generally each thing seized and its
37 condition.

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- 1 (4) This section does not apply to a thing if it is impracticable or
2 would be unreasonable to give the receipt required by this
3 section (given the thing's nature, condition and value).
- 4 **179. Forfeiture of seized things**
- 5 (1) A seized thing is forfeited to the State if the regulator:
- 6 (a) cannot find the person entitled to the thing after making
7 reasonable inquiries; or
- 8 (b) cannot return it to the person entitled to it, after making
9 reasonable efforts; or
- 10 (c) reasonably believes it is necessary to forfeit the thing to
11 prevent it being used to commit an offence against this
12 Act.
- 13 (2) Subsection (1)(a) does not require the regulator to make
14 inquiries if it would be unreasonable to make inquiries to find
15 the person entitled to the thing.
- 16 (3) Subsection (1)(b) does not require the regulator to make efforts
17 if it would be unreasonable to make efforts to return the thing to
18 the person entitled to it.
- 19 (4) If the regulator decides to forfeit the thing under
20 subsection (1)(c), the regulator must tell the person entitled to
21 the thing of the decision by written notice.
- 22 (5) Subsection (4) does not apply if:
- 23 (a) the regulator cannot find the person entitled to the thing,
24 after making reasonable inquiries; or
- 25 (b) it is impracticable or would be unreasonable to give the
26 notice.
- 27 (6) The notice must state:
- 28 (a) the reasons for the decision; and
- 29 (b) that the person entitled to the thing may apply within
30 28 days after the date of the notice for the decision to be
31 reviewed; and
- 32 (c) how the person may apply for the review; and
- 33 (d) that the person may apply for a stay of the decision if the
34 person applies for a review.
- 35 (7) In deciding whether and, if so, what inquiries and efforts are
36 reasonable or whether it would be unreasonable to give notice

1 about a thing, regard must be had to the thing's nature,
2 condition and value.

3 (8) Any costs reasonably incurred by the State in storing or
4 disposing of a thing forfeited under subsection (1)(c) may be
5 recovered in a court of competent jurisdiction as a debt due to
6 the State from that person.

7 (9) In this section *person entitled* to a thing means the person from
8 whom it was seized unless that person is not entitled to possess
9 it in which case it means the owner of the thing.

10 **180. Return of seized things**

11 (1) If a seized thing has not been forfeited, the person entitled to the
12 thing may apply to the regulator for the return of the thing after
13 the end of 6 months after it was seized.

14 (2) The regulator must return the thing to the applicant under
15 subsection (1) unless the regulator has reasonable grounds to
16 retain the thing.

17 (3) The regulator may impose any conditions on the return of the
18 thing under this section that the regulator considers appropriate
19 to eliminate or minimise any risk to work health or safety
20 related to the thing.

21 (4) In this section *person entitled* to a thing means the person
22 entitled to possess the thing or the owner of the thing.

23 **181. Access to seized things**

24 (1) Until a seized thing is forfeited or returned, the regulator must
25 permit the following persons to inspect it and, if it is a
26 document, to make copies of it at all reasonable times:

- 27 (a) the person from whom the thing was seized;
28 (b) the owner of the thing;
29 (c) a person authorised by a person referred to in
30 paragraph (a) or (b).

31 (2) Subsection (1) does not apply if it is impracticable or would be
32 unreasonable to allow inspection or copying.

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Division 4 — Damage

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

Note: Section 184 is not required in WA.

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

- 1 (c) the inspector reasonably believes that the person may be
2 able to assist in the investigation of an offence against
3 this Act.
- 4 (2) When asking a person to provide his or her name and residential
5 address, the inspector must:
- 6 (a) tell the person the reason for the requirement to provide
7 his or her name and residential address; and
- 8 (b) warn the person that it is an offence to fail to state that
9 name and residential address, unless the person has a
10 reasonable excuse.
- 11 (3) If the inspector reasonably believes that the name or residential
12 address is false, the inspector may require the person to give
13 evidence of its correctness.
- 14 (4) A person must not, without reasonable excuse, refuse or fail to
15 comply with a requirement under subsection (1) or (3).
16 Penalty: a fine of \$10 000.
- 17 (5) Subsection (4) places an evidential burden on the accused to
18 show a reasonable excuse.

19 **186. Inspector may take affidavits**

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

23 **187. Attendance of inspector at coronial inquests**

24 Note: Section 187 is not required in WA.

25 **Division 6 — Offences in relation to inspectors**

26 **188. Offence to hinder or obstruct inspector**

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

30 Penalty:

- 31 (a) in the case of an individual, a fine of \$10 000;
32 (b) in the case of a body corporate, a fine of \$50 000.

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Division 6 Offences in relation to inspectors

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1 **189. Offence to impersonate inspector**

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

4 Penalty: a fine of \$10 000.

5 **190. Offence to assault, threaten or intimidate inspector**

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

9 Penalty:

10 (a) in the case of an individual, a fine of \$50 000 or
11 imprisonment for 2 years or both;

12 (b) in the case of a body corporate, a fine of \$250 000.

1 **193. Compliance with improvement notice**

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

4 Penalty:

- 5 (a) in the case of an individual, a fine of \$50 000;
6 (b) in the case of a body corporate, a fine of \$250 000.

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

8 (1) This section applies if a person has been issued with an
9 improvement notice.

10 (2) An inspector may, by written notice given to the person, extend
11 the compliance period for the improvement notice.

12 (3) However, the inspector may extend the compliance period only
13 if the period has not ended.

14 (4) In this section:

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

18 **Division 2 — Prohibition notices**

19 **195. Power to issue prohibition notice**

20 (1) This section applies if an inspector reasonably believes that:

21 (a) an activity is occurring at a workplace that involves or
22 will involve a serious risk to the health or safety of a
23 person emanating from an immediate or imminent
24 exposure to a hazard; or

25 (b) an activity may occur at a workplace that, if it occurs,
26 will involve a serious risk to the health or safety of a
27 person emanating from an immediate or imminent
28 exposure to a hazard.

29 (2) The inspector may give a person who has control over the
30 activity a direction prohibiting the carrying on of the activity, or
31 the carrying on of the activity in a specified way, until an
32 inspector is satisfied that the matters that give or will give rise
33 to the risk have been remedied.

34 (3) The direction may be given orally, but must be confirmed by
35 written notice (a *prohibition notice*) issued to the person as
36 soon as practicable.

- 1 (4) An inspector who is at the workplace when the inspector issues
2 a prohibition notice prohibiting the carrying on of an activity, or
3 the carrying on of an activity in a specified way, other than in
4 respect of an activity as defined in subsection (5), must remain
5 at the workplace until the activity or the carrying on of the
6 activity in the specified way has ceased, unless it is not
7 practicable to do so.
- 8 (5) The application of this section extends to accommodation
9 premises that are being or may be occupied by a worker as
10 mentioned in section 19(4) and for that purpose, in this Division
11 and, insofar as they apply to a prohibition notice, in Divisions 4
12 and 6:
- 13 (a) *workplace* includes those premises; and
14 (b) references to a serious risk to the health or safety of a
15 person emanating from an immediate or imminent
16 exposure to a hazard are to be read as applying only to a
17 worker; and
18 (c) *activity* includes the occupation of those premises.

19 **196. Contents of prohibition notice**

- 20 (1) A prohibition notice must state:
- 21 (a) that the inspector believes that grounds for the issue of
22 the prohibition notice exist and the basis for that belief;
23 and
24 (b) briefly, the activity that the inspector believes involves
25 or will involve the risk and the matters that give or will
26 give rise to the risk; and
27 (c) the provision of this Act that the inspector believes is
28 being, or is likely to be, contravened by that activity.
- 29 (2) A prohibition notice may include directions on the measures to
30 be taken to remedy the risk, activities or matters to which the
31 notice relates, or the contravention or likely contravention
32 referred to in subsection (1)(c).
- 33 (3) Without limiting section 195, a prohibition notice that prohibits
34 the carrying on of an activity in a specified way may do so by
35 specifying 1 or more of the following:
- 36 (a) a workplace, or part of a workplace, at which the
37 activity is not to be carried out;
38 (b) anything that is not to be used in connection with the
39 activity;

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- 1 (c) any procedure that is not to be followed in connection
2 with the activity.

3 **197. Compliance with prohibition notice**

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

7 Penalty:

- 8 (a) in the case of an individual, a fine of \$100 000;
9 (b) in the case of a body corporate, a fine of \$500 000.

10 **Division 3 — Non-disturbance notices**

11 **198. Issue of non-disturbance notice**

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

16 **199. Contents of non-disturbance notice**

- 17 (1) A non-disturbance notice may require the person to:
18 (a) preserve the site at which a notifiable incident has
19 occurred for a specified period; or
20 (b) prevent the disturbance of a particular site (including the
21 operation of plant) in other circumstances for a specified
22 period that is reasonable in the circumstances.
- 23 (2) A non-disturbance notice must specify the period (of no more
24 than 7 days) for which it applies and set out:
25 (a) the obligations of the person to whom the notice is
26 issued; and
27 (b) the measures to be taken to preserve a site or prevent
28 disturbance of a site; and
29 (c) the penalty for contravening the notice.
- 30 (3) In subsection (1) a reference to a site includes any plant,
31 substance, structure or thing associated with the site.
- 32 (4) A non-disturbance notice does not prevent any action:
33 (a) to assist an injured person; or
34 (b) to remove a deceased person; or

- 1 (c) that is essential to make the site safe or to prevent a
2 further incident; or
3 (d) that is associated with a police investigation; or
4 (e) for which an inspector has given permission.

5 **200. Compliance with non-disturbance notice**

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

8 Penalty:

- 9 (a) in the case of an individual, a fine of \$50 000;
10 (b) in the case of a body corporate, a fine of \$250 000.

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

13 **201. Issue of subsequent notices**

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

18 **Division 4 — General requirements applying to notices**

19 **202. Application of Division**

20 In this Division:

21 *notice* means improvement notice, prohibition notice or
22 non-disturbance notice.

23 **203. Notice to be in writing**

24 A notice must be in writing.

25 **204. Directions in notices**

26 A direction included in an improvement notice or prohibition
27 notice may:

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

31 **205. Recommendations in notice**

- 32 (1) An improvement notice or prohibition notice may include
33 recommendations.

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Division 4 General requirements applying to notices

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- 1 (2) It is not an offence to fail to comply with recommendations in a
2 notice.

3 **206. Changes to notice by inspector**

- 4 (1) An inspector may make minor changes to a notice:
5 (a) for clarification; or
6 (b) to correct errors or references; or
7 (c) to reflect changes of address or other circumstances.
- 8 (2) An inspector may also, in accordance with section 194, extend
9 the compliance period for an improvement notice.

10 **207. Regulator may vary or cancel notice**

11 Except as provided in section 206, a notice issued by an
12 inspector may only be varied or cancelled by the regulator.

13 **208. Formal irregularities or defects in notice**

- 14 A notice is not invalid only because of:
15 (a) a formal defect or irregularity in the notice unless the
16 defect or irregularity causes or is likely to cause
17 substantial injustice; or
18 (b) a failure to use the correct name of the person to whom
19 the notice is issued if the notice sufficiently identifies
20 the person and is issued or given to the person in
21 accordance with section 209.

22 **209. Issue and giving of notice**

- 23 (1) A notice may be issued or given to a person:
24 (a) by delivering it personally to the person or sending it by
25 post or facsimile or electronic transmission to the
26 person's usual or last known place of residence or
27 business; or
28 (b) by leaving it for the person at the person's usual or last
29 known place of residence or business with a person who
30 appears to be over 16 years and who appears to reside or
31 work there; or
32 (c) by leaving it for the person at the workplace to which
33 the notice relates with a person who is or appears to be
34 the person with management or control of the
35 workplace; or
36 (d) in a prescribed manner.

1

Part 11 — Enforceable undertakings

2

Note: Part 11 (sections 216 to 222) is not required in WA.

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)	(1) A worker whose interests are affected by the decision or his or her representative appointed for the purpose of section 52(1)(b). (2) A person conducting a business or undertaking whose interests are affected by the decision. (3) A health and safety representative who represents a worker whose interests are affected by the decision.
2	Section 72(6) (decision in relation to training of health and safety representative)	(1) A person conducting a business or undertaking whose interests are affected by the decision. (2) A health and safety representative whose interests are affected by the decision.
3	Section 76(6) (decision relating to health and safety committee)	(1) A worker whose interests are affected by the decision. (2) A person conducting a business or undertaking whose interests are affected by the decision. (3) A health and safety

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Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
		representative who represents a worker whose interests are affected by the decision.
4	Section 102 (decision on review of provisional improvement notice)	(1) The person to whom the provisional improvement notice was issued. (2) (3) (4) (5) A person conducting a business or undertaking whose interests are affected by the decision. Note: Subitems (2), (3) and (4) are not required in WA.
5	Section 179 (forfeiture of thing)	The person entitled to the thing.
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) (4) Note: Subitems (3) and (4) are not required in WA.
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) (4)

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
		Note: Subitems (3) and (4) are not required in WA.
9	Section 195 (issue of prohibition notice)	<ul style="list-style-type: none"> (1) The person to whom the notice was issued. (2) The person with management or control of the workplace, plant or substance. (3) A person conducting a business or undertaking whose interests are affected by the decision. (4) (5) (6) <p>Note: Subitems (4), (5) and (6) are not required in WA.</p>
10	Section 198 (issue of a non-disturbance notice)	<ul style="list-style-type: none"> (1) The person to whom the notice was issued. (2) The person with management or control of the workplace. (3) A person conducting a business or undertaking whose interests are affected by the decision. (4) (5) <p>Note: Subitems (4) and (5) are not required in WA.</p>
11	Section 201 (issue of subsequent notice)	<ul style="list-style-type: none"> (1) The person to whom the notice was issued. (2) The person with management or control of the workplace. (3) A person conducting a business or undertaking whose interests are affected by the decision.

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Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
		(4) (5) Note: Subitems (4) and (5) are not required in WA.
12	Section 207 (decision of regulator to vary or cancel notice)	(1) The person to whom the notice was issued. (2) The person with management or control of the workplace. (3) A person conducting a business or undertaking whose interests are affected by the decision. (4) (5) (6) Note: Subitems (4), (5) and (6) are not required in WA.
13	A prescribed provision of the regulations	A person prescribed by the regulations as eligible to apply for review of the reviewable decision.

- 1 (2) Unless the contrary intention appears, a reference in this Part to
2 a decision includes a reference to:
- 3 (a) making, suspending, revoking or refusing to make an
4 order, determination or decision;
- 5 (b) giving, suspending, revoking or refusing to give a
6 direction, approval, consent or permission;
- 7 (c) issuing, suspending, revoking or refusing to issue an
8 authorisation;
- 9 (d) imposing a condition;
- 10 (e) making a declaration, demand or requirement;
- 11 (f) retaining, or refusing to deliver up, a thing; or
- 12 (g) doing or refusing to do any other act or thing.

- 1 (b) to set aside the reviewable decision and substitute
2 another decision that the internal reviewer considers
3 appropriate.
- 4 (3)
- 5 Note: Subsection (3) is not required in WA.
- 6 (4) The applicant must provide further information within the time
7 (being not less than 7 days) specified by the internal reviewer in
8 a request for information.
- 9 (5) If the applicant does not provide the further information within
10 the required time, the decision is taken to have been confirmed
11 by the internal reviewer at the end of that time.
- 12 (6)
- 13 Note: Subsection (6) is not required in WA.
- 14 **227. Decision on internal review**
- 15 As soon as practicable after reviewing the decision, the internal
16 reviewer must give the applicant in writing:
- 17 (a) the decision on the internal review; and
18 (b) the reasons for the decision.
- 19 **228. Stays of reviewable decisions on internal review**
- 20 (1) An application for an internal review of a reviewable decision
21 (other than a decision to issue a prohibition notice or a
22 non-disturbance notice) stays the operation of the decision.
- 23 (2) If an application is made for an internal review of a decision to
24 issue a prohibition notice or a non-disturbance notice, the
25 reviewer may stay the operation of the decision.
- 26 (3) The reviewer may make the decision to stay the operation of a
27 decision on the reviewer's own initiative or on the application
28 of the applicant for review.
- 29 (4) The reviewer must make a decision on an application for a stay
30 as soon as is reasonably practicable within the period of
31 3 working days after the reviewer receives the application.
- 32 (5) If the reviewer has not made a decision to stay a decision within
33 the time set out in subsection (4), the reviewer is taken to have
34 made a decision not to grant a stay.

- 1 (6) A stay of the operation of a decision pending a decision on an
2 internal review continues until whichever of the following is the
3 earlier:
- 4 (a) the end of the prescribed period for applying for a
5 review (an *external review*) of the decision made on the
6 internal review;
- 7 (b) an application for external review is made.

8 **Division 3 — External review**

9 **229. Application for external review**

- 10 (1) An eligible person may apply to the Tribunal for review of:
- 11 (a) a reviewable decision, other than under section 179 or
12 180; or
- 13 (b) a decision made, or taken to have been made, on an
14 internal review.
- 15 (2A) An eligible person may apply to a court for review of a
16 reviewable decision under section 179 or 180 made by the
17 regulator.
- 18 (2) The application must be made:
- 19 (a) if the decision was to forfeit a thing (including a
20 document), within 28 days after the day on which the
21 decision first came to the applicant's notice; or
- 22 (b) in the case of any other decision, within 14 days after
23 the day on which the decision first came to the
24 applicant's notice; or
- 25 (c) if the decision maker is required by the Tribunal or court
26 to give the eligible person a statement of reasons, within
27 14 days after the day on which the statement is given to
28 the eligible person.

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

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

- 7 (1) Two or more contraventions of a health and safety duty
8 provision by a person that arise out of the same factual
9 circumstances may be charged as a single offence or as separate
10 offences.
- 11 (2) This section does not authorise contraventions of 2 or more
12 health and safety duty provisions to be charged as a single
13 offence.
- 14 (3) A single penalty only may be imposed in relation to 2 or more
15 contraventions of a health and safety duty provision that are
16 charged as a single offence.
- 17 (4) In this section:
18 *health and safety duty provision* means a provision of
19 Division 2, 3 or 4 of Part 2.

20 **Division 2 — Sentencing for offences**

21 **234. Application of this Division**

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

24 **235. Orders generally**

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

30 **236. Adverse publicity orders**

- 31 (1) A court may make an order (an *adverse publicity order*) in
32 relation to the offender requiring the offender:
- 33 (a) to take either or both of the following actions within the
34 period specified in the order:
- 35 (i) to publicise, in the way specified in the order, the
36 offence, its consequences, the penalty imposed
37 and any other related matter;

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Division 2 Sentencing for offences

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- 1 (ii) to notify a specified person or specified class of
2 persons, in the way specified in the order, of the
3 offence, its consequences, the penalty imposed
4 and any other related matter; and
- 5 (b) to give the regulator, within 7 days after the end of the
6 period specified in the order, evidence that the action or
7 actions were taken by the offender in accordance with
8 the order.
- 9 (2) A court may make an adverse publicity order on its own
10 initiative or on the application of the person prosecuting the
11 offence.
- 12 (3) If the offender fails to give evidence to the regulator in
13 accordance with subsection (1)(b), the regulator, or a person
14 authorised in writing by the regulator, may take the action or
15 actions specified in the order.
- 16 (4) However, if:
- 17 (a) the offender gives evidence to the regulator in
18 accordance with subsection (1)(b); and
- 19 (b) despite that evidence, the regulator is not satisfied that
20 the offender has taken the action or actions specified in
21 the order in accordance with the order,
- 22 the regulator may apply to a court for an order authorising the
23 regulator, or a person authorised in writing by the regulator, to
24 take the action or actions.
- 25 (5) If the regulator or a person authorised in writing by the regulator
26 takes an action or actions in accordance with subsection (3) or
27 an order under subsection (4), the regulator is entitled to recover
28 from the offender, by action in a court of competent jurisdiction,
29 an amount in relation to the reasonable expenses of taking the
30 action or actions as a debt due to the regulator.

31 **237. Orders for restoration**

- 32 (1) The court may order the offender to take such steps as are
33 specified in the order, within the period so specified, to remedy
34 any matter caused by the commission of the offence that
35 appears to the court to be within the offender's power to
36 remedy.
- 37 (2) The period in which an order under this section must be
38 complied with may be extended, or further extended, by order

1 of the court but only if an application for the extension is made
2 before the end of that period.

3 **238. Work health and safety project orders**

4 (1) The court may make an order requiring the offender to
5 undertake a specified project for the general improvement of
6 work health and safety within the period specified in the order.

7 (2) The order may specify conditions that must be complied with in
8 undertaking the specified project.

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

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

15 (2) A court-ordered WHS undertaking must specify the following
16 conditions:

17 (a) that the offender appears before the court if called on to
18 do so during the period of the adjournment and, if the
19 court so specifies, at the time to which the further
20 hearing is adjourned;

21 (b) that the offender does not commit, during the period of
22 the adjournment, any offence against this Act;

23 (c) that the offender observes any special conditions
24 imposed by the court.

25 (3) An offender who has given a court-ordered WHS undertaking
26 under this section may be called on to appear before the court
27 by order of the court.

28 (4) An order under subsection (3) must be served on the offender
29 not less than 4 days before the time specified in it for the
30 appearance.

31 (5) If the court is satisfied at the time to which a further hearing of a
32 proceeding is adjourned that the offender has observed the
33 conditions of the court-ordered WHS undertaking, it must
34 discharge the offender without any further hearing of the
35 proceeding.

1 notice to be given to or served on the Crown under this Act may
2 be given to or served on the responsible agency.

3 (2) If an infringement notice is to be served on the Crown for an
4 offence against this Act, the responsible agency may be
5 specified in the infringement notice.

6 (3) If proceedings are brought against the Crown for an offence
7 against this Act or in relation to a contravention of this Act, the
8 responsible agency in relation to the offence or contravention
9 may be specified in any document initiating, or relating to, the
10 proceedings.

11 (4) The responsible agency in relation to an offence or a
12 contravention of this Act is entitled to act in proceedings against
13 the Crown for the offence or relating to the contravention and,
14 subject to any relevant rules of court, the procedural rights and
15 obligations of the Crown as the accused or defendant in the
16 proceedings are conferred or imposed on the responsible
17 agency.

18 (5) The person prosecuting the offence or bringing the proceedings
19 may change the responsible agency during the proceedings with
20 the court's leave.

21 (6) In this section, the **responsible agency**:

22 (a) in relation to a notice referred to in subsection (1) is:

23 (i) in the case of a provisional improvement notice,
24 improvement notice or infringement notice, the
25 agency of the Crown the acts or omissions of
26 which are alleged to contravene this Act;

27 (ii) in the case of a prohibition notice, the agency of
28 the Crown which has control over the activity
29 referred to in section 195(1)(a) or (b);

30 (iii) in the case of a non-disturbance notice, the
31 agency of the Crown with the management and
32 control of the workplace;

33 (iv)

34 Note: Subparagraph (iv) is not required in WA.

35 and

36 (b) in relation to an offence or proceedings for a
37 contravention of this Act, is the agency of the Crown:

38 (i) the acts or omissions of which are alleged to
39 constitute the offence or contravention; or

- 1 (ii) if that agency has ceased to exist, that is the
2 successor of that agency; or
- 3 (iii) if that agency has ceased to exist and there is no
4 clear successor, that the court declares to be the
5 responsible agency.

6 **Division 6 — Public authorities**

7 **249. Application to public authorities that are bodies corporate**

8 This Division applies only to public authorities that are bodies
9 corporate.

10 **250. Proceedings against public authorities**

11 (1) Proceedings may be brought under this Act against a public
12 authority in its own name.

13 (2) Nothing in this Division affects any privileges that a public
14 authority may have under the Crown.

15 **251. Imputing conduct to public authorities**

16 (1) For the purposes of this Act, any conduct engaged in on behalf
17 of a public authority by an employee, agent or officer of the
18 public authority acting within the actual or apparent scope of his
19 or her employment, or within his or her actual or apparent
20 authority, is conduct also engaged in by the public authority.

21 (2) If an offence under this Act requires proof of knowledge,
22 intention or recklessness, it is sufficient in proceedings against
23 the public authority for that offence to prove that the person
24 referred to in subsection (1) had the relevant knowledge,
25 intention or recklessness.

26 (3) If for an offence against this Act mistake of fact is relevant to
27 determining liability, it is sufficient in proceedings against the
28 public authority for that offence if the person referred to in
29 subsection (1) made that mistake of fact.

30 **252. Officer of public authority**

31 A person who makes, or participates in making, decisions that
32 affect the whole, or a substantial part, of the business or
33 undertaking of a public authority is taken to be an officer of the
34 public authority for the purposes of this Act.

1 **253. Proceedings against successors to public authorities**

2 (1) Proceedings for an offence against this Act that were instituted
3 against a public authority before its dissolution, or that could
4 have been instituted against a public authority if not for its
5 dissolution, may be continued or instituted against its successor
6 if the successor is a public authority.

7 (2) An infringement notice served on a public authority for an
8 offence against this Act is taken to be an infringement notice
9 served on its successor if the successor is a public authority.

10 (3) Similarly, any penalty paid by a public authority in relation to
11 an infringement notice is taken to be a penalty paid by its
12 successor if the successor is a public authority.

13 **Division 7 — WHS civil penalty provisions**

14 Note: Part 13 Division 7 (sections 254 to 266) is not required in WA.

15 **Division 8 — Civil liability not affected by this Act**

16 **267. Civil liability not affected by this Act**

17 Except as provided in Part 6, nothing in this Act is to be
18 construed as:

- 19 (a) conferring a right of action in civil proceedings in
20 relation to a contravention of a provision of this Act; or
21 (b) conferring a defence to an action in civil proceedings or
22 otherwise affecting a right of action in civil proceedings;
23 or
24 (c) affecting the extent (if any) to which a right of action
25 arises, or civil proceedings may be brought, in relation
26 to breaches of duties or obligations imposed by the
27 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.

Penalty:

- (a) in the case of an individual, a fine of \$10 000;
- (b) in the case of a body corporate, a fine of \$50 000.

- (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.

Penalty:

- (a) in the case of an individual, a fine of \$10 000;
- (b) in the case of a body corporate, a fine of \$50 000.

- (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.

1 **269. Act does not affect legal professional privilege**
2 Nothing in this Act requires a person to produce a document
3 that would disclose information, or otherwise provide
4 information, that is the subject of legal professional privilege.

5 **270. Immunity from liability**

6 (1) A person who is or has been an inspector, or other person
7 engaged in the administration of this Act, incurs no civil
8 liability for an act or omission done or omitted to be done in
9 good faith and in the execution or purported execution of
10 powers and functions under this Act.

11 (2) A civil liability that would, but for subsection (1), attach to a
12 person, attaches instead to the State.

13 **271. Confidentiality of information**

14 (1) This section applies if a person obtains information or gains
15 access to a document in exercising any power or function under
16 this Act.

17 (2) The person must not do any of the following:

18 (a) disclose to anyone else:

19 (i) the information; or

20 (ii) the contents of or information contained in the
21 document;

22 (b) give access to the document to anyone else;

23 (c) use the information or document for any purpose.

24 Penalty:

25 (a) in the case of an individual, a fine of \$10 000;

26 (b) in the case of a body corporate, a fine of \$50 000.

27 (3) Subsection (2) does not apply to the disclosure of information,
28 or the giving of access to a document or the use of information
29 or a document:

30 (a) about a person, with the person's consent; or

31 (b) that is necessary for the exercise of a power or function
32 under this Act; or

- 1 (c) that is made or given by the regulator or a person
2 authorised by the regulator if the regulator reasonably
3 believes the disclosure, access or use:
- 4 (i) is necessary for administering, or monitoring or
5 enforcing compliance with, this Act; or
- 6 (ii) is necessary or convenient for the administration
7 or enforcement of another Act of this State
8 prescribed by the regulations, a Commonwealth
9 law prescribed by the regulations or a law of
10 another State prescribed by the regulations; or
- 11 (iii) is necessary for the administration or
12 enforcement of another Act or law, if the
13 disclosure, access or use is necessary to lessen or
14 prevent a serious risk to public health or safety;
15 or
- 16 (iv) is necessary for the recognition of authorisations
17 under a corresponding WHS law; or
- 18 (v) is required for the exercise of a power or
19 function under a corresponding WHS law; or
- 20 (d) that is required by any court, tribunal, authority or
21 person having lawful authority to require the production
22 of documents or the answering of questions; or
- 23 (e) that is required or authorised under a law; or
- 24 (f) to a Minister.
- 25 (4) A person must not intentionally disclose to another person the
26 name of an individual who has made a complaint in relation to
27 that other person unless:
- 28 (a) the disclosure is made with the consent of the
29 complainant; or
- 30 (b) the disclosure is required under a law.
- 31 Penalty:
- 32 (a) in the case of an individual, a fine of \$10 000;
- 33 (b) in the case of a body corporate, a fine of \$50 000.

34 **272. No contracting out**

35 A term of any agreement or contract that purports to exclude,
36 limit or modify the operation of this Act or any duty owed under
37 this Act or to transfer to another person any duty owed under
38 this Act is void.

1 **273. Person not to levy workers**

2 A person conducting a business or undertaking must not impose
3 a levy or charge on a worker, or permit a levy or charge to be
4 imposed on a worker, for anything done, or provided, in relation
5 to work health and safety.

6 Penalty:

- 7 (a) in the case of an individual, a fine of \$5 000;
8 (b) in the case of a body corporate, a fine of \$25 000.

9 **Division 2 — Codes of practice**

10 **274. Approved codes of practice**

11 (1) The Minister may approve a code of practice for the purposes of
12 this Act and may vary or revoke an approved code of practice.

13 (2) The Minister may only approve, vary or revoke a code of
14 practice under subsection (1) if that code of practice, variation
15 or revocation was developed by a process that involved
16 consultation between:

17 (a)

18 Note: Paragraph (a) is not required in WA.

19 (b) unions; and

20 (c) employer organisations.

21 (3) A code of practice may apply, adopt or incorporate any matter
22 contained in a document formulated, issued or published by a
23 person or body whether:

24 (a) with or without modification; or

25 (b) as in force at a particular time or from time to time.

26 (4) An approval of a code of practice, or a variation or revocation of
27 an approved code of practice, takes effect when notice of it is
28 published in the *Government Gazette* or on such later date as is
29 specified in the approval, variation or revocation.

30 (5) As soon as practicable after approving a code of practice, or
31 varying or revoking an approved code of practice, the Minister
32 must ensure that notice of the approval, variation or revocation
33 is published in the *Government Gazette* and a newspaper
34 circulating generally throughout the State.

35 (6) The regulator must ensure that a copy of:

36 (a) each code of practice that is currently approved; and

- 1 (b) each document applied, adopted or incorporated (to any
2 extent) by an approved code of practice,
3 is available for inspection by members of the public without
4 charge at the office of the regulator during normal business
5 hours.

6 **275. Use of codes of practice in proceedings**

- 7 (1) This section applies in a proceeding for an offence against
8 this Act.
9 (2) An approved code of practice is admissible in the proceeding as
10 evidence of whether or not a duty or obligation under this Act
11 has been complied with.
12 (3) The court may:
13 (a) have regard to the code as evidence of what is known
14 about a hazard or risk, risk assessment or risk control to
15 which the code relates; and
16 (b) rely on the code in determining what is reasonably
17 practicable in the circumstances to which the code
18 relates.

19 Note: See section 18 for the meaning of *reasonably practicable*.

- 20 (4) Nothing in this section prevents a person from introducing
21 evidence of compliance with this Act in a manner that is
22 different from the code but provides a standard of work health
23 and safety that is equivalent to or higher than the standard
24 required in the code.

25 **Division 3 — Regulation-making powers**

26 **276. Regulation-making powers**

- 27 (1) The Governor may make regulations in relation to:
28 (a) any matter relating to work health and safety; and
29 (b) any matter or thing required or permitted by this Act to
30 be prescribed or that is necessary or convenient to be
31 prescribed to give effect to this Act.
32 (2) Without limiting subsection (1), the regulations may make
33 provision for or in relation to matters set out in Schedule 3.
34 (3) The regulations may:
35 (a) be of general or limited application; or

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Division 4 Review of Act

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- 1 (b) differ according to differences in time, place or
2 circumstance; or
- 3 (c) leave any matter or thing to be, from time to time,
4 determined, applied or approved by the regulator, an
5 inspector or any other prescribed person or body of
6 persons; or
- 7 (d) apply, adopt or incorporate any matter contained in any
8 document formulated, issued or published by a person or
9 body whether:
- 10 (i) with or without modification; or
- 11 (ii) as in force at a particular time or as in force or
12 remade from time to time; or
- 13 (e) prescribe exemptions from complying with any of the
14 regulations on the terms and conditions (if any)
15 prescribed; or
- 16 (f) allow the regulator to provide exemptions from
17 complying with any of the regulations on the terms and
18 conditions (if any) prescribed or, if the regulations
19 allow, on the terms and conditions (if any) determined
20 by the regulator; or
- 21 (g) prescribe fees for doing any act or providing any service
22 for the purposes of this Act and prescribe the
23 circumstances and way in which fees can be refunded,
24 waived or reduced; or
- 25 (h) prescribe a penalty for any contravention of the
26 regulations not exceeding a fine of \$6 000 for an
27 individual or \$30 000 for a body corporate.
- 28 (i)

29 Note: Paragraph (i) is not required in WA.

30 (4) Nothing in subsection (3) limits the operation of the
31 *Interpretation Act 1984* in relation to regulations under this Act.

32 (5) A regulation made under this Act is inoperative to the extent
33 that it is inconsistent with a regulation made under the
34 *Industrial Relations Act 1979* relating to the Tribunal.

35 **Division 4 — Review of Act**

36 **277. Review of Act**

- 37 (1) The Minister must carry out a review of the operation and
38 effectiveness of this Act as soon as is practicable after every

1 **Schedule 1 — Application of Act to dangerous goods and**
2 **high risk plant**

3 Note: Schedule 1 is not required in WA.

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Schedule 2 The WorkSafe Western Australia Commissioner and
Commission for Occupational Health and Safety

Division 3 Commission for Occupational Health and Safety

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1 Minister from time to time on the recommendation of the Public
2 Sector Commissioner.

3 (3) A person appointed to be Commissioner who, immediately before the
4 appointment was a public service officer, retains all existing and
5 accruing rights on appointment as Commissioner despite the
6 appointment.

7 (4) A person appointed to be Commissioner who, immediately before the
8 appointment was a public service officer, is entitled upon resigning
9 the person's office as Commissioner or upon ceasing to be
10 Commissioner to be appointed to an office in the Public Service not
11 lower in status than the office the person occupied immediately before
12 appointment as Commissioner.

13 (5) The Commissioner must not engage in paid employment outside the
14 Commissioner's duties and functions under this Act without first
15 obtaining the approval in writing of the Minister.

16 **Division 3 — Commission for Occupational Health and Safety**

17 **Subdivision 1 — The Commission**

18 **4. Commission established**

19 A body called the Commission for Occupational Health and Safety is
20 established.

21 **5. Membership of Commission**

22 (1) The Commission consists of 13 members, of whom —

23 (a) one must be a person appointed by the Governor as the
24 presiding member on the nomination of the Minister; and

25 (b) one must be the Commissioner; and

26 (c) 2 must be public service officers of whom —

27 (i) one must be nominated by the Minister; and

28 (ii) the other must be an officer of the department, as
29 defined in the *Mines Safety and Inspection Act 1994*
30 section 4(1) or in an Act that replaces that Act,
31 nominated by the Minister to whom the
32 administration of that Act is committed;

33 and

34 (d) 9 must be appointed by the Governor, of whom —

35 (i) 2 must be persons nominated for appointment by the
36 body known as the Chamber of Commerce and
37 Industry of Western Australia (Inc); and

- 1 (ii) 3 must be persons nominated for appointment by the
2 body known as UnionsWA, and of whom one is a
3 person who has knowledge of and experience in the
4 mining industry in the State; and
- 5 (iii) 3 must be persons having knowledge of or experience
6 in occupational health and safety who are nominated
7 for appointment by the Minister after consultation
8 between the Minister and the bodies referred to in
9 subparagraphs (i) and (ii); and
- 10 (iv) one must be nominated by the Chamber of Minerals
11 and Energy of Western Australia Inc.

12 (2) Where any of the bodies referred to in subclause (1)(d)(i), (ii) or (iv)
13 fails to make a nomination within 60 days after being requested in
14 writing by the Minister to do so the Governor may appoint any person
15 who is suitably qualified, and any person so appointed must be taken
16 to have been nominated under subclause (1)(d)(i), (ii) or (iv), as the
17 case may be.

18 (3) A nomination for the purposes of subclause (1)(c) may be made from
19 time to time, may be made by reference to the holder of a specified
20 office and may be expressed to operate for a period or in such
21 circumstances as are specified in the instrument of nomination.

22 (4) Each member of the Commission must be a natural person.

23 **6. Offence to use Commission's names or similar**

24 (1) A person other than the Commission must not use or operate under
25 the name referred to in clause 4, "WorkSafe Western Australia", or
26 any name that is so similar that it is likely to be misunderstood as
27 referring to the Commission.

28 Penalty:

29 (a) in the case of an individual, a fine of \$10 000;

30 (b) in the case of a body corporate, a fine of \$50 000.

31 (2) Nothing in subclause (1) —

32 (a) prevents the department from using or operating under a
33 name as referred to in subclause (1) if that designation is
34 given to it under the *Public Sector Management Act 1994*
35 section 35; or

36 (b) affects clause 2(4).

37 **7. Deputy presiding member**

38 The Minister must appoint one of the members of the Commission to
39 be deputy presiding member of the Commission.

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1 **8. Remuneration and allowances**

2 A member of the Commission, or of a committee, must be paid such
3 remuneration and allowances (if any) as are determined by the
4 Minister on the recommendation of the Public Sector Commissioner.

5 **Subdivision 2 — Commission’s functions and powers**

6 **9. Functions**

7 (1) The functions of the Commission are —

- 8 (a) to inquire into and report to the Minister upon any matters
9 referred to it by the Minister; and
- 10 (b) to make recommendations to the Minister with respect to —
11 (i) this Act; and
12 (ii) any law or provision of a law, relating to work health
13 and safety that is administered by the Minister and
14 any law or provision of a law relating to work health
15 and safety that is prescribed for the purposes of this
16 paragraph; and
17 (iii) subsidiary legislation, guidelines and codes of
18 practice proposed to be made under or for the
19 purposes of any prescribed law;
- 20 and
- 21 (c) to examine, review and make recommendations to the
22 Minister in relation to existing and proposed registration or
23 licensing schemes relating to work health and safety; and
- 24 (d) to provide advice to and cooperate with Government
25 departments, public authorities, unions, employer
26 organisations and other interested persons in relation to work
27 health and safety; and
- 28 (e) to formulate or recommend standards, specifications or other
29 forms of guidance for the purpose of assisting duty holders
30 under this Act and workers to maintain appropriate standards
31 of work health and safety; and
- 32 (f) to promote, as widely as possible, and advise on education
33 and training in work health and safety; and
- 34 (g) in cooperation with educational authorities or bodies to
35 devise and approve courses in relation to work health and
36 safety; and
- 37 (h) to approve and accredit training courses for health and safety
38 representatives; and
- 39 (i) to recommend to the Minister the establishment of public
40 inquiries into any matter relating to work health and safety;
41 and

- 1 (j) to collect, publish and disseminate information on work
2 health and safety; and
- 3 (k) to formulate reporting procedures and monitoring
4 arrangements for identification of workplace hazards, and
5 incidents in which injury or death is likely to occur in a work
6 situation; and
- 7 (l) to commission and sponsor research into work health and
8 safety; and
- 9 (m) to perform other functions that are conferred on the
10 Commission under this Act or any other Act.
- 11 (2) The Commission may issue for public review and comment on any
12 regulations, codes of practice or guidelines with respect to which it
13 proposes under subclause (1)(b) to make any recommendations to the
14 Minister.
- 15 (3) The Commission must ensure, as far as is practicable, that any
16 information it provides is in such language and form as are
17 appropriate for the persons to whom the information is directed.
- 18 (4) The Minister must within 60 days after receiving from the
19 Commission a recommendation under subclause (1) reply in writing
20 to the Commission in relation to that recommendation.

21 **Subdivision 3 — Committees**

22 **10. Committees**

- 23 (1) The Commission may from time to time establish any committee.
- 24 (2) The Commission may —
- 25 (a) determine a committee's functions, membership and
26 constitution; and
- 27 (b) subject to subclause (3), appoint a committee's members and
28 other persons as it thinks fit to be committee members; and
- 29 (c) give directions with respect to a committee's functions and
30 procedures.
- 31 (3) In appointing persons to be members of committees the
32 Commission —
- 33 (a) must, as far as is practicable, appoint persons who represent
34 duty holders under this Act, workers and persons having
35 knowledge of or experience in work health and safety; and
- 36 (b) must have regard to the desirability of having a reasonable
37 number of men and women, including persons of differing
38 ethnic backgrounds and other groups with special needs.

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1 (4) A committee must comply with a direction given to it under
2 subclause (2)(c).

3 (5) At the request of the Commission, a committee must report on the
4 performance of its functions to the Commission, in accordance with
5 the Commission's request.

6 **11. Provisions relating to committees**

7 (1) Each member of a committee must be a natural person.

8 (2) The Commission may remove a person from membership of a
9 committee and may reconstitute or discharge a committee established
10 by the Commission.

11 (3) A committee must ensure that an accurate record is kept and
12 preserved of the proceedings of each meeting of the committee and of
13 each resolution passed by the committee.

14 (4) Subject to this Act, a committee may determine its own procedures.

15 (5) A person with special knowledge or experience may be invited to act
16 in an advisory capacity to a committee if the committee is of the
17 opinion that the person will assist the committee in the performance
18 of its functions and the Commission has approved the invitation.

19 **Subdivision 4 — Constitution and proceedings of the Commission**

20 **12. Term of office**

21 Subject to clause 30, an appointed member holds office for the term,
22 not exceeding 3 years, that is specified in the member's instrument of
23 appointment and is eligible for reappointment.

24 **13. Functions of deputy presiding member**

25 (1) The deputy presiding member must perform the functions of the
26 presiding member when the presiding member is unable to do so by
27 reason of illness, absence or other cause, or when the office of
28 presiding member is vacant.

29 (2) No act or omission of the deputy presiding member acting as
30 presiding member is to be questioned on the ground that the occasion
31 for the deputy presiding member so acting had not arisen or had
32 ceased.

33 **14. Deputy members**

34 (1) The Minister may appoint an eligible person to be a deputy of an
35 appointed member and may terminate such an appointment at any
36 time.

-
- 1 (2) The provisions of clause 5 that apply to and in relation to the
2 appointment of a member apply, with any necessary modification, to
3 and in relation to the appointment of the deputy of that member.
- 4 (3) A deputy of an appointed member may perform the functions of the
5 member when the member is unable to do so by reason of illness,
6 absence or other cause.
- 7 (4) Despite anything in this Act, a deputy of an appointed member may
8 continue to act as a member, after the occasion for so acting has
9 ceased, for the purpose of completing any function.
- 10 (5) A deputy of an appointed member, while acting as a member, has all
11 the functions of and all the protection given to a member.
- 12 (6) No act or omission of a person acting in place of another under this
13 section is to be questioned on the ground that the occasion for so
14 acting had not arisen or had ceased.

15 **15. General procedure concerning meetings**

- 16 (1) The presiding member may at any time and must when so requested
17 by the Minister or by not less than 5 members of the Commission
18 convene a meeting of the Commission to be held at a time and place
19 to be determined by the presiding member.
- 20 (2) The Commission must meet at least 4 times a year at intervals of not
21 more than 3 months.
- 22 (3) The presiding member must preside at all meetings of the
23 Commission at which the presiding member is present.
- 24 (4) If both the presiding member and deputy presiding member are absent
25 from a meeting the members present are to appoint, by secret ballot,
26 one of their number to preside, and that person has the powers of the
27 presiding member under clause 16 in addition to any voting
28 entitlements that the member otherwise has.
- 29 (5) A quorum for a meeting of the Commission is 7 members.
- 30 (6) The procedure for convening meetings of the Commission and the
31 conduct of business at those meetings is, subject to this Act, to be as
32 determined by the Commission.

33 **16. Voting**

- 34 (1) Subject to subclause (2), at a meeting of the Commission —
- 35 (a) only members appointed under clause 5(1)(d) are entitled to
36 vote; and
- 37 (b) if any question requiring a vote arises the question must be
38 decided by a majority of the votes of the members appointed

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1 under clause 5(1)(d) if, and only if, not less than 6 of those
2 members also constitute such majority.

3 (2) If—

4 (a) on a vote at a meeting of the Commission, a majority of the
5 votes of members appointed under clause 5(1)(d) is
6 constituted by 5 of those members; and

7 (b) on a vote at a subsequent meeting of the Commission on the
8 same question, a majority of the votes is constituted by 5 of
9 those members,

10 the presiding member may, at that subsequent meeting, cast a vote to
11 be included in the majority vote.

12 (3) It is the duty of the Commission to work for the attainment of the
13 objects of this Act by achieving a consensus, as far as this is
14 practicable, among its members.

15 **17. Holding meetings remotely**

16 The presence of a person at a meeting of the Commission need not be
17 by attendance in person but may be by that person and each other
18 person at the meeting being simultaneously in contact by telephone,
19 or other means of instantaneous communication.

20 **18. Resolution without meeting**

21 A resolution in writing signed by 7 members of the Commission,
22 appointed under clause 5(1)(d), by letter, facsimile transmission,
23 electronic mail or other written means has effect as if it had been
24 passed at a meeting of the Commission.

25 **19. Minutes**

26 The Commission must ensure that an accurate record is kept and
27 preserved of the proceedings at each meeting of the Commission and
28 of each resolution passed by the Commission.

29 **Subdivision 5 — Disclosure of interests etc.**

30 **20. Term used: member**

31 In this Division —

32 **member** means a member of the Commission or a member of a
33 committee, as the case may be.

34 **21. Disclosure of interests**

35 (1) A member who has a material personal interest in a matter being
36 considered or about to be considered by the Commission or a
37 committee must, as soon as possible after the relevant facts have come

1 to the member's knowledge, disclose the nature of the interest at a
2 meeting of the Commission or the committee, as is relevant.

3 Penalty: a fine of \$10 000.

4 (2) A disclosure under subclause (1) must be recorded in the minutes of
5 the meeting.

6 **22. Exclusion of interested member**

7 (1) A member who has a material personal interest in a matter that is
8 being considered by the Commission or a committee —

9 (a) must not vote, whether at a meeting or otherwise, on the
10 matter; and

11 (b) must not be present while the matter is being considered at a
12 meeting.

13 (2) In subclause (1)(a) or (b) a reference to a matter also refers to a
14 proposed resolution under clause 23 in respect of the matter, whether
15 relating to that member or a different member.

16 **23. Commission or committee may resolve that clause 22 inapplicable**

17 Clause 22 does not apply if the Commission or a committee has at any
18 time passed a resolution that —

19 (a) specifies the member, the interest and the matter; and

20 (b) states that the members voting for the resolution are satisfied
21 that the interest should not disqualify the member from
22 considering or voting on the matter.

23 **24. Voting where clause 22 applies**

24 (1) Despite clause 16, when the Commission is dealing with a matter in
25 relation to which a member of the Commission is disqualified under
26 clause 22, a question requiring a vote must be decided by a majority
27 of the votes of the members appointed under clause 5(1)(d) if, and
28 only if, not less than 5 of those members also constitute such majority.

29 (2) The Minister may deal with a matter to the extent that the
30 Commission cannot deal with it because of subclause (1).

31 **25. Minister may declare clauses 22 and 24 inapplicable**

32 (1) The Minister may by writing declare that clause 22 or 24 does not
33 apply in relation to a specified matter, either generally or for the
34 purpose of dealing with particular proposed resolutions.

35 (2) The Minister must, within 14 sitting days after a declaration under
36 subclause (1) is made, cause a copy of the declaration to be laid
37 before each House of Parliament.

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Division 4 Matters relevant to the Commissioner and the Commission
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1 **Subdivision 6 — General**

2 **26. Duty not to make improper use of information**

3 A member or former member of the Commission or a member or
4 former member of a committee must not, whether within or outside
5 the State, make improper use of information acquired by virtue of that
6 position to gain, directly or indirectly, an advantage for himself or
7 herself or for any other person.

8 Penalty: a fine of \$5 000.

9 **27. Minutes of meetings**

10 (1) The minutes of a meeting of the Commission must be open for
11 inspection at its principal place of business by members of the public
12 during normal office hours without fee, other than minutes relating to
13 a matter determined to be confidential under subclause (3).

14 (2) A person may, on payment of the fee prescribed by the regulations, if
15 any, obtain a copy of any minutes of the Commission available for
16 inspection under subclause (1).

17 (3) The Commission may determine that a matter is confidential if it
18 considers that its disclosure is likely to infringe the reasonable privacy
19 of any person.

20 **28. Annual report**

21 (1) The Commission, not later than 30 September in each year, must
22 make and submit to the Minister an annual report of its operations and
23 the operation of this Act and any prescribed law for the preceding
24 year ending on 30 June.

25 (2) The Minister must cause a copy of the Commission's annual report
26 submitted under subclause (1) to be laid before each House of
27 Parliament within 14 sitting days of that House after receipt of the
28 report by the Minister.

29 (3) The Commission must ensure that after subclause (2) has been
30 complied with copies of the reports referred to in that subclause are
31 available on request for inspection at its principal place of business.

32 **Division 4 — Matters relevant to the Commissioner and**
33 **the Commission**

34 **29. Use of Government staff and facilities**

35 (1) The Commission may by arrangement with the relevant employer
36 make use, either full-time or part-time, of the services of any officer
37 or employee in the department.

- 1 (2) The Commission may, by arrangement with the department, make use
2 of any of the department's facilities.
- 3 (3) An arrangement under subclause (1) or (2) must be made on the terms
4 that are agreed to by the parties.
- 5 **30. Vacation of office by Commissioner, appointed member**
- 6 (1) The Commissioner or an appointed member may resign from office
7 by notice in writing given to the Minister.
- 8 (2) The Commissioner or an appointed member (the *person*) may be
9 removed from office by the Minister —
- 10 (a) for mental or physical disability, incompetence, neglect of
11 duty or misconduct that impairs the performance of the
12 person's duties; or
- 13 (b) if the person is, according to the *Interpretation Act 1984*
14 section 13D, a bankrupt or a person whose affairs are under
15 insolvency laws; or
- 16 (c) if the person is absent without leave of the Commission from
17 3 consecutive meetings of the Commission of which the
18 person has had notice; or
- 19 (d) for any other act or omission that in the opinion of the
20 Minister may cause prejudice or injury to the Commission.
- 21 (3) An appointed member who is appointed under clause 5(1)(d)(i), (ii)
22 or (iv) must be removed from office by the Minister if the person's
23 nomination is revoked.

Schedule 3 — Regulation making powers

[s. 276]

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

- 1 (c) matters relating to health and safety in relation to
2 accommodation provided to workers.

3 **5. Hazards and risks**

4 Matters relating to hazards and risks including —

- 5 (a) the prescribing of standards relating to the use of or exposure
6 to any physical, biological, chemical or psychological hazard;
7 and
8 (b) matters relating to safety cases, safety management plans and
9 safety management systems (however described); and
10 (c) matters relating to measures to control risks.

11 **6. Records and notices**

12 6.1 The keeping and availability of records of health and safety
13 representatives.

14 6.2 The keeping of records in relation to incidents.

15 6.3 The keeping of records of specified activities, matters or things to be
16 kept by specified persons.

17 6.4 The giving of notice of or information about specified activities,
18 matters or things to the regulator, an inspector or other specified
19 person.

20 **7. Authorisations**

21 7.1 Matters relating to authorisations (including licences, registrations and
22 permits) and qualifications, and experience for the purposes of Part 4
23 or the regulations including providing for —

- 24 (a) applications for the grant, issue, renewal, variation,
25 suspension and cancellation of authorisations, including the
26 minimum age to be eligible for an authorisation; and
27 (b) the evidence and information to be provided in relation to
28 applications including the provision of statutory declarations;
29 and
30 (c) exemptions; and
31 (d) variations of authorisations by the regulator whether on
32 application or otherwise; and
33 (e) authorisation of persons as trainers and assessors; and
34 (f) examination of applicants for authorisations; and
35 (g) conditions of authorisations; and
36 (h) fees for applications for the grant, issue, renewal and
37 variation of authorisations.

1 7.2 The recognition of authorisations under corresponding WHS laws and
2 exceptions to recognition.

3 7.3 The sharing of information with corresponding regulators relating to
4 the grant, issue, renewal, variation, suspension or cancellation of
5 authorisations.

6 **8. Work groups**

7 Matters relating to work groups and variation of work groups and
8 agreements or variations of agreements relating to the determination
9 of work groups.

10 **9. Health and safety committees and health and safety**
11 **representatives**

12 Matters relating to health and safety committees and health and safety
13 representatives.

14 **10. Issue resolution**

15 Matters relating to issue resolution including —

- 16 (a) the minimum requirements for an agreed procedure for
17 resolving an issue; and
18 (b) the requirements for a default issue resolution procedure
19 where there is no agreed procedure.

20 **11. WHS entry permits**

21 Note: Item 11 is not required in WA.

22 **12. Identity cards**

23 Matters relating to identity cards.

24 **13. Forfeiture**

25 Matters relating to —

- 26 (a) costs of forfeiture and disposal of forfeited things; and
27 (b) disposal of seized things and forfeited things.

28 **14. Review of decisions**

29 Matters relating to the review of decisions under the regulations
30 including —

- 31 (a) prescribing decisions as reviewable decisions for the purposes
32 of Part 12 or for the purposes of the regulations; and
33 (b) prescribing procedures for internal and external review of
34 decisions under the regulations, subject to section 276(5); and
35 (c) conferring jurisdiction on the Tribunal to conduct reviews of
36 decisions under the regulations.

Schedule 4 — Work Health and Safety Tribunal

[s. 4]

1. Terms used

In this Schedule —

Commission and *Chief Commissioner* have the meanings given to those terms in the *Industrial Relations Act 1979* section 7(1);

matter means an application made under section 229(1) for review of a decision.

2. Industrial Relations Commission to be called Work Health and Safety Tribunal when exercising jurisdiction under this Act

(1) By this subclause the Commission has jurisdiction to hear and determine matters.

(2) When sitting in exercise of the jurisdiction conferred by subclause (1) the Commission is to be known as the Work Health and Safety Tribunal (the *Tribunal*).

(3) A determination of the Tribunal on a matter has effect according to its substance and an order containing the determination is an instrument to which the *Industrial Relations Act 1979* section 83 applies.

3. Jurisdiction to be exercised by commissioner with requisite qualifications

(1) The jurisdiction conferred by clause 2 in respect of any matter must be exercised —

(a) by the commissioner designated under the *Industrial Relations Act 1979* section 16(2A) to exercise the jurisdiction; or

(b) if that commissioner is unable to act by reason of sickness, absence or other cause —

(i) by another commissioner; or

(ii) an acting commissioner appointed under the *Industrial Relations Act 1979* section 17,

to whom the Chief Commissioner may allocate the matter under section 16 of that Act.

(2) In allocating a matter for the purposes of subclause (1)(b) the Chief Commissioner must have regard to the desirability of the commissioner concerned having relevant knowledge in the field of work health and safety.

(3) A commissioner to whom a matter has been allocated under subclause (1)(b) may continue and complete the hearing and

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1 determination of part heard proceedings after the commissioner
2 referred to in subclause (1)(a) has resumed the commissioner's duties.

3 (4) A person who is a commissioner may, even though the person's
4 designation has ceased to have effect under the *Industrial Relations*
5 *Act 1979* section 16(2B), continue and complete the hearing and
6 determination of part heard proceedings after another commissioner
7 has been designated under section 16(2A) of that Act.

8 **4. Tribunal's review powers**

9 (1) A person who applies under section 229(1) for a review of a decision
10 may apply for a stay of the operation of the decision and the Tribunal
11 may, on the conditions that the Tribunal determines, order that the
12 operation of the decision be stayed wholly or in part pending the
13 determination of the review.

14 (2) In determining an application made under section 229(1) for review of
15 a decision the Tribunal may —

- 16 (a) confirm or vary the decision; or
17 (b) set aside the decision and substitute another decision that the
18 Tribunal considers appropriate.

19 **5. Practice, procedure and appeals**

20 (1) The provisions of the *Industrial Relations Act 1979* sections 22B,
21 26(1), (2) and (3), 27, 28, 31(1), (2), (3) and (5), 33, 34(1), (3) and
22 (4), 36 and 49 that apply to and in relation to the exercise of the
23 jurisdiction of the Commission constituted by a commissioner apply
24 to the exercise of the jurisdiction conferred by clause 2 —

- 25 (a) with such modifications as are prescribed under section 113
26 of that Act; and
27 (b) with such other modifications as may be necessary or
28 appropriate.

29 (2) For the purposes of subclause (1), the *Industrial Relations Act 1979*
30 section 31(1) applies as if paragraph (c) were deleted and the
31 following paragraph were inserted:

- 32
33 (c) by a legal practitioner.
34

35 **6. Hearing certain claims and matters together**

36 (1) Subclauses (2) and (3) apply if —

- 37 (a) under the *Industrial Relations Act 1979*, an employee has
38 referred to the Commission a claim that the employee has
39 been harshly, oppressively or unfairly dismissed from
40 employment; and

- 1 (b) a matter —
- 2 (i) involving the same parties; and
- 3 (ii) arising out of the same circumstances,
- 4 has been referred for determination under the jurisdiction conferred
- 5 by clause 2.
- 6 (2) An employee referred to in subclause (1) may in writing request that a
- 7 claim referred to in subclause (1)(a) be heard and determined by the
- 8 commissioner who is hearing and determining the matter referred to
- 9 in subclause (1)(b).
- 10 (3) If such a request is made, the Chief Commissioner, in exercising the
- 11 powers conferred by the *Industrial Relations Act 1979* section 16,
- 12 must allocate the hearing and determination of the claim and the
- 13 matter accordingly.
- 14 (4) If —
- 15 (a) an employee has referred to the Commission a claim of the
- 16 kind described in the *Industrial Relations Act 1979*
- 17 section 29(1)(b)(ii); and
- 18 (b) the claim involves the same employer and arises out of the
- 19 same circumstances as a matter that has been referred for
- 20 determination under the jurisdiction conferred by clause 2,
- 21 nothing in this section prevents the Chief Commissioner exercising
- 22 the powers conferred by section 16 of that Act so that the claim is
- 23 heard and determined by the commissioner who is hearing and
- 24 determining the matter referred to in paragraph (b).

cl. 1

Schedule 5 — Health and Safety Magistrates

[s. 4]

1. Health and safety magistrates

Every magistrate holds office as a health and safety magistrate by virtue of this clause and ceases to hold that office upon ceasing to hold office as a magistrate.

2. Jurisdiction of health and safety magistrate

(1) A health and safety magistrate has jurisdiction to hear and determine under the *Criminal Procedure Act 2004* proceedings brought under section 230(1), subject to the *Children's Court of Western Australia Act 1988* section 19(1).

(2) When exercising jurisdiction under subclause (1) a health and safety magistrate constitutes a court of summary jurisdiction.

(3) The *Magistrates Court Act 2004* sections 15, 16, 35 and 36 and Part 3 Division 2 apply to and in relation to a health and safety magistrate in the same way as they apply to and in relation to the Magistrates Court and its officers.

3. Administrative arrangements

The Chief Magistrate of the Magistrates Court must make such administrative arrangements as are necessary to enable a health and safety magistrate to carry out functions under this Act.

4. Review of decisions under sections 179 and 180

(1) In this clause —

decision means a decision under section 179 or 180;

review means a review under section 229(2A) of a decision.

(2) An application for a review of a decision must be made in accordance with the rules of court.

(3) A person entitled to a thing under section 179 may apply, in accordance with the rules of court, for a stay of the operation of a decision under that section to forfeit the thing if the person applies for review of the decision and the court may, on the conditions that the court determines, order that the operation of the decision be stayed wholly or in part pending the determination of the review.

(4) On a review of a decision the court may —

(a) confirm or vary the decision; or

(b) set aside the decision and substitute another decision that the court considers appropriate.

Schedule 6 — Transfer of administration of laws

1. Governor may transfer administration of certain laws to Minister

(1) In this clause —

department means the department of the Public Service principally assisting the Minister in the administration of this Act.

(2) For the purposes of facilitating the coordination of the administration of laws relating to work health and safety, where the Governor is of the opinion that —

(a) any law or a provision of a law relates to work health and safety and that law or that provision is administered by a Minister other than the Minister charged with the administration of this Act the Governor may by order transfer the administration of that law or that provision to the Minister; and

(b) any law or provision of a law not relating to work health and safety that is administered by the Minister refers to an officer of the department the Governor may order that the reference must be read and construed as a reference to an officer specified in the order,

and an order has effect accordingly to its tenor.

(3) An order made under subclause (2) may be amended or revoked by the Governor.

(4) An order made under subclause (2) or (3) must be published in the *Government Gazette* and laid before each House of Parliament within 14 sitting days of the House.

(5) An order under this clause may provide for the transfer of any function imposed by the transferred law from the officer or authorised person specified in that law to an officer of the department who has the relevant qualifications and whose office or designation is specified in the order and any duty or power conferred by or under the transferred law may be carried out or exercised by the officer so specified and any direction or order given by the officer so specified under or for the purposes of the transferred law has effect accordingly.

(6) A transferred law must be taken to be a prescribed law for the purposes of Schedule 2 clause 9(1)(b)(ii).

1 **6. Section 69A inserted**

2 After section 68 insert:

3

4 **69A. Confidentiality of information**

5 (1) This section applies if a person obtains information or
6 gains access to a document in exercising any power or
7 function under this Act.

8 (2) The person must not do any of the following —

- 9 (a) disclose to anyone else —
- 10 (i) the information; or
- 11 (ii) the contents of or information contained
12 in the document;
- 13 (b) give access to the document to anyone else;
- 14 (c) use the information or document for any
15 purpose.

16 Penalty:

- 17 (a) in the case of an individual, a fine
18 of \$10 000;
- 19 (b) in the case of a body corporate, a fine
20 of \$50 000.

21 (3) Subsection (2) does not apply to the disclosure of
22 information, or the giving of access to a document or
23 the use of information or a document —

- 24 (a) about a person, with the person's consent; or
- 25 (b) that is necessary for the exercise of a power or
26 function under this Act; or
- 27 (c) that is made or given by the Chief Officer or a
28 person authorised by the Chief Officer if the
29 Chief Officer reasonably believes the
30 disclosure, access or use —
- 31 (i) is necessary for administering, or
32 monitoring or enforcing compliance
33 with, this Act; or
- 34 (ii) is necessary for the administration or
35 enforcement of the *Work Health and*
36 *Safety Act 2014* or another Act
37 prescribed by the regulations; or

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Schedule 7 Repeals, consequential amendments to other Acts

Division 4 Fair Trading Act 2010 amended

cl. 7

- 1 (iii) is necessary for the administration or
2 enforcement of another Act or law, if
3 the disclosure, access or use is
4 necessary to lessen or prevent a serious
5 risk to public health or safety;
6 or
7 (d) that is required by any court, tribunal, authority
8 or person having lawful authority to require the
9 production of documents or the answering of
10 questions; or
11 (e) that is required or authorised under a law.
12

13 **7. Schedule 1 amended**

14 In Schedule 1 after clause 10(6) insert:
15

- 16 (7A) The sharing of information with a regulator as defined in the
17 *Work Health and Safety Act 2014* section 4 relating to the
18 grant, issue, renewal, variation, suspension or cancellation
19 of authorisations under that Act.
20

21 **Division 4 — Fair Trading Act 2010 amended**

22 **8. Act amended**

23 This Division amends the *Fair Trading Act 2010*.

24 **9. Schedule 1 amended**

- 25 (1) In Schedule 1 delete:
26 *Occupational Safety and Health Act 1984*
27 *Veterinary Chemical Control and Animal Feeding Stuffs Act 1976*.
28 (2) In Schedule 1 insert in alphabetical order:
29
30 *Veterinary Chemical Control and Animal Feeding Stuffs Act 1976*
31 *Work Health and Safety Act 2014*
32

33 **Division 5 — Health Act 1911 amended**

34 **10. Act amended**

35 This Division amends the *Health Act 1911*.

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Schedule 7 Repeals, consequential amendments to other Acts

Division 7 Local Government Act 1995 amended

cl. 15

1 **15. Section 16 amended**

2 (1) In section 16(2A) delete “*Occupational Safety and Health*
3 *Act 1984* section 51G.” and insert:

4
5 *Work Health and Safety Act 2014* Schedule 4 clause 2.
6

7 (2) In section 16(2C) delete “*Occupational Safety and Health*
8 *Act 1984* section 51G” and insert:

9
10 *Work Health and Safety Act 2014* Schedule 4 clause 2
11

12 (3) Delete section 16(2D) and (2E).

13 **16. Section 49I amended**

14 In section 49I(1) delete “*Occupational Safety and Health*
15 *Act 1984*,” and insert:

16
17 *Work Health and Safety Act 2014*,
18

19 **17. Section 113 amended**

20 Delete section 113(1)(d)(ii)(I) and insert:

21
22 (I) the *Work Health and Safety*
23 *Act 2014*; and
24

25 **Division 7 — Local Government Act 1995 amended**

26 **18. Act amended**

27 This Division amends the *Local Government Act 1995*.

28 **19. Section 5.40 amended**

29 In section 5.40(e) delete “*Occupational Safety and Health*
30 *Act 1984*; and” and insert:

31
32 *Work Health and Safety Act 2014*; and
33

1 **Division 8 — Mines Safety and Inspection Act 1994 amended**

2 **20. Act amended**

3 This Division amends the *Mines Safety and Inspection Act 1994*.

4 **21. Section 4 amended**

5 (1) In section 4(1) delete the definition of *safety and health*
6 *magistrate*.

7 (2) In section 4(1) insert in alphabetical order:

8

9 *health and safety magistrate* means a person holding
10 office as a health and safety magistrate under the *Work*
11 *Health and Safety Act 2014* Schedule 5 clause 1;

12

13 (3) In section 4(1) in the definition of *Mining Industry Advisory*
14 *Committee* delete “section 14A(2) of the *Occupational Safety*
15 *and Health Act 1984*,” and insert:

16

17 section 16A(2);

18

19 (4) In section 4(1) in the definition of *Tribunal* delete “section 51G(2)
20 of the *Occupational Safety and Health Act 1984*,” and insert:

21

22 the *Work Health and Safety Act 2014*
23 Schedule 4 clause 2(2);

24

25 **22. Section 6A amended**

26 (1) In section 6A(1) in the definition of *workplace* delete
27 “*Occupational Safety and Health Act 1984*,” and insert:

28

29 *Work Health and Safety Act 2014* section 4.

30

31 (2) In section 6A(2):

32 (a) delete “*Occupational Safety and Health Act 1984*” and
33 insert:

34

35 *Work Health and Safety Act 2014*

36

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Schedule 7 Repeals, consequential amendments to other Acts

Division 8 Mines Safety and Inspection Act 1994 amended

cl. 23

1 (b) delete “*Occupational Safety and Health Act 1984*,” and
2 insert:

3

4 *Work Health and Safety Act 2014*,

5

6 (3) In section 6A(3) delete “*Occupational Safety and Health Act 1984*
7 does not include any provision of Part II of that Act.” and insert:

8

9 *Work Health and Safety Act 2014* does not include any
10 provision of Schedule 2 of that Act.

11

12 (4) In section 6A(4) delete “*Occupational Safety and Health*
13 *Act 1984*” and insert:

14

15 *Work Health and Safety Act 2014*

16

17 (5) After section 6A(5) insert:

18

19 (6) On and from the day on which the *Work Health and*
20 *Safety Act 2014* Schedule 7 clause 22 comes into
21 operation, each reference in an instrument under this
22 section that was in effect immediately before that day
23 to the *Occupational Safety and Health Act 1984* must
24 be taken to be a reference to the *Work Health and*
25 *Safety Act 2014*.

26

27 Note: The heading to amended section 6A is to read:

28 **Application of this Act to workplace under *Work Health and***
29 ***Safety Act 2014***

30 **23. Part 3 Division 1A inserted**

31 At the beginning of Part 3 insert:

32

33 **Division 1A — Mining Industry Advisory Committee**

34 **16A. Mining Industry Advisory Committee**

35 (1) In this section —

36 *commencement day* means the commencement of the
37 *Work Health and Safety Act 2014* Schedule 7 clause 1;

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Division 8 Mines Safety and Inspection Act 1994 amended

cl. 24

- 1 (d) to make recommendations to the Minister for
2 Mines regarding the formulation, amendment
3 or repeal of laws relating to work health and
4 safety for which that Minister is responsible;
5 and
- 6 (e) to prepare or recommend the adoption of codes
7 of practice, guidelines, standards, specifications
8 or other forms of guidance for the purpose of
9 assisting employers, self-employed persons,
10 employees, manufacturers or other persons to
11 maintain appropriate standards of work health
12 and safety in the mining industry; and
- 13 (f) to provide advice on —
14 (i) education and publications; and
15 (ii) training and training courses,
16 with respect to work health and safety in the
17 mining industry.
- 18 (5) The chairperson of the committee is to be the officer of
19 the department nominated by the Minister for Mines to
20 be a member of the Commission under the *Work*
21 *Health and Safety Act 2014* Schedule 2
22 clause 5(1)(c)(ii).
- 23 (6) Subject to subsection (4), the Ministers —
24 (a) are to appoint the members of; and
25 (b) may alter or reconstitute,
26 the committee.
- 27 (7) The members of the committee are entitled to be paid
28 such remuneration and travelling and other allowances
29 as may be determined by the Ministers on the
30 recommendation of the Public Sector Commissioner.
- 31 (8) Subject to any direction given to it by the Commission,
32 the committee must determine its own procedures.
33

34 **24. Section 16 amended**

35 After section 16(7) insert:
36

- 37 (8) The State mining engineer and the State coal mining
38 engineer may share information with a regulator as

1 defined in the *Work Health and Safety Act 2014*
2 section 4 —

3 (a) relating to the grant, issue, renewal, variation,
4 suspension or cancellation of authorisations
5 under that Act; or

6 (b) that would otherwise achieve the object of
7 that Act.
8

9 **25. Section 62 amended**

10 In section 62(1)(b) delete “occupational safety and health
11 accredited under section 14(1)(h) of the *Occupational Safety*
12 *and Health Act 1984*,” and insert:

13
14 work health and safety accredited for the
15 purposes of the *Work Health and Safety*
16 *Act 2014*,
17

18 **26. Part 9 Division 3 heading amended**

19 In the heading to Part 9 Division 3 delete “**Occupational Safety**
20 **and Health**” and insert:

21
22 **Work Health and Safety**
23

24 **27. Section 102 amended**

25 (1) In section 102(2):

26 (a) in paragraph (c) delete “Part VIB of the *Occupational*
27 *Safety and Health Act 1984* (**Part VIB**); or” and insert:

28
29 the *Work Health and Safety Act 2014*
30 Schedule 4; or
31

32 (b) in paragraph (d) delete “Part VIB.” and insert:

33
34 that Schedule.
35

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Schedule 7 Repeals, consequential amendments to other Acts

Division 8 Mines Safety and Inspection Act 1994 amended

cl. 28

- 1 (2) In section 102(3):
- 2 (a) delete paragraph (a) and insert:
- 3
- 4 (a) the *Work Health and Safety Act 2014*
- 5 Schedule 4; or
- 6
- 7 (b) in paragraph (b) delete “Part,” and insert:
- 8
- 9 Schedule,
- 10
- 11 (3) Delete section 102(4).
- 12 **28. Section 102AAA inserted**
- 13 At the end of Part 9 Division 3 insert:
- 14
- 15 **102AAA. Conciliation**
- 16 (1) This section applies where a matter has been referred to
- 17 the Tribunal for determination under section 55(6),
- 18 55A(4), 56(11), 62(1), 67F or 74(2) of this Act.
- 19 (2) If the Tribunal considers that the issues involved may
- 20 be resolved by conciliation —
- 21 (a) the Tribunal may endeavour to assist the parties
- 22 to reach an agreement on those issues; and
- 23 (b) for that purpose the Tribunal may —
- 24 (i) arrange conferences of the parties or
- 25 their representatives presided over by
- 26 the Tribunal; and
- 27 (ii) arrange for the parties or their
- 28 representatives to confer among
- 29 themselves at a conference at which the
- 30 Tribunal is not present; and
- 31 (iii) otherwise encourage the parties to
- 32 exchange or divulge attitudes or
- 33 information that in the opinion of the
- 34 Tribunal would assist in the resolution
- 35 of the issues.
- 36 (3) The Tribunal may give any direction or make any order
- 37 or declaration that the Tribunal thinks expedient for the
- 38 purposes of this section, and any such direction, order

- 1 or declaration is enforceable as if it were given or made
2 under the *Industrial Relations Act 1979* section 32.
- 3 (4) If the Tribunal gives or makes a direction, order or
4 declaration under subsection (3) the Tribunal must —
- 5 (a) if it is given or made orally, reduce the
6 direction, order or declaration to writing as
7 soon as is practicable; and
- 8 (b) make the text of the direction, order or
9 declaration available to the parties as soon as is
10 practicable after it is given or made.
- 11 (5) If the Tribunal —
- 12 (a) takes action under subsection (2)(a); and
13 (b) is satisfied that the parties have reached
14 agreement on all of the issues involved,
- 15 the Tribunal may, with the consent of the parties, make
16 a determination for the purposes of section 102 in
17 terms of that agreement.
- 18 (6) If the Tribunal —
- 19 (a) takes action under subsection (2)(a); and
20 (b) subsection (5)(b) does not apply,
- 21 the Tribunal must determine the matter for the
22 purposes of section 102.
- 23 (7) In making a determination mentioned in subsection (6)
24 the Tribunal must endeavour to ensure that the matter
25 is resolved —
- 26 (a) taking into account any agreement reached by
27 the parties on any particular issue; and
- 28 (b) subject to paragraph (a), on terms that could
29 reasonably have been agreed between the
30 parties in the first instance or by conciliation.
31

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Schedule 7 Repeals, consequential amendments to other Acts

Division 8 Mines Safety and Inspection Act 1994 amended

cl. 29

1 **29. Section 104A inserted**
2 After section 103 insert:
3

4 **104A. Confidentiality of information**

5 (1) This section applies if a person obtains information or
6 gains access to a document in exercising any power or
7 function under this Act.

8 (2) The person must not do any of the following —
9 (a) disclose to anyone else —
10 (i) the information; or
11 (ii) the contents of or information contained
12 in the document;
13 (b) give access to the document to anyone else;
14 (c) use the information or document for any
15 purpose.

16 Penalty:

17 (a) in the case of an individual, a fine
18 of \$10 000;
19 (b) in the case of a body corporate, a fine
20 of \$50 000.

21 (3) Subsection (2) does not apply to the disclosure of
22 information, or the giving of access to a document or
23 the use of information or a document —
24 (a) about a person, with the person's consent; or
25 (b) that is necessary for the exercise of a power or
26 function under this Act; or
27 (c) that is made or given by the State mining
28 engineer or the State coal mining engineer (the
29 ***engineer***) or a person authorised by the
30 engineer if the engineer reasonably believes the
31 disclosure, access or use —
32 (i) is necessary for administering, or
33 monitoring or enforcing compliance
34 with, this Act; or
35 (ii) is necessary for the administration or
36 enforcement of the *Work Health and*
37 *Safety Act 2014* or another Act
38 prescribed by the regulations; or

- 1 (iii) is necessary for the administration or
2 enforcement of another Act or law, if
3 the disclosure, access or use is
4 necessary to lessen or prevent a serious
5 risk to public health or safety;
6 or
7 (d) that is required by any court, tribunal, authority
8 or person having lawful authority to require the
9 production of documents or the answering of
10 questions; or
11 (e) that is required or authorised under a law.
12 (4) Nothing in this section affects the operation of
13 section 26.
14

15 **30. Section 104 amended**

16 After section 104(1)(zm) insert:

- 17
18 (zna) the sharing of information with a regulator as
19 defined in the *Work Health and Safety Act 2014*
20 section 4 relating to the grant, issue, renewal,
21 variation, suspension or cancellation of
22 authorisations under that Act;
23

24 **Division 9 — Petroleum (Submerged Lands) Act 1982 amended**

25 **31. Act amended**

26 This Division amends the *Petroleum (Submerged Lands) Act 1982*.

27 **32. Schedule 5 amended**

- 28 (1) In Schedule 5 clause 3 in the definition of *Tribunal* delete
29 “*Occupational Safety and Health Act 1984* section 51G(2);” and
30 insert:
31

32 *Work Health and Safety Act 2014* Schedule 4 clause 2(2);
33

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Schedule 7 Repeals, consequential amendments to other Acts

Division 9 Petroleum (Submerged Lands) Act 1982 amended

cl. 32

- 1 (2) In Schedule 5 clause 70(2):
- 2 (a) in paragraph (c) delete “Part VIB of the *Occupational Safety*
- 3 *and Health Act 1984*; or” and insert:
- 4
- 5 the *Work Health and Safety Act 2014* Schedule 4; or
- 6
- 7 (b) in paragraph (d) delete “Part.” and insert:
- 8
- 9 Schedule.
- 10
- 11 (3) In Schedule 5 clause 70(3):
- 12 (a) delete paragraph (a) and insert:
- 13
- 14 (a) the *Work Health and Safety Act 2014* Schedule 4;
- 15 and
- 16
- 17 (b) in paragraph (b) delete “Part,” and insert:
- 18
- 19 Schedule,
- 20
- 21 (4) Delete Schedule 5 clause 70(4).
- 22 (5) At the end of Schedule 5 Division 5 insert:
- 23

24 **71A. Conciliation**

- 25 (1) This clause applies where a matter has been referred to the
- 26 Tribunal for determination under clause 67 in relation to a
- 27 decision made under clause 22.
- 28 (2) If the Tribunal considers that the issues involved may be
- 29 resolved by conciliation —
- 30 (a) the Tribunal may endeavour to assist the parties to
- 31 reach an agreement on those issues; and
- 32 (b) for that purpose the Tribunal may —
- 33 (i) arrange conferences of the parties or their
- 34 representatives presided over by the
- 35 Tribunal; and
- 36 (ii) arrange for the parties or their
- 37 representatives to confer among themselves
- 38 at a conference at which the Tribunal is not
- 39 present; and

-
- 1 (iii) otherwise encourage the parties to exchange
2 or divulge attitudes or information that in
3 the opinion of the Tribunal would assist in
4 the resolution of the issues.
- 5 (3) The Tribunal may give any direction or make any order or
6 declaration that the Tribunal thinks expedient for the
7 purposes of this clause, and any such direction, order or
8 declaration is enforceable as if it were given or made under
9 the *Industrial Relations Act 1979* section 32.
- 10 (4) If the Tribunal gives or makes a direction, order or
11 declaration under subclause (3) the Tribunal must —
- 12 (a) if it is given or made orally, reduce the direction,
13 order or declaration to writing as soon as is
14 practicable; and
- 15 (b) make the text of the direction, order or declaration
16 available to the parties as soon as is practicable after
17 it is given or made.
- 18 (5) If the Tribunal —
- 19 (a) takes action under subclause (2)(a); and
20 (b) is satisfied that the parties have reached agreement
21 on all of the issues involved,
- 22 the Tribunal may, with the consent of the parties, make a
23 determination for the purposes of clause 70 in terms of that
24 agreement.
- 25 (6) If the Tribunal —
- 26 (a) takes action under subclause (2)(a); and
27 (b) subclause (5)(b) does not apply,
- 28 the Tribunal must determine the matter for the purposes of
29 clause 70.
- 30 (7) In making a determination mentioned in subclause (6) the
31 Tribunal must endeavour to ensure that the matter is
32 resolved —
- 33 (a) taking into account any agreement reached by the
34 parties on any particular issue; and
35 (b) subject to paragraph (a), on terms that could
36 reasonably have been agreed between the parties in
37 the first instance or by conciliation.
38

1 (5) At the end of Schedule 1 Division 5 insert:
2

3 **70A. Conciliation**

- 4 (1) This clause applies where a matter has been referred to the
5 Tribunal for determination under clause 66 in relation to a
6 decision made under clause 21.
- 7 (2) If the Tribunal considers that the issues involved may be
8 resolved by conciliation —
- 9 (a) the Tribunal may endeavour to assist the parties to
10 reach an agreement on those issues; and
- 11 (b) for that purpose the Tribunal may —
- 12 (i) arrange conferences of the parties or their
13 representatives presided over by the
14 Tribunal; and
- 15 (ii) arrange for the parties or their
16 representatives to confer among themselves
17 at a conference at which the Tribunal is not
18 present; and
- 19 (iii) otherwise encourage the parties to exchange
20 or divulge attitudes or information that in
21 the opinion of the Tribunal would assist in
22 the resolution of the issues.
- 23 (3) The Tribunal may give any direction or make any order or
24 declaration that the Tribunal thinks expedient for the
25 purposes of this clause, and any such direction, order or
26 declaration is enforceable as if it were given or made under
27 the *Industrial Relations Act 1979* section 32.
- 28 (4) If the Tribunal gives or makes a direction, order or
29 declaration under subclause (3) the Tribunal must —
- 30 (a) if it is given or made orally, reduce the direction,
31 order or declaration to writing as soon as is
32 practicable; and
- 33 (b) make the text of the direction, order or declaration
34 available to the parties as soon as is practicable after
35 it is given or made.
- 36 (5) If the Tribunal —
- 37 (a) takes action under subclause (2)(a); and

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Schedule 7 Repeals, consequential amendments to other Acts

Division 11 Petroleum Pipelines Act 1969 amended

cl. 35

- 1 (b) is satisfied that the parties have reached agreement
2 on all of the issues involved,
3 the Tribunal may, with the consent of the parties, make a
4 determination for the purposes of clause 69 in terms of that
5 agreement.
- 6 (6) If the Tribunal —
7 (a) takes action under subclause (2)(a); and
8 (b) subclause (5)(b) does not apply,
9 the Tribunal must determine the matter for the purposes of
10 clause 69.
- 11 (7) In making a determination mentioned in subclause (6) the
12 Tribunal must endeavour to ensure that the matter is
13 resolved —
14 (a) taking into account any agreement reached by the
15 parties on any particular issue; and
16 (b) subject to paragraph (a), on terms that could
17 reasonably have been agreed between the parties in
18 the first instance or by conciliation.
19

20 **Division 11 — *Petroleum Pipelines Act 1969* amended**

21 **35. Act amended**

22 This Division amends the *Petroleum Pipelines Act 1969*.

23 **36. Schedule 1 amended**

- 24 (1) In Schedule 1 clause 3 in the definition of ***Tribunal*** delete
25 “*Occupational Safety and Health Act 1984* section 51G(2);” and
26 insert:

27
28 *Work Health and Safety Act 2014* Schedule 4 clause 2(2);
29

- 30 (2) In Schedule 1 clause 69(2):
31 (a) in paragraph (c) delete “Part VIB of the *Occupational Safety*
32 *and Health Act 1984*; or” and insert:
33
34 the *Work Health and Safety Act 2014* Schedule 4; or
35
36 (b) in paragraph (d) delete “Part.” and insert:
37
38 Schedule.
39

- 1 (3) In Schedule 1 clause 69(3):
2 (a) delete paragraph (a) and insert:
3
4 (a) the *Work Health and Safety Act 2014* Schedule 4;
5 and
6
7 (b) in paragraph (b) delete “Part,” and insert:
8
9 Schedule,
10
11 (4) Delete Schedule 1 clause 69(4).
12 (5) At the end of Schedule 1 Division 5 insert:
13
14 **70A. Conciliation**
15 (1) This clause applies where a matter has been referred to the
16 Tribunal for determination under clause 66 in relation to a
17 decision made under clause 21.
18 (2) If the Tribunal considers that the issues involved may be
19 resolved by conciliation —
20 (a) the Tribunal may endeavour to assist the parties to
21 reach an agreement on those issues; and
22 (b) for that purpose the Tribunal may —
23 (i) arrange conferences of the parties or their
24 representatives presided over by the
25 Tribunal; and
26 (ii) arrange for the parties or their
27 representatives to confer among themselves
28 at a conference at which the Tribunal is not
29 present; and
30 (iii) otherwise encourage the parties to exchange
31 or divulge attitudes or information that in
32 the opinion of the Tribunal would assist in
33 the resolution of the issues.
34 (3) The Tribunal may give any direction or make any order or
35 declaration that the Tribunal thinks expedient for the
36 purposes of this clause, and any such direction, order or
37 declaration is enforceable as if it were given or made under
38 the *Industrial Relations Act 1979* section 32.

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Schedule 7 Repeals, consequential amendments to other Acts

Division 12 Public Sector Management Act 1994 amended

cl. 37

- 1 (4) If the Tribunal gives or makes a direction, order or
2 declaration under subclause (3) the Tribunal must —
- 3 (a) if it is given or made orally, reduce the direction,
4 order or declaration to writing as soon as is
5 practicable; and
- 6 (b) make the text of the direction, order or declaration
7 available to the parties as soon as is practicable after
8 it is given or made.
- 9 (5) If the Tribunal —
- 10 (a) takes action under subclause (2)(a); and
11 (b) is satisfied that the parties have reached agreement
12 on all of the issues involved,
- 13 the Tribunal may, with the consent of the parties, make a
14 determination for the purposes of clause 69 in terms of that
15 agreement.
- 16 (6) If the Tribunal —
- 17 (a) takes action under subclause (2)(a); and
18 (b) subclause (5)(b) does not apply,
- 19 the Tribunal must determine the matter for the purposes of
20 clause 69.
- 21 (7) In making a determination mentioned in subclause (6) the
22 Tribunal must endeavour to ensure that the matter is
23 resolved —
- 24 (a) taking into account any agreement reached by the
25 parties on any particular issue; and
26 (b) subject to paragraph (a), on terms that could
27 reasonably have been agreed between the parties in
28 the first instance or by conciliation.
29

30 **Division 12 — *Public Sector Management Act 1994* amended**

31 **37. Act amended**

32 This Division amends the *Public Sector Management Act 1994*.

33 **38. Section 8 amended**

34 In section 8(1)(e) delete “*Occupational Safety and Health*
35 *Act 1984*.” and insert:

36
37 *Work Health and Safety Act 2014*.
38

Work Health and Safety Bill 2014

Schedule 7 Repeals, consequential amendments to other Acts

Division 14 Workers' Compensation and Injury Management Act 1981 amended

cl. 43

s. 13	s. 14(b)
s. 215(2)(e)	

1 Note: The headings to the amended sections listed in the Table are to read
2 as set out in the Table.

3

Table

Amended section	Section heading
s. 10	Act adds to protection provided by <i>Work Health and Safety Act 2014</i>
s. 11	<i>Work Health and Safety Act 2014</i> prevails
s. 12	Compliance with this Act is no defence to prosecution under <i>Work Health and Safety Act 2014</i>
s. 13	Relationship between duties under this Act and <i>Work Health and Safety Act 2014</i>

4 **Division 14 — *Workers' Compensation and Injury Management***
5 ***Act 1981* amended**

6 **43. Act amended**

7 This Division amends the *Workers' Compensation and Injury*
8 *Management Act 1981*.

9 **44. Section 48 amended**

10 (1) In section 48(2) delete "*Occupational Safety and Health*
11 *Act 1984*." and insert:

12

13 *Work Health and Safety Act 2014*.

14

15 (2) In section 48(3) delete "*Occupational Safety and Health*
16 *Act 1984*" and insert:

17

18 *Work Health and Safety Act 2014*

19

1 **45. Section 95 amended**

2 In section 95(1)(b) delete “*Occupational Safety and Health*
3 *Act 1984*; and” and insert:

4

5 *Work Health and Safety Act 2014*; and

6

7 **46. Section 100B amended**

8 In section 100B(1) delete “*Occupational Safety and Health*
9 *Act 1984*” and insert:

10

11 *Work Health and Safety Act 2014*

12

cl. 1

1 **Schedule 8 — Transitional provisions arising from the**
2 **enactment of the Work Health and Safety Act 2014**

3 **1. Terms used**

4 In this Schedule —

5 *commencement day* means the day on which Schedule 7 clause 1(1)
6 comes into operation;

7 *repealed Act* means the *Occupational Safety and Health Act 1984* as
8 in force immediately before commencement day.

9 **2. Interpretation Act 1984 not affected**

10 Except where the contrary intention appears, the provisions of this
11 Schedule do not prejudice or affect the application of the
12 *Interpretation Act 1984* to and in relation to the repeals effected by
13 Schedule 7 clause 1.

14 **3. Regulations for transitional matters**

15 The regulations may contain provisions that are necessary or
16 convenient for dealing with matters concerning the transition from the
17 provisions of any written law applying before commencement day to
18 the provisions of this Act, including regulations made under this Act,
19 applying after commencement day.

20 **4. WorkSafe Western Australia Commissioner**

21 (1) The person who, immediately before commencement day, was the
22 WorkSafe Western Australia Commissioner under the repealed Act is,
23 on and from commencement day, to be taken to be the WorkSafe
24 Western Australia Commissioner appointed under Schedule 2 clause 2
25 on the same terms and conditions, including as to remuneration, as
26 those which applied to the person immediately before commencement
27 day.

28 (2) A person to whom subclause (1) applies retains all existing and
29 accruing rights and benefits as if the appointment under this Act were
30 a continuation of the person's appointment under the repealed Act
31 immediately before commencement day.

32 **5. Commission**

33 (1) The Commission for Occupational Safety and Health under the
34 repealed Act is, on and from commencement day, to be taken to be
35 the Commission for Occupational Health and Safety established under
36 Schedule 2 clause 4.

37 (2) A person who, immediately before commencement day, was a
38 member of the Commission for Occupational Safety and Health under

1 the repealed Act is, on and from that day, to be taken to be the
2 member of the Commission for Occupational Health and Safety
3 established under Schedule 2 clause 4, in the position that most
4 closely corresponds to the appointment or nomination of that person
5 as a member under the repealed Act, for the balance of the person's
6 term under the repealed Act.

7 **6. Advisory committees**

8 (1) An advisory committee appointed under section 15 of the repealed
9 Act that is in effect immediately before commencement day is, on and
10 from that day, to be taken to be a committee established under
11 Schedule 2 clause 10.

12 (2) A person who, immediately before commencement day, was a
13 member of an advisory committee appointed under section 15 of the
14 repealed Act is, on and from that day, to be taken to be a member of a
15 committee established under Schedule 2 clause 10 for the balance of
16 the person's term under the repealed Act.

17 **7. Tribunal commissioners**

18 (1) The commissioner who, immediately before commencement day, was
19 the commissioner designated under the *Industrial Relations Act 1979*
20 section 16(2A) to exercise the jurisdiction of the Occupational Safety
21 and Health Tribunal under the repealed Act is, on and from
22 commencement day, to be taken to be the commissioner referred to in
23 Schedule 4 clause 3(1)(a).

24 (2) A commissioner who, immediately before commencement day, was a
25 commissioner referred to in section 51H(1)(b)(i) or (ii) of the repealed
26 Act is, on and from commencement day, to be taken to be a
27 commissioner referred to in Schedule 4 clause 3(1)(b)(i) or (ii), as is
28 applicable to the case.

29 **8. Duties of designers**

30 (1) Subject to this clause, the duties imposed on a designer under
31 section 22 of this Act do not apply to or in relation to the designing of
32 any plant, substance or structure (including with respect to carrying
33 out any calculations, analysis, testing or examination or with respect
34 to the provision of any information) if the designer commenced (or
35 commenced and completed) designing the plant, substance or
36 structure before commencement day.

37 (2) If —

- 38 (a) subclause (1) applies in relation to a particular design; and
39 (b) the designer would be subject to the operation of section 23
40 of the repealed Act if that section were still in operation,

cl. 9

- 1 then —
- 2 (c) the designer must comply with the relevant requirements of
- 3 that section as if the repealed Act were still in operation; and
- 4 (d) if the designer fails to comply with paragraph (c), then action
- 5 may be brought against the designer (including by the
- 6 undertaking of a prosecution) as if the repealed Act were still
- 7 in operation.
- 8 (3) If a designer commenced designing any plant, substance or structure
- 9 before commencement day but has not completed the design by the
- 10 second anniversary of commencement day, then the designer will, in
- 11 relation to the design, cease to have the benefit of subclause (1) and
- 12 the designer must comply with the requirements of this Act in relation
- 13 to the duties of a designer (as if this Act had been in operation at the
- 14 time that the designer commenced designing).
- 15 (4) Despite a preceding subclause, if —
- 16 (a) a designer carries out any calculations, analysis, testing or
- 17 examination in connection with the performance of a duty
- 18 under the repealed Act (as taken to be in operation under
- 19 subclause (2)(d)); and
- 20 (b) the designer would, if the calculations, analysis, testing or
- 21 examination were carried out under this Act, be subject to a
- 22 requirement set out in section 22(4)(b) or (5) of this Act,
- 23 then the designer must comply with those requirements as if that
- 24 section applied in relation to the plant, substance or structure.

25 **9. Duties of manufacturers**

- 26 (1) Subject to this clause, the duties imposed on a manufacturer under
- 27 section 23 of this Act do not apply to or in relation to the manufacture
- 28 of any plant, substance or structure (including with respect to carrying
- 29 out any calculations, analysis, testing or examination or with respect
- 30 to the provision of any information) if the manufacturer commenced
- 31 (or commenced and completed) any process associated with the
- 32 manufacturing of the plant, substance or structure before
- 33 commencement day.
- 34 (2) If —
- 35 (a) subclause (1) applies in relation to the manufacture of any
- 36 particular plant, substance or structure; and

- 1 (b) the manufacturer would be subject to the operation of
2 section 23 of the repealed Act if that section were still in
3 operation,
4 then —
5 (c) the manufacturer must comply with the relevant requirements
6 of that section as if the repealed Act were in operation; and
7 (d) if the manufacturer fails to comply with paragraph (c), then
8 action may be brought against the manufacturer (including by
9 the undertaking of a prosecution) as if the repealed Act were
10 still in operation.
- 11 (3) If a manufacturer commenced any process associated with the
12 manufacture of any plant, substance or structure before
13 commencement day but has not completed the manufacture by the
14 first anniversary of commencement day, then the manufacturer will,
15 in relation to the manufacture of the plant, substance or structure,
16 cease to have the benefit of subclause (1) and the manufacturer must
17 comply with the requirements of the Act in relation to the duties of a
18 manufacturer (as if this Act had been in operation at the time that the
19 manufacturer commenced this process).
- 20 (4) Despite a preceding subclause, if —
21 (a) a manufacturer carries out any calculations, analysis, testing
22 or examination in connection with the performance of a duty
23 under the repealed Act (as taken to be in operation under
24 subclause (2)(d)); and
25 (b) the manufacturer would, if the calculations, analysis, testing
26 or examination were carried out under this Act, be subject to
27 a requirement set out in section 23(4)(b) or (5) of this Act,
28 then the manufacturer must comply with those requirements as if that
29 section applied in relation to the plant, substance or structure.

30 **10. Duties of importers**

- 31 (1) Subject to this clause, the duties imposed on an importer under
32 section 24 of this Act do not apply to or in relation to the importing of
33 any plant, substance or structure (including with respect to carrying
34 out any calculations, analysis, testing or examination or with respect
35 to the provision of any information) if the importer commenced (or
36 commenced and completed) any steps constituting the importation of
37 the plant, substance or structure before commencement day.
- 38 (2) If —
39 (a) subclause (1) applies in relation the importing of any
40 particular plant, substance or structure; and
41 (b) the importer would be subject to the operation of section 23
42 of the repealed Act if that section were still in operation,

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- 1 then —
- 2 (c) the importer must comply with the relevant requirements of
- 3 that section as if the repealed Act were in operation; and
- 4 (d) if the importer fails to comply with paragraph (c), then action
- 5 may be brought against the importer (including by the
- 6 undertaking of a prosecution) as if the repealed Act were still
- 7 in operation.
- 8 (3) If an importer commenced any process associated with the importing
- 9 of any plant, substance or structure before commencement day but has
- 10 not completed the importing by the first anniversary of
- 11 commencement day, then the importer will, in relation to the
- 12 importing of the plant, substance or structure, cease to have the
- 13 benefit of subclause (1) and the importer must comply with the
- 14 requirements of the Act in relation to the duties of an importer (as if
- 15 the Act had been in operation at the time that the importer
- 16 commenced this process).
- 17 (4) Despite a preceding subclause, if —
- 18 (a) an importer carries out any calculations, analysis, testing or
- 19 examination in connection with the performance of a duty
- 20 under the repealed Act (as taken to be in operation under
- 21 subclause (2)(d)); and
- 22 (b) the importer would, if the calculations, analysis, testing or
- 23 examination were carried out under this Act, be subject to a
- 24 requirement set out in section 24(4)(b) or (5) of this Act,
- 25 then the importer must comply with those requirements as if that
- 26 section applied in relation to the plant, substance or structure.

27 **11. Duties of suppliers**

- 28 (1) Subject to this clause, the duties imposed on a supplier under
- 29 section 25 of this Act do not apply to or in relation to the supply of
- 30 any plant, substance or structure (including with respect to carrying
- 31 out any calculations, analysis, testing or examination or with respect
- 32 to the provision of any information) if the supplier commenced (or
- 33 commenced and completed) any process associated with the supply of
- 34 the plant, substance or structure before commencement day.
- 35 (2) If —
- 36 (a) subclause (1) applies in relation to the supply of any
- 37 particular plant, substance or structure; and
- 38 (b) the supplier would be subject to the operation of section 23 of
- 39 the repealed Act as if that section were still in operation,
- 40 then —

- 1 (c) the supplier must comply with the relevant requirement of
2 that section as if the repealed Act were in operation; and
- 3 (d) if the supplier fails to comply with paragraph (c), then action
4 may be brought against the supplier (including by the
5 undertaking of a prosecution) as if the repealed Act were still
6 in operation.
- 7 (3) If a supplier commenced any process associated with the supply of
8 any plant, substance or structure before commencement day but has
9 not completed the supply by the first anniversary of commencement
10 day, then the supplier will, in relation to the supply of the plant,
11 substance or structure, cease to have the benefit of subclause (1) and
12 the supplier must comply with the requirements of the Act in relation
13 to the duties of a supplier (as if this Act had been in operation at the
14 time that the supplier commenced this process).
- 15 (4) Despite a preceding subclause, if —
- 16 (a) a supplier carries out any calculations, analysis, testing or
17 examination in connection with the performance of a duty
18 under the repealed Act (as taken to be in operation under
19 subclause (2)(d)); and
- 20 (b) the supplier would, if the calculations, analysis, testing or
21 examination were carried out under this Act, be subject to a
22 requirement set out in section 25(4)(b) or (5) of this Act,
- 23 then the supplier must comply with those requirements as if that
24 section applied in relation to the plant, substance or structure.

25 **12. Duties of persons who install, construct or commission plant or**
26 **structures**

- 27 (1) In this clause —
- 28 *designated person* means a person who conducts a business or
29 undertaking that installs, constructs or commissions plant or a
30 structure.
- 31 (2) Subject to this clause, the duties imposed on a designated person
32 under section 26 of this Act do not apply to or in relation to the
33 installation, construction or commissioning of any plant or structure if
34 the designated person commenced (or commenced and completed)
35 any process associated with the installation, construction or
36 commissioning of the plant or structure before commencement day.
- 37 (3) If a designated person commenced any process associated with the
38 installation, construction or commissioning of any plant or structure
39 before commencement day but had not completed the installation,
40 construction or commissioning by the second anniversary of
41 commencement day, then the designated person will, in relation to the
42 installation, construction or commissioning of the plant or structure,

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1 cease to have the benefit of subclause (2) and the designated person
2 must comply with the requirements of the Act in relation to the duties
3 of a designated person (as if this Act had been in operation at the time
4 that the designated person commenced this process).

5 **13. Safety and health representatives and committees, inspectors**

6 (1) A person who, immediately before commencement day, was an
7 inspector under the repealed Act is, on and from commencement day,
8 to be taken to have been appointed as an inspector under this Act.

9 (2) A person who, immediately before commencement day was, under
10 the repealed Act, a safety and health representative for a workplace is,
11 on and from commencement day, to be taken to be a health and safety
12 representative under this Act for the work group that corresponds to
13 the former workplace (with a term of office corresponding to the
14 balance of the person's term of office under the repealed Act).

15 (3) A safety and health committee for a workplace that, immediately
16 before commencement day, was in effect under the repealed Act is, on
17 and from commencement day, to be taken to be a health and safety
18 committee under this Act for the workplace or part of the workplace
19 that corresponds to the former workplace (with the membership as
20 constituted under the repealed Act).

21 (4) If a process or proceeding —

22 (a) to elect a safety and health representative; or

23 (b) to establish or constitute a safety and health committee,

24 was commenced (but not completed) under the repealed Act before
25 commencement day, the process or proceeding may be continued and
26 completed under the repealed Act as if the repealed Act were still in
27 operation, and is to have effect as if it were completed immediately
28 before commencement day.

29 (5) Subclause (4)(a) ceases to apply at the expiration of 3 months after
30 commencement day.

31 **14. Training for issue of provisional improvement notice**

32 (1) A person who has completed a course of training prescribed for the
33 purposes of the definition of *qualified representative* in section 51AB
34 of the repealed Act must be taken to have completed any training
35 required under section 90(4) of this Act.

36 (2) Subclause (1) ceases to apply at the expiration of 6 months after
37 commencement day (and any relevant course of training under the
38 repealed Act will then cease to have effect for the purposes of this
39 Act).

1 **15. Functions and powers of inspectors**

2 (1) An inspector may, on or after commencement day, perform a function
3 or exercise a power under this Act in relation to anything arising
4 under or relevant to the repealed Act before commencement day (and
5 this Act applies in relation to the performance or exercise of such a
6 function or power as if a reference to this Act included a reference to
7 the repealed Act).

8 (2) Without limiting subclause (1) —

9 (a) a reference in this Act to a contravention of this Act includes
10 a reference to a contravention of the repealed Act; and

11 (b) a reference in this Act to an offence against this Act includes
12 a reference to an offence against the repealed Act.

13 (3) Any action taken or information acquired under this Act (including on
14 account of the operation of this clause) may be used for the purposes
15 of the repealed Act (insofar as it may be relevant to an act, omission
16 or circumstance occurring before commencement day).

17 (4) Nothing in this clause affects or limits any action that may be taken
18 under or with respect to the repealed Act by virtue of the operation of
19 any other Act or law.

20 **16. Disqualifications**

21 A disqualification under section 34 of the repealed Act (including a
22 disqualification made after commencement day on appeal from a
23 decision of the Tribunal) has effect for the purposes of section 60 of
24 this Act as if it were a disqualification under section 65.

25 **17. Codes of practice**

26 (1) In this clause —

27 *prescribed code of practice* means an approved code of practice in
28 force under section 57 of the repealed Act immediately before
29 commencement day that is prescribed by the regulations for the
30 purposes of this clause.

31 (2) A prescribed code of practice must be taken to be an approved code of
32 practice under this Act (without the need to take any other step or to
33 publish any notice under section 274).

34 (3) A prescribed code of practice under subclause (2) may be varied or
35 revoked by the Minister in accordance with section 274.

36 **18. Authorisations**

37 (1) In this clause —

cl. 19

1 **authorisation** means a registration, licence, permit, accreditation or
2 other form of authorisation granted or recognised under the repealed
3 Act.

4 (2) An authorisation —

5 (a) of a class prescribed by the regulations for the purposes of
6 this clause; and

7 (b) that was in effect immediately before commencement day,

8 is to have effect under this Act in the manner, and for the time,
9 prescribed by the regulations (and, to the extent prescribed by the
10 regulations, must be taken to be a registration, licence, permit,
11 accreditation or other form of authorisation granted or recognised
12 under this Act).

13 (3) If an application for an authorisation of a kind referred to in
14 subclause (2)(a) was commenced (but not completed) under the
15 repealed Act before commencement day, the application may be
16 continued and completed under the repealed Act as if the repealed Act
17 were still in operation and any authorisation granted or recognised
18 under that application is to have effect as if it were in effect
19 immediately before commencement day.

20 **19. Improvement and prohibition notices, provisional improvement**
21 **notices**

22 (1) In this clause —

23 **notice** means an improvement notice, prohibition notice or
24 provisional improvement notice as those terms are defined in the
25 repealed Act.

26 (2) The repealed Act continues to apply, on and from commencement
27 day, in relation to a notice that was in effect immediately before
28 commencement day as if the repealed Act were still in operation.

29 **20. Reviews etc.**

30 (1) In this clause —

31 **former provisions** means —

32 (a) the repealed Act as in force immediately before
33 commencement day; and

34 (b) the *Industrial Relations Act 1979* as in force immediately
35 before commencement day;

36 **proceedings** includes conciliation arrangements under section 51J of
37 the repealed Act.

38 (2) Without affecting the *Interpretation Act 1984* section 37(1) —

- 1 (a) any right under the former provisions to take proceedings to
2 refer a matter or claim for determination, to review a decision
3 or document or to appeal a decision is not affected by the
4 repeal of the *Occupational Safety and Health Act 1984*; and
- 5 (b) any proceedings under the repealed provisions in respect of a
6 determination, review or appeal that had commenced but
7 were not completed before commencement day may be
8 continued as if the repealed provisions were still in operation;
9 and
- 10 (c) any decision arising from proceedings referred to in
11 paragraph (a) or (b) must be taken, for the purposes of
12 clauses 13(2) and (3), 18(2) and 19(2) to have been in effect
13 immediately before commencement day.

14 **21. Instruments**

15 An instrument under section 4(3) of the repealed Act that was in
16 effect immediately before commencement day is, on and from
17 commencement day, to be taken to be an instrument under
18 section 12(4) and if a provision of or under the repealed Act is
19 specified in the instrument, that provision must be taken to be the
20 provision of or under this Act that most closely corresponds to the
21 specified provision.

22

WESTERN AUSTRALIA

Work Health and Safety Bill 2014

DRAFT BILL FOR PUBLIC COMMENT

The Government proposes to introduce into Parliament a Bill —

- to provide for the health, safety and welfare of persons at work or affected by work; and
- to repeal the *Occupational Safety and Health Act 1984*; and
- to repeal the *Occupational Safety and Health Regulations 1996*; and
- to make consequential amendments to certain Acts; and
- for related matters.

This draft Bill has been prepared for public comment but it does not necessarily represent the Government's settled position.