



Australian Capital Territory

# **Occupational Health and Safety Act 1989**

**A1989-18**

**Republication No 26**

**Effective: 25 October 2007 – 22 November 2007**

Republication date: 25 October 2007

Last amendment made by A2007-31

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Occupational Health and Safety Act 1989* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 25 October 2007. It also includes any amendment, repeal or expiry affecting the republished law to 25 October 2007.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Occupational Health and Safety Act 1989

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Australian Capital Territory

# Occupational Health and Safety Act 1989

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An Act to promote and improve standards of occupational health, safety and welfare, and for related purposes

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Occupational Health and Safety Act 1989*.

### 2 Objects

The objects of this Act are—

- (a) to secure the health, safety and welfare of employees at work; and
- (b) to protect persons at or near workplaces from risks to health or safety arising out of the activities of employees at work; and
- (c) to promote an occupational environment for employees that is adapted to their health and safety needs; and
- (d) to foster a cooperative consultative relationship between employers and employees on the health, safety and welfare of employees at work.

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

*Note 2* For example, the signpost definition '*compliance agreement*—see section 140 (2).' means that the term 'compliance agreement' is defined in that subsection.

*Note 3* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

## 4 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

## 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1* *Criminal Code*

The Criminal Code, ch 2 applies to the following offences against this Act (see Code, pt 2.1):

- s 47
- s 48
- s 49
- s 67
- s 75
- s 84
- s 85
- pt 6
- pt 7
- pt 9

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2* *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## **6 Employee taken to be at work for Act**

For this Act, an employee is taken to be at work at all times while the employee is at his or her workplace for the purpose of performing work in relation to an undertaking carried on by his or her employer.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

## **7 References to employee of employer at workplace**

A reference in this Act to an employee of an employer at a particular workplace is a reference to an employee who works at the workplace in the capacity of an employee of the employer.

## **8 Voluntary workers etc**

(1) The Minister may, in writing, declare that—

- (a) a person who is included in a specified class of people and who, otherwise than under a contract of service or a contract for services, engages in activities or performs acts at the request or direction, or for the benefit, of another person specified in the declaration shall, for this Act, be taken to be employed by that other person; and
- (b) the work of the firstmentioned person shall, for this Act, be taken to be constituted by the performance by that person of such acts as are specified in the declaration;

and such a declaration has effect accordingly.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

(2) A declaration is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.



## 9 Exemptions

(1) The Minister may, in writing, exempt—

- (a) an employer; or
- (b) a class of employers; or
- (c) an employee; or
- (d) a class of employees; or
- (e) a workplace; or
- (f) a class of workplaces;

from the application of all or any of the provisions of this Act.

(2) An exemption is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(3) If the Minister—

- (a) receives an application for an exemption; and
- (b) makes a decision refusing to grant the exemption to a person referred to in subsection (1) (a), (c) or (e);

the Minister shall, within 28 days of making the decision, give written notice of the decision to the applicant.

(4) Application may be made to the administrative appeals tribunal for review of a decision referred to in subsection (3) (b).

## 10 Service of documents etc on employers

(1) If a provision of this Act requires or permits a document to be given to an employer in relation to an activity undertaken by or on behalf of the employer, the document shall be taken to have been so given to the employer if it is given to the person who is, or is reasonably believed to be, in charge of that activity.

- (2) If a provision of this Act requires or permits anything (other than the service of a document) to be done in relation to an employer in relation to an activity undertaken by or on behalf of the employer, the thing shall be taken to have been so done in relation to the employer if it is done in relation to the person who is, or is reasonably believed to be, in charge of that activity.

## **Part 2**                      **Occupational Health and Safety Council**

### **Division 2.1**              **Establishment, functions and powers**

#### **11**              **Establishment**

There is established by this section a council by the name of the Occupational Health and Safety Council.

#### **12**              **Functions**

- (1) The council has the following functions:
  - (a) to advise the Minister on matters relating to—
    - (i) occupational health and safety; or
    - (ii) workers compensation; or
  - (b) to inquire into and report to the Minister on matters referred to the council by the Minister in relation to—
    - (i) occupational health and safety; or
    - (ii) workers compensation; or
  - (c) such other functions as are prescribed under the regulations.

*Note*      A provision of a law that gives an entity (including a person) a function also gives the entity the powers necessary and convenient to exercise the function (see Legislation Act, s 196 (1) and dict, pt 1, defs of *entity* and *function*).

- (2) Without limiting subsection (1) (a), the matters on which the council may advise the Minister include the following matters:
  - (a) the operation of this Act and the associated laws;
  - (b) the approval of codes of practice, and the variation of codes of practice, under section 206;

- (c) the provision of education and training in relation to occupational health and safety;
- (d) the promotion of occupational health and safety;
- (e) the operation of the *Workers Compensation Act 1951*;
- (f) the approval of a protocol or an amendment to a protocol under the *Workers Compensation Act 1951*;
- (g) the provision of education and training in relation to workers compensation.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

## **Division 2.2 Constitution and meetings**

### **14 Membership**

The council shall consist of—

- (a) 4 members appointed by the Minister after consultation with such people or bodies as the Minister considers represent the interests of employees; and
- (b) 4 members appointed by the Minister after consultation with such people or bodies as the Minister considers represent the interests of employers; and
- (c) 4 other members appointed by the Minister; and
- (d) the commissioner.

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

## **15 Terms of appointment**

- (1) The appointed members of the council must be appointed as part-time members.
- (2) An appointed member of the council must be appointed for not longer than 3 years.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def of *appoint*).

- (3) An appointed member of the council holds office on the conditions (if any) about matters not provided for by this Act that are determined in writing by the Minister.

## **16 Appointment of chair and deputy chair**

The Minister must appoint a member of the council appointed under section 14 (c) as chair of the council and another member as deputy chair of the council.

## **17 Leave of absence**

- (1) The Minister may grant leave of absence to the chair or deputy chair on the conditions (if any) about remuneration or other matters that the Minister determines.
- (2) The council may grant leave of absence to a member (other than the chair or deputy chair) on the conditions (if any) about remuneration or other matters that the council determines.

**18 Disclosure of interest**

- (1) A member of the council who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the council shall, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the council.
- (2) A disclosure shall be recorded in the minutes of the meeting and, unless the council otherwise determines, the member shall not—
  - (a) be present during any deliberation of the council in relation to that matter; or
  - (b) take part in any decision of the council in relation to that matter.
- (3) A member referred to in subsection (2) shall not—
  - (a) be present during any deliberation of the council for the purpose of considering whether to make a determination under that subsection in relation to that member; or
  - (b) take part in the making by the council of such a determination.

**20 Ending appointment of council member**

- (1) This section applies to a member of the council other than the commissioner.
- (2) The Minister must end the appointment of a member of the council if the Minister becomes aware that the member—
  - (a) has become bankrupt or executed a personal insolvency agreement; or
  - (b) has failed to comply with section 18 (Disclosure of interest) without reasonable excuse; or
  - (c) has at any time been convicted, in Australia, of an offence punishable by imprisonment for 1 year or longer; or

- (d) has at any time been convicted, outside Australia, of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for 1 year or longer.
- (3) However, before ending the appointment of the member under subsection (2) (c) or (d) the Minister must be satisfied that the conviction affects the member's suitability as a member of the council.
- (4) The Minister may end the appointment of a member of the council—
  - (a) if the member was appointed under section 14 (a) and the Minister is satisfied that the member no longer represents the interests of employees; or
  - (b) if the member was appointed under section 14 (b) and the Minister is satisfied that the member no longer represents the interests of employers; or
  - (c) if the member is absent from 3 consecutive meetings of the council, otherwise than on leave approved under section 17; or
  - (d) if the member contravenes a territory law; or
  - (e) for misbehaviour; or
  - (f) for physical or mental incapacity, if the incapacity substantially affects the exercise of the member's functions.

*Note* A person's appointment also ends if the person resigns (see Legislation Act, s 210).

## **22 Calling meetings**

- (1) The chair—
  - (a) may call the meetings of the council that the chair considers necessary for the efficient exercise of its functions; and
  - (b) shall, on receipt of a written request signed by not less than 4 other members of the council, call a meeting of the council.

- (2) If the chair proposes to call a meeting of the council, the chair shall, not later than 5 days before the date of the proposed meeting, give each member of the council a written notice specifying—
  - (a) the date, time and place of the meeting; and
  - (b) the matters to be considered at the meeting.
- (3) The Minister may call a meeting of the council by written notice given to each of the members.

### **23 Procedure at meetings**

- (1) The chair shall preside at all meetings of the council at which the chair is present.
- (2) If the chair is not present at a meeting of the council, the deputy chair shall preside at the meeting.
- (3) If the chair and the deputy chair are both absent from a meeting of the council, the members present shall elect 1 of their number to preside at the meeting.
- (4) Subject to section 22 and this section, the member presiding at a meeting of the council may give directions regarding the procedure to be followed in relation to the meeting.
- (5) Subject to subsection (6), at a meeting of the council, 7 members including—
  - (a) 2 of the members referred to in section 14 (a); and
  - (b) 2 of the members referred to in section 14 (b); and
  - (c) 2 of the members referred to in section 14 (c);constitute a quorum.
- (6) A paragraph of subsection (5) shall only be taken to be satisfied if at least 1 of the members required to be present by that paragraph is not an acting member.



- (7) Questions arising at a meeting of the council shall be decided by a majority of the votes of members present and voting.
- (8) The member presiding at a meeting of the council has a deliberative vote only.
- (9) The council shall keep a record in writing of its proceedings.

## **24 Immunity from suit**

- (1) An action, suit or proceeding does not lie against a person who is or has been a member of the council in relation to an honest act or omission in the exercise or purported exercise of a function under this Act.
- (2) Subsection (1) does not affect any liability that the Territory would, apart from that subsection, have in relation to an act or omission mentioned in that subsection.

## **Division 2.3 Advisory committees**

### **25 Establishment**

- (1) The council may establish the advisory committees that it considers necessary to assist in the exercise of its functions.
- (2) The council shall, when requested to do so by the Minister, constitute an advisory committee to assist it in the exercise of its functions in relation to any matter specified by the Minister about occupational health and safety.
- (3) Subject to any direction by the council, an advisory committee may decide how it is to exercise its functions.

## Part 3 Occupational Health and Safety Commissioner

### 26 Appointment

- (1) There shall be an Occupational Health and Safety Commissioner, who shall be appointed in writing by the Executive.
- (2) The commissioner holds office, subject to this part, for the period (not exceeding 7 years) specified in the instrument of appointment, and is eligible for reappointment.

### 27 Functions

- (1) In addition to any other functions given to the commissioner under this Act, the commissioner has the following functions:
  - (a) to promote an understanding and acceptance of, and compliance with, this Act and the associated laws;
  - (b) to undertake research, and develop educational and other programs, for the purpose of promoting occupational health, safety and welfare;
  - (c) to review ACT laws for the purpose of ascertaining whether any of those laws is inconsistent with this Act, and to report to the Minister on the results of the review;
  - (d) when requested to do so by the Minister, to examine any proposed law for the purpose of ascertaining whether the proposed law, if enacted, would be inconsistent with this Act, and to report to the Minister on the results of the examination;
  - (e) to advise the Minister on any matter relevant to the operation of this Act;
  - (f) the functions (if any) that are given to the commissioner under any other Territory law.

- (2) The commissioner has power to do all things that are necessary or convenient to be done in relation to the performance of the commissioner's functions.

**28 Resignation**

The commissioner may resign by writing given to the Minister.

**29 Retirement**

The Executive may, with the consent of the commissioner, retire the commissioner on the ground of physical or mental incapacity.

**30 Removal of commissioner**

- (1) The Executive may remove the commissioner from office if—
- (a) an address praying for his or her removal on the ground of misbehaviour or physical or mental incapacity has been presented to the Executive by the Legislative Assembly; or
  - (b) the commissioner is absent from duty, except on leave granted by the Minister, for 14 consecutive days or for 28 days in any 12 months.
- (2) The Executive shall remove the commissioner from office if the commissioner—
- (a) becomes bankrupt; or
  - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  - (c) compounds with his or her creditors; or
  - (d) makes an assignment of his or her remuneration for the benefit of his or her creditors.
- (3) The commissioner must not be removed from office except as provided by this section or section 31.

**31 Suspension and removal of commissioner**

- (1) The Executive may suspend the commissioner from office on the ground of misbehaviour or physical or mental incapacity.
- (2) If the Executive suspends the commissioner from office, the Minister must present a statement of the grounds of the suspension to the Legislative Assembly within 7 sitting days after the suspension.
- (3) If a statement mentioned in subsection (2) is presented to the Legislative Assembly, the Legislative Assembly may, within 15 sitting days after the day the statement is presented to it, by resolution, declare that the commissioner should be removed from office.
- (4) If the Legislative Assembly passes a resolution mentioned in subsection (3), the Executive must remove the commissioner from office.
- (5) If, at the end of 15 sitting days after the day the statement is presented to it, the Legislative Assembly does not pass such a resolution, the suspension ends.
- (6) The commissioner may not be suspended from office except as provided by this section.

**32 Ministerial directions**

- (1) The Minister may, in writing, give directions to the commissioner in relation to the exercise of his or her functions, either generally or in relation to a particular matter.
- (2) The commissioner must comply with a direction given under subsection (1).
- (3) The Minister must present a copy of any direction under subsection (1) to the Legislative Assembly within 5 sitting days after it is given to the commissioner.

**33 Acting commissioner**

- (1) The Minister may appoint a person to act as commissioner—
  - (a) during a vacancy in the office of commissioner (whether or not an appointment has previously been made to that office); or
  - (b) during any period, or during all periods, when the commissioner is or is expected to be absent from duty or from the ACT or is, for any reason, unable to perform the duties of office; or

but a person appointed to act during a vacancy shall not continue to act for more than 12 months.

- (2) Anything done in good faith by or in relation to a person purporting to act in the office of commissioner is not in doubt merely because—
  - (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.

**34 Staff**

- (1) The staff assisting the commissioner are to be employed under the *Public Sector Management Act 1994*.
- (2) The *Public Sector Management Act 1994* applies in relation to the management of the staff assisting the commissioner.
- (3) The commissioner has all the powers of a chief executive in relation to the staff assisting the commissioner as if the staff were employed in a department under the control of the commissioner.

**35 Delegation**

The commissioner may, in writing, delegate to a member of the staff assisting the commissioner any of the commissioner's powers or functions under a Territory law, other than the commissioner's powers under section 185.

## **Part 4**                      **Safety duties for occupational health and safety**

### **Division 4.1**              **Safety duties**

#### **37**                      **Duties of employers in relation to employees**

- (1) An employer shall take all reasonably practicable steps to protect the health, safety and welfare at work of the employer's employees.
- (2) Without limiting subsection (1), an employer contravenes that subsection if the employer fails to take all reasonably practicable steps—
  - (a) to provide and maintain a working environment (including plant and systems of work)—
    - (i) that is safe for the employer's employees and without risk to their health; and
    - (ii) that provides adequate facilities for their welfare at work; or
  - (b) in relation to any workplace under the employer's control—
    - (i) to ensure that the workplace is safe for the employees and without risk to their health; and
    - (ii) to provide and maintain a means of access to and egress from the workplace that is safe for the employees and without risk to their health; or
  - (c) to ensure the safety at work of, and the absence of risks at work to the health of, the employees in connection with the use, handling, storage or transport of plant or substances; or
  - (d) to provide to the employees the information, instruction, training and supervision necessary to enable them to perform

- their work in a manner that is safe and without risk to their health; or
- (e) to develop and maintain a policy relating to occupational health and safety that—
    - (i) enables effective cooperation between the employer and the employees in promoting and developing measures to ensure the employees' health, safety and welfare at work; and
    - (ii) provides adequate mechanisms for reviewing the effectiveness of those measures; or
  - (f) to bring to the attention of the employees the measures developed as a result of the policy mentioned in subsection (2) (e) to ensure their health, safety and welfare at work; or
  - (g) to take appropriate action to monitor the employees' health and safety at work and the conditions of the workplaces under the employer's control; or
  - (h) to maintain appropriate information and records relating to the employees' health and safety; or
  - (i) to provide appropriate medical and first-aid services for the employees.
- (3) A policy of the kind referred to in subsection (2) (e) shall be developed and maintained in consultation with—
- (a) any health and safety committee established in relation to the employer's employees; or
  - (b) if no such committee exists in relation to the employer's employees—those employees or any involved union.
- (4) In working out whether an employer has taken all reasonable steps to protect the health, safety and welfare at work of the employer's



employees, regard may be had to all relevant matters, including for example—

- (a) whether copies of codes of practice applicable to the workplace are available to employees or whether employees are given information about where copies of the codes may be inspected or obtained; and
  - (b) whether the codes have been complied with.
- (5) This section does not limit section 45 (Reliance on information supplied or results of research).

### **38 Duties of employers in relation to third parties**

- (1) An employer shall take all reasonably practicable steps to ensure that persons at or near a workplace under the employer's control, who are not the employer's employees, are not exposed to risk to their health or safety arising from the conduct of the employer's undertaking.
- (2) In working out whether an employer has taken all reasonable steps to ensure that the employer has complied with subsection (1), regard may be had to all relevant matters, including for example—
  - (a) whether copies of codes of practice applicable to the workplace are available to employees or whether employees are given information about where copies of the codes may be inspected or obtained; and
  - (b) whether the codes have been complied with.
- (3) This section does not limit section 45 (Reliance on information supplied or results of research).

### **39 Duties of people in control of workplaces**

- (1) A person who has, to any extent, control of—
  - (a) a workplace; or

(b) a means of access to, or egress from, a workplace; or

(c) plant or a substance at a workplace;

shall take all reasonably practicable steps to ensure that it is safe and without risk to health.

(2) In working out whether an employer has taken all reasonable steps to ensure that the employer has complied with subsection (1), regard may be had to all relevant matters, including for example—

(a) whether copies of codes of practice applicable to the workplace are available to employees or whether employees are given information about where copies of the codes may be inspected or obtained; and

(b) whether the codes have been complied with.

(3) This section does not limit section 45 (Reliance on information supplied or results of research).

## **40 Duties of employees**

(1) An employee shall, at all times while at work, take all reasonably practicable steps—

(a) to ensure that the employee does not take any action, or make any omission, that creates a risk, or increases an existing risk, to the health or safety of the employee, or of other persons (whether employees or not) at or near the place where the employee is at work; and

(b) in relation to any duty or obligation imposed on the employee's employer, or on any other person, by or under this Act—to cooperate with the employer, or that other person, to the extent necessary to enable the employer or other person to fulfill that duty or obligation; and

- (c) to use equipment, in accordance with any instructions given by the employee's employer consistent with its safe and proper use, that is—
- (i) supplied to the employee by the employer; and
  - (ii) necessary to protect the health and safety of the employee or of other persons (whether employees or not) at or near the place where the employee is at work.
- (2) Nothing in subsection (1) shall be taken to imply that the choice, or manner of use, of equipment of the kind mentioned in subsection (1) (c) is not a matter that may, consistently with this Act and the associated laws, be agreed on—
- (a) between the employer and any involved union in relation to employees of that employer; or
  - (b) by a health and safety committee in relation to the employees of the employer.
- Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).
- (3) If an agreement of the kind mentioned in subsection (2) (a) (whether or not entered into before 9 April 1990) or of the kind mentioned in subsection (2) (b) provides a process for choosing equipment of a particular kind that is to be provided by the employer, action shall not be taken against an employee of the employer for failure to use equipment of that kind that is so provided, unless the equipment has been chosen in accordance with that process.
- (4) If an agreement of the kind mentioned in subsection (2) (a) (whether or not entered into before 9 April 1990) or of the kind mentioned in subsection (2) (b) provides a process for determining the manner of use of equipment of a particular kind, action shall not be taken against an employee of the employer for failure to use, in the manner required by the employer, equipment of that kind that is so

provided, unless the manner has been determined in accordance with that process.

**41 Duties of self-employed people**

A self-employed person shall take all reasonably practicable steps to ensure that the health and safety of other persons (other than his or her employees) are not adversely affected by work undertaken by or for the self-employed person.

**42 Duties of manufacturers in relation to plant and substances**

- (1) A manufacturer of any plant that the manufacturer ought reasonably to expect will be used by employees at work shall take all reasonably practicable steps—
  - (a) to ensure that the plant is so designed and constructed as to be, when properly used, safe for employees and without risk to their health; and
  - (b) to carry out, or cause to be carried out, the research, testing or examination necessary to discover, and to eliminate or minimise, any risk to the health or safety of employees that may arise from the use of the plant; and
  - (c) to make available to an employer, in connection with the use of the plant by employees at work, adequate information about—
    - (i) the use for which it was designed and tested; and
    - (ii) any conditions necessary to ensure that, when put to the use for which it was designed and tested, it will be safe for employees and without risk to their health; and
    - (iii) the proper maintenance of the plant.
- (2) A manufacturer of any substance that the manufacturer ought reasonably to expect will be used by employees at work shall take all reasonably practicable steps—

- (a) to ensure that the substance is so manufactured as to be, when properly used, safe for employees and without risk to their health; and
- (b) to carry out or cause to be carried out, the research, testing or examination necessary to discover, and to eliminate or minimise, any risk to the health and safety of employees that may arise from the use of the substance; and
- (c) to make available to an employer, in connection with the use of the substance by employees at work, adequate information about—
  - (i) the use for which it was manufactured and tested; and
  - (ii) details of its composition; and
  - (iii) any conditions necessary to ensure that, when put to the use for which it was manufactured and tested, it will be safe for employees and without risk to their health; and
  - (iv) the first-aid and medical procedures that should be followed if the substance causes injury.
- (3) If—
  - (a) plant or a substance is brought into the ACT at any time by a person who is not the manufacturer of the plant or substance; and
  - (b) at that time the manufacturer of the plant or substance does not have a place of business in the ACT;

the firstmentioned person shall, for this section, be taken to be the manufacturer of the plant or substance.

### **43 Duties of suppliers in relation to plant and substances**

- (1) A supplier of any plant or substance that the supplier ought reasonably to expect will be used by employees at work shall take all reasonably practicable steps—

- (a) to ensure that, at the time of supply, the plant or substance is in such condition as to be, when properly used, safe for employees and without risk to their health; and
- (b) to carry out, or cause to be carried out, the research, testing or examination necessary to discover, and to eliminate or minimise, any risk to the health or safety of employees that may arise from the condition of the plant or substance; and
- (c) to make available to an employer, in connection with the use of the plant or substance by employees at work, adequate information about—
  - (i) the condition of the plant or substance at the time of the supply; and
  - (ii) any risk to the health and safety of employees to which the condition of the plant or substance may give rise unless it is properly used; and
  - (iii) the steps that need to be taken to eliminate such a risk; and
  - (iv) for plant—the proper maintenance of the plant; and
  - (v) for a substance—the first-aid and medical procedures that should be followed in the event of the substance causing injury to an employee.
- (2) For subsection (1), if a person (the *ostensible supplier*) supplies to an employer any plant or substance that is to be used by employees at work and the ostensible supplier—
  - (a) carries on the business of financing the acquisition or the use of goods by other persons; and
  - (b) has, in the course of that business, acquired an interest in the plant or substance solely for the purpose of financing its acquisition by the employer from a third person or its provision to the employer by a third person; and

- (c) has not taken possession of the plant or substance or has taken possession of the plant or substance solely for the purpose of passing possession of the plant or substance to that employer;

the reference in subsection (1) to a supplier is, in relation to the plant or substance referred to in this subsection, a reference to the third person and not a reference to the other ostensible supplier.

#### **44 Duties of people erecting or installing plant in workplace**

- (1) A person who erects or installs any plant in a workplace for the use of employees at work shall take all reasonably practicable steps to ensure that the plant is not erected or installed in such a manner that it is unsafe for the employees who use the plant or constitutes a risk to their health.
- (2) In working out whether a person has taken all reasonably practicable steps to comply with subsection (1), regard may be had to all relevant matters, including, for example—
- (a) whether copies of codes of practice applicable to the workplace are available to employees or whether employees are given information about where copies of codes may be inspected or obtained; and
- (b) whether the codes have been complied with.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) This section does not limit section 45.

#### **45 Reliance on information supplied or results of research**

- (1) Without limiting section 37 (1), section 38 or section 39, a person required under that provision to take reasonably practicable steps in relation to the use of plant or a substance shall be taken to have taken such steps in accordance with that provision, in relation to the use of any plant or substance, to the extent that—

- (a) the person ensured, as far as is reasonably practicable, that the use of the plant or substance was in accordance with—
    - (i) information supplied by the manufacturer or the supplier of the plant or substance; or
    - (ii) an approved code of practice;  
relating to the health and safety in the use of the plant or substance; and
  - (b) it was reasonable for the person to rely on that information.
- (2) Without limiting section 42 (1) or (2) or section 43 (1), a person required under that subsection to take reasonably practicable steps in relation to the carrying out of research, testing or examination of plant or a substance, shall be taken to have taken such steps in accordance with that subsection, in relation to the carrying out of any research, testing or examination, to the extent that—
- (a) the research, testing or examination has already been carried out otherwise than by, or on behalf of, the person; and
  - (b) it was reasonable for the person to rely on that research, testing or examination.
- (3) Without limiting section 44, a person required under that section to take reasonably practicable steps in relation to the erection or installation of plant in a workplace, shall be taken to have taken such steps in accordance with that section, in relation to any erection or installation of plant, to the extent that—
- (a) the person ensured, as far as is reasonably practicable, that the erection or installation was in accordance with—
    - (i) information supplied by the manufacturer or the supplier of the plant; or
    - (ii) an approved code of practice;



relating to the erection or installation of the plant in a manner that ensures the health and safety of employees who use the plant; and

- (b) it was reasonable for the person to rely on that information.

## **Division 4.2 Failure to comply with safety duties**

### **46 Meaning of *safety duty* for div 4.2**

In this division:

*safety duty* means a duty under any of the following provisions:

- section 37 (Duties of employers in relation to employees)
- section 38 (Duties of employers in relation to third parties)
- section 39 (Duties of people in control of workplaces)
- section 40 (Duties of employees)
- section 41 (Duties of self-employed people)
- section 42 (Duties of manufacturers in relation to plant and substances)
- section 43 (Duties of suppliers in relation to plant and substances)
- section 44 (Duties of people erecting or installing plant in workplace).

### **47 Failure to comply with safety duty—general offence**

- (1) A person commits an offence if—
- (a) the person is required to comply with a safety duty; and
  - (b) the person fails to comply with the safety duty.

Maximum penalty: 100 penalty units.

- (2) Absolute liability applies to subsection (1) (a).
- (3) Strict liability applies to subsection (1) (b).

**48 Failure to comply with safety duty—exposing people to substantial risk of serious harm**

- (1) A person commits an offence if—
- (a) the person is required to comply with a safety duty; and
  - (b) the person fails to comply with the safety duty; and
  - (c) the failure exposes anyone to a substantial risk of serious harm; and
  - (d) the person either—
    - (i) was reckless about whether the failure would expose anyone to a substantial risk of serious harm; or
    - (ii) was negligent about whether the failure would expose anyone to a substantial risk of serious harm.

Maximum penalty: 1 500 penalty units, imprisonment for 5 years or both.

- (2) Absolute liability applies to subsection (1) (a).  
(3) Strict liability applies to subsection (1) (b).

**49 Failure to comply with safety duty—causing serious harm to people**

- (1) A person commits an offence if—
- (a) the person is required to comply with a safety duty; and
  - (b) the person fails to comply with the safety duty; and
  - (c) the failure causes serious harm to anyone; and
  - (d) the person either—
    - (i) was reckless about whether the failure would cause serious harm to anyone; or

(ii) was negligent about whether the failure would cause serious harm to anyone.

Maximum penalty: 2 000 penalty units, imprisonment for 7 years or both.

- (2) Absolute liability applies to subsection (1) (a).
- (3) Strict liability applies to subsection (1) (b).

## **50 Alternative verdicts for failure to comply with safety duties**

- (1) This section applies if, in a prosecution for an offence for a failure to comply with a safety duty, the trier of fact—
  - (a) is not satisfied beyond reasonable doubt that the defendant is guilty of the offence; but
  - (b) is satisfied beyond reasonable doubt that the defendant is guilty of an alternative offence.
- (2) The trier of fact may find the defendant guilty of the alternative offence, but only if the defendant has been given procedural fairness in relation to the finding of guilt.
- (3) In this section:

*alternative offence*, for an offence mentioned in table 50, column 2, means an offence mentioned in table 50, column 3 for the offence.

**Table 50 Alternative verdicts**

| <b>column 1<br/>item</b> | <b>column 2<br/>prosecuted offence</b>  | <b>column 3<br/>alternative offence</b>                         |
|--------------------------|---|---|
| 1                        | section 48 (which is about exposing people to substantial risk of serious harm) | section 47 (Failure to comply with safety duty—general offence) |
| 2                        | section 49 (which is about causing serious harm to people)                      | section 47<br>section 48  |

**51 Beginning of prosecution in Magistrates Court**

- (1) If a coroner's inquest or inquiry is held and it appears from the coroner's report or from proceedings at the inquest or inquiry that an offence has been committed against this part, a prosecution for the offence may be begun in the Magistrates Court at any time before the 3rd anniversary of the day the findings were recorded, or the report was made, whichever occurs later.
- (2) Subsection (1) applies to an offence against this part whether it was committed before or after the commencement of this section.

## **Part 5**                      **Workplace arrangements**

### **Division 5.1**              **Health and safety representatives**

#### **52**              **Small employers not affected**

This division applies only in relation to an employer who employs 10 or more employees.

#### **53**              **Work groups designated by employers**

- (1) A person who becomes an employer shall—
  - (a) not later than 14 days after becoming an employer; and
  - (b) by notice in accordance with subsection (9);establish designated work groups in relation to his or her employees.
- (2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence.  
Maximum penalty: 10 penalty units.
- (3) An employer may vary designated work groups by notice in accordance with subsection (9).
- (4) Designated work groups shall be so established or varied that the manner in which employees are grouped—
  - (a) best and most conveniently enables the employees' interests relating to occupational health and safety to be represented and safeguarded; and
  - (b) best takes account of the need for any health and safety representative selected for a designated work group to be accessible to each employee included in the group.

- (5) In determining the manner of grouping employees in accordance with subsection (4), an employer shall have regard, in particular to—
- (a) the number of employees; and
  - (b) the nature of each type of work performed by the employees; and
  - (c) the number and grouping of the employees who perform the same or similar types of work; and
  - (d) the workplaces, and the areas within the workplaces, where each type of work is performed; and
  - (e) the nature of any risks to health and safety at the workplaces; and
  - (f) any arrangements at the workplaces relating to overtime or shift work.
- (6) An employer shall not establish or vary a designated work group without consulting—
- (a) each involved union in relation to the employees; and
  - (b) if there is no such involved union—such of the employees as the employer considers appropriate;
- in relation to the establishment or variation of the designated work group.
- (7) Designated work groups for employees shall be so established or varied that each of the employees is included in a designated work group.
- (8) Subject to subsections (4), (5) and (6), all of an employer's employees may be included in 1 designated work group.
- (9) A notice establishing a designated work group under subsection (1), or varying a designated work group under subsection (3), shall—

- (a) describe the group and the employees, or the class of employees, who are included in that group; and
- (b) be displayed in each workplace under the employer's control as will allow all of the employees in the group to be notified of its establishment or variation.

#### **54 Work groups designated by commissioner**

- (1) If an employer to whom section 53 (1) applies has failed to establish designated work groups in relation to his or her employees within the time required by that subsection, the commissioner may establish designated work groups in relation to those employees.
- (2) The commissioner may establish designated work groups instead of those established by an employer, on receipt of a written request to do so, signed by not less than 50% of the employees included in all of the groups established by the employer.
- (3) The commissioner may vary a designated work group established by an employer on receipt of a written request to do so, signed by not less than 50% of the employees included in the group.
- (4) The establishment of a designated work group under subsection (1) or (2) or the variation of a designated work group under subsection (3) shall be by written notice given to the employer concerned, describing each of the groups established or varied and the employees or class of employees who are included in that group.
- (5) In the exercise of a power under subsection (1), (2) or (3), the commissioner shall have regard to the matters specified in section 53 (5) (a) to (f) and shall consult—
  - (a) each involved union in relation to the employees affected; or
  - (b) if there is no such involved union—such of the employees affected as the commissioner considers appropriate.
- (6) If a designated work group is established under subsection (1) or (2) or varied under subsection (3), the employer to whom notice under

subsection (4) is given shall, not later than 14 days after the date of the notice, cause a notice of the establishment or variation to be displayed at such workplaces under the employer's control as will allow all of the employees in the group to be notified of its establishment or variation.

- (7) A person who, without reasonable excuse, contravenes subsection (6) commits an offence.

Maximum penalty (subsection (7)): 1 penalty unit.

## 55 Work groups on construction sites

- (1) In this section:

*building and construction work*—see the *Long Service Leave (Building and Construction Industry) Act 1981*.

*construction site* means a workplace where building and construction work is, or is to be, performed.

- (2) If—

- (a) a person (the *principal contractor*) engages but does not employ another person (the *subcontractor*) to carry out building and construction work for the principal contractor on a construction site; and
- (b) the subcontractor employs another person (the *worker*) to perform that work;

the commissioner may, on application by the principal contractor, declare that this section applies to that site.

- (3) The commissioner shall not make a declaration unless the commissioner believes on reasonable grounds—
- (a) that—



- (i) the principal contractor has, or will have, substantial control over the performance of the worker's work on the construction site; or
  - (ii) apart from an agreement between the principal contractor and the subcontractor, the principal contractor would have, or would have had, such control; and
- (b) that—
  - (i) the principal contractor has, or will have, substantial control over the performance of other building and construction work on the site; or
  - (ii) apart from an agreement between the principal contractor or any other subcontractor, the principal contractor would have, or would have had, such control.
- (4) An application for a declaration shall be made in writing and given to the commissioner.
- (5) A declaration under subsection (2) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.
- (6) While a declaration is in force—
  - (a) division 5.1, division 5.2 and division 5.5 have effect in relation to the principal contractor and the worker—
    - (i) as if a contract of employment existed between them in relation to the performance of the work by the worker on the construction site; and
    - (ii) as if a reference in any provision of those divisions (other than in section 61 (3), section 64 (1) (b) and section 87 (4)) to an employer or employee were a reference to the principal contractor or worker, respectively;

- (b) section 9, section 10, section 184 and schedule 1 have effect in relation to the principal contractor and the worker as if, in relation to the performance of the work by the worker on the construction site, a reference in any of those sections or the schedule to an employer or employee included in a reference to the principal contractor or worker, respectively; and
- (c) for division 5.1 and division 5.5 (other than section 61 (3), section 64 and section 87 (4)), the subcontractor shall not be taken to be the worker's employer in relation to the performance of the work by the worker on the construction site.

## **56 Selection**

- (1) There shall not be more than 1 health and safety representative for a designated work group.
- (2) The health and safety representative for a designated work group shall be an employee included in the group who has been duly selected by the employees in the group to be its health and safety representative.
- (3) The regulations may make provision in relation to the selection of health and safety representatives, and if such regulations are in force, a health and safety representative shall be selected only in accordance with the regulations.
- (4) A person selected in accordance with subsection (2) as a health and safety representative for a designated work group shall have no power as a health and safety representative until the person has given the relevant employer a written notice of his or her selection.
- (5) Subsection (4) does not apply to a person selected as a health and safety representative in accordance with regulations made for subsection (3).
- (6) As soon as practicable after an employer is notified under subsection (4), the employer shall cause a notice that the person so

selected is the health and safety representative for the designated work group to be displayed in a prominent place at such workplaces under the employer's control as will allow all of the employees in the group to be notified of the selection.

- (7) A person who, without reasonable excuse, contravenes subsection (6) commits an offence.

Maximum penalty: 1 penalty unit.

## **57 Objections to selection**

- (1) This section has no effect if regulations made for section 56 (3) are in force.

- (2) If—

(a) a health and safety representative (the *current representative*) for a designated work group holds office otherwise than because of an election conducted under this section; and

(b) a notice of objection to the selection of the current representative, signed by—

(i) the employer of all the employees included in the designated work group; or

(ii) not less than 50% of the employees included in the designated work group;

is lodged with the commissioner in accordance with subsection (3);

the commissioner shall conduct an election of a health and safety representative to replace the current representative.

- (3) A notice of objection shall be lodged with the commissioner—

(a) within 7 days after the day notice of the selection of the current representative was given to the employer concerned in accordance with section 56 (4); or

- (b) if the commissioner believes on reasonable grounds that the first reasonable opportunity to lodge the notice will not, or did not, arise within those 7 days—within any further period that the commissioner allows, whether before or after the end of the 7 days.
- (4) If a health and safety representative is elected at an election conducted under this section—
  - (a) the commissioner shall, in writing, notify the employer concerned and the current representative of the election of the representative; and
  - (b) the current representative shall cease to hold office on the date of the notice given to him or her under paragraph (a).
- (5) As soon as practicable after the employer is notified under subsection (4) (a), the employer shall cause a notice that the person so elected is the health and safety representative for the designated work group to be displayed in a prominent place at such workplaces under the employer's control as will allow all of the employees in the group to be notified of the election.
- (6) A person who, without reasonable excuse, contravenes subsection (5) commits an offence.

Maximum penalty: 1 penalty unit.

## **58 Lists of health and safety representatives**

- (1) An employer shall prepare and keep up to date a list of all the health and safety representatives for designated work groups that consist of employees of the employer, and shall ensure that the list is at all reasonable times available for inspection by—
  - (a) the employees; and
  - (b) involved unions in relation to the designated work groups; and
  - (c) inspectors.

- (2) An employer who, without reasonable excuse, contravenes subsection (1) commits an offence.

Maximum penalty: 1 penalty unit.

## **59 Powers**

For the purpose of promoting or ensuring the health and safety of employees in a designated work group at any workplace where work is performed for the relevant employer by some or all of those employees, the health and safety representative for the group may—

- (a) inspect the whole or any part of such a workplace if—
- (i) there has, in the immediate past, been an accident or a dangerous occurrence at the workplace; or
  - (ii) the health and safety representative believes on reasonable grounds that there is an immediate threat of an accident or dangerous occurrence at the workplace; or
  - (iii) the health and safety representative has given the employer reasonable notice of the inspection; and
- (b) accompany an inspector during any inspection of the workplace by the inspector (whether or not the inspection is conducted as a result of a request made by the health and safety representative); and
- (c) if there is no health and safety committee in relation to the employer's employees—represent the employees in the group in consultations with the employer about the development, implementation and review of measures to ensure the health and safety at work of the employees in the group; and
- (d) if there is a health and safety committee in relation to the employer's employees—examine any of the records of that committee; and

- (e) investigate complaints made by any of the employees in the group to the health and safety representative about the health and safety of any of the employees at work; and
- (f) with the consent of the employee concerned, be present at any interview, about health and safety at work, between an employee in the group and—
  - (i) an inspector; or
  - (ii) the employer or a person representing the employer; and
- (g) subject to section 60, obtain access to any information under the employer's control relating to risks to health and safety of any employee—
  - (i) at any workplace under the employer's control; or
  - (ii) arising from the conduct by the employer of an undertaking or from plant or substances used for the purposes of the undertaking; and
- (h) subject to section 60, obtain access to any information under the employer's control relating to the health and safety of any of the employer's employees.

## **60 Access to information**

A health and safety representative is not entitled to obtain access to—

- (a) information in relation to which an employer is entitled to claim, and does claim, legal professional privilege; or
- (b) information of a confidential medical nature relating to a person who is or was an employee of an employer unless—
  - (i) the person has given the employer a written authority permitting the health and safety representative to have access to the information; or

- (ii) the information is in a form that does not identify the person or enable the identity of the person to be discovered.

## **61 Duties of employers**

- (1) The employer of the employees included in a designated work group for which there is a health and safety representative shall—
  - (a) on being requested to do so by the representative, consult with the representative on the implementation of changes at any workplace where some or all of the employees in the group perform work for the employer, being changes that may affect the health or safety at work of the employees; and
  - (b) in relation to a workplace where some or all of the employees perform work for the employer—
    - (i) permit the health and safety representative to make the inspection of the workplace that the representative is entitled to make in accordance with section 59 (1) (a), and to accompany an inspector during any inspection of the workplace by the inspector; and
    - (ii) if there is no health and safety committee in relation to the employer's employees at the workplace—on being requested to do so by the health and safety representative, consult with the representative about the development, implementation and review of measures to ensure the health and safety at work of those employees; and
  - (c) permit the health and safety representative to be present at any interview where the representative is entitled to be present under section 59 (1) (f); and
  - (d) permit the health and safety representative, on request, to have access to information to which the representative is entitled under section 59 (1) (g) or (h); and

- (e) permit the representative to take the time off work, without loss of remuneration or other entitlements, that is necessary and reasonable to exercise the powers of a health and safety representative; and
- (f) permit the representative to take the time off work, without loss of remuneration or other entitlements, that is necessary and reasonable to allow the representative to undertake a training program approved under the regulations; and
- (g) permit the health and safety representative to have access to the facilities—
  - (i) that are prescribed for this paragraph; or
  - (ii) to which access is necessary and reasonable for the purposes of exercising the representative's powers.

Maximum penalty: 50 penalty units.

- (2) An employer shall not permit a health and safety representative to have access to information of a confidential medical nature under the control of the employer, being information relating to a person who is or was an employee of the employer, unless—
  - (a) the person has given to the employer a written authority permitting the representative to have access to the information; or
  - (b) the information is in a form that does not identify the person or enable the identity of the person to be discovered.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) If—
  - (a) a declaration under section 55 is in force in relation to a construction site; and



- (b) a worker to whom the declaration relates is the health and safety representative for a designated work group established in relation to employees on site;

the subcontractor who employs the worker shall permit the worker to take the time off work, without loss of remuneration or other entitlements, that is necessary and reasonable to exercise the powers of a health and safety representative.

Maximum penalty: 10 penalty units.

## **62 Term of office**

- (1) Subject to this division, a health and safety representative for a designated work group holds office for the period, not longer than 2 years, that is determined by the employees who are, from time to time, included in the group.
- (2) A person who ceases to hold office as a health and safety representative under this section is eligible for reselection.

## **63 Resignation etc**

- (1) A person shall cease to be the health and safety representative for a designated work group if—
- (a) the person resigns as the health and safety representative; or
  - (b) the person ceases to be an employee included in the designated work group; or
  - (c) the person is disqualified under section 64.
- (2) A person may resign as the health and safety representative for a designated work group by written notice given to the relevant employer.

## **64 Disqualification**

- (1) The commissioner may, on application by—

- (a) the employer of the employees in a designated work group; or
- (b) if a declaration under section 55 is in force in relation to a construction site—any employer who is a subcontractor to whom the declaration relates; or
- (c) any involved union in relation to a designated work group; or
- (d) if there is no involved union in relation to a designated work group—any employee in the group;

disqualify the health and safety representative for the group for a specified period, not longer than 5 years, from being a health and safety representative for any designated work group.

- (2) An application referred to in subsection (1) shall be in writing setting out the grounds on which the disqualification is sought.
- (3) The commissioner shall not disqualify a health and safety representative unless the commissioner believes on reasonable grounds that—
  - (a) action taken by the representative in the exercise or purported exercise of his or her powers under this Act was taken—
    - (i) with the intention of causing harm to the employer or to an undertaking of the employer; or
    - (ii) unreasonably, capriciously or otherwise than for the purpose for which the power was given to the representative; or
  - (b) the representative has intentionally used, or disclosed to another person, for a purpose that is not connected with the exercise of a power of a health and safety representative, information acquired from an employer.
- (4) For the purpose of exercising the power under subsection (1), the commissioner shall have regard to—

- (a) the harm (if any) that was caused to the employer or to an undertaking of the employer as a result of the action of the representative; and
  - (b) the past record of the representative in exercising the powers of a health and safety representative; and
  - (c) the effect (if any) on the public interest of the action of the representative; and
  - (d) any other matters the commissioner considers relevant.
- (5) If the commissioner disqualifies a health and safety representative, the commissioner shall take all reasonably practicable steps to give written notice of the disqualification to the representative.

**65 Liability**

An action or other proceeding, civil or criminal, does not lie against a health and safety representative for or in relation to any act done, or omission made, in good faith in connection with his or her powers under this Act.

**66 Deputy health and safety representatives**

- (1) One deputy health and safety representative may be selected for each designated work group for which a health and safety representative has been selected.
- (2) A deputy health and safety representative shall be selected in the same way as a health and safety representative.
- (3) If the health and safety representative for a designated work group ceases to be the health and safety representative or is unable (because of absence or for any other reason) to exercise the powers of a health and safety representative—
  - (a) the powers may be exercised by the deputy health and safety representative (if any) for the group; and

- (b) this Act (other than this section) applies in relation to the deputy accordingly.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

- (4) The employer of the employees included in a designated work group for which there is a deputy health and safety representative shall permit the deputy to take the time off work, without loss of remuneration or other entitlements, that is necessary and reasonable to allow the representative to undertake a training program approved under the regulations.

## Division 5.2 Provisional improvement notices

### 67 Issue

- (1) If a health and safety representative for a designated work group believes on reasonable grounds that a person (the *responsible person*)—
- (a) is contravening a provision of this Act; or
  - (b) is likely to contravene a provision of this Act;
- being a contravention that affects, or that the health and safety representative believes on reasonable grounds is likely to affect, 1 or more employees included in the group, the representative may, by written notice given to the responsible person, require that person to rectify the matters or activities occasioning the contravention or likely contravention.
- (2) A health and safety representative shall not give a provisional improvement notice to a person unless the representative believes on reasonable grounds that—
- (a) the representative has taken all reasonably practicable steps to consult with the responsible person about rectification by that

person of the matters or activities occasioning the contravention or likely contravention; and

- (b) any further such steps are unlikely to result in the rectification of those matters or activities.
- (3) A health and safety representative shall not issue a provisional improvement notice in relation to any matter that is the subject of an improvement notice or a prohibition notice.
- (4) A provisional improvement notice shall—
- (a) specify the contravention that the health and safety representative believes is occurring or is likely to occur, and set out the reasons for that belief; and
  - (b) specify a period of not less than 7 days beginning on the day after the day when the notice is issued (being a period that is, in the representative's opinion, reasonable) within which the responsible person is to rectify the matters or activities to which the notice relates.
- (5) Notwithstanding subsection (4) (b), a provisional improvement notice that relates to a matter in the building and construction industry may be so expressed as to require the responsible person to rectify the matters or activities to which the notice relates within the 24 hours beginning when the notice is given personally to the responsible person.
- (6) In subsection (5):
- building and construction industry***—see the *Long Service Leave (Building and Construction Industry) Act 1981*.
- (7) A provisional improvement notice may specify action that the responsible person is to take during the period specified in the notice.

- (8) If the health and safety representative gives a provisional improvement notice to the responsible person, the representative must—
- (a) give a copy of the notice to the commissioner; and
  - (b) if the responsible person is an employee and the notice is given to the person in relation to work performed by the person for an employer—take all reasonably practicable steps to give a copy of the notice to the employer.

Maximum penalty: 1 penalty unit.

- (9) The responsible person or, if the responsible person is an employee mentioned in subsection (8) (b), the employer must give a copy of the provisional improvement notice to each of the following people:
- (a) if the notice relates to something that affects workplaces where people not employed by the employer work—each other employer of employees at each affected workplace;
  - (b) if the notice relates to premises—
    - (i) each owner of the premises; and
    - (ii) if the premises are leased—the lessor and lessee of the premises; and
    - (iii) anyone else with a right of immediate possession to the premises;
  - (c) if the notice relates to plant or a substance or other thing and the plant or thing is hired under a hire-purchase agreement or contract of hire—the hirer of the plant or thing;
  - (d) if the notice relates to plant or a substance or other thing, whether or not the thing is hired—anyone else with a right of immediate possession to the plant or thing;

Maximum penalty: 10 penalty units.

- (10) An offence against subsection (8) or (9) is a strict liability offence.

- (11) Before the end of the period specified in a provisional improvement notice, the health and safety representative who issued the notice may, by written notice given to the responsible person, extend the period within which the person is to take action in accordance with the notice.

## **68 Display**

- (1) If a provisional improvement notice has been given to an employer, the employer shall—
- (a) notify each employee whose work is affected by the contravention to which the notice relates of the fact of the issue of the notice; and
  - (b) while the notice remains in force—cause a copy to be displayed in a prominent place at or near each workplace where the work to which the notice relates is usually performed.
- (2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence.

Maximum penalty: 10 penalty units.

## **69 Compliance**

The responsible person to whom a provisional improvement notice is given shall, subject to section 70—

- (a) ensure that, to the extent to which the notice relates to any matter over which the person has control, the notice is complied with; and
- (b) shall take the steps that are reasonably practicable to inform the health and safety representative who issued the notice of the action taken to comply with the notice.

Maximum penalty: 100 penalty units.

## **70 Revocation**

- (1) If a health and safety representative believes on reasonable grounds that the responsible person to whom the representative has given a provisional improvement notice has complied with section 69 in relation to that notice, the representative shall, by written notice given to the person, revoke the provisional improvement notice.
- (2) If a health and safety representative revokes a provisional improvement notice, the representative shall give a copy of the notice of revocation to the commissioner as soon as practicable.

## **71 Review**

- (1) The responsible person in relation to whom a provisional improvement notice is in force or any other person (other than the commissioner) to whom a copy of the notice has been given under section 67 (8) may—
  - (a) not later than 7 days after the date of the notice; and
  - (b) by written notice given to the commissioner;request the commissioner to arrange for an inspection to investigate the circumstances relating to the giving of the notice.
- (2) On the request being made, the operation of the notice to which it relates is suspended until an inspector completes an investigation into the circumstances relating to the giving of the notice.
- (3) As soon as practicable after a request has been made, the commissioner shall arrange for an inspector to investigate the circumstances in which the notice was given.
- (4) If, as a result of an investigation arranged under subsection (3), an inspector believes on reasonable grounds that—
  - (a) the provisional improvement notice should not have been given to a person; or



- (b) the person to whom the notice was given has complied with section 69 in relation to the notice; or
- (c) for any other reason, the notice should no longer remain in force;

the inspector shall revoke the notice by written notice given to that person.

- (5) An inspector who revokes a provisional improvement notice shall take all reasonably practicable steps to give to each person mentioned in section 67 (8) (b) or (9) (a) to (d), to whom a copy of the notice was given, written notice of the revocation.

## **Division 5.3                      Emergency procedures**

### **72                      Action by health and safety representatives**

- (1) If a health and safety representative for a designated work group believes on reasonable grounds that there is an immediate threat to the health or safety of an employee included in the group unless the employee ceases to perform particular work, the representative shall—
  - (a) inform the person (a *supervisor*) supervising the employee in the performance of the work of the threat to health or safety; or
  - (b) if no supervisor can be contacted immediately—direct the employee to cease, in a safe way, to perform the work, and, as soon as practicable, inform a supervisor that the direction has been given.
- (2) If a supervisor is informed under subsection (1) (a) of a threat to the health and safety of an employee, the supervisor shall take the action that the supervisor considers appropriate to remove that threat, and any such action may include directing the employee to cease, in a safe way, to perform the work.
- (3) If a health and safety representative—

- (a) is unable to agree with the supervisor whom the representative has informed under subsection (1) (a) of a threat to the health or safety of a person performing work, and who has taken the action that the supervisor considers appropriate to remove that threat, that the action taken was sufficient to remove that threat; or
- (b) is unable to agree with the supervisor whom the representative has informed under subsection (1) (b) that there is a need for a direction under that paragraph;

the representative or supervisor may request the commissioner to arrange for an inspector to investigate the work that is the subject of the disagreement.

- (4) As soon as practicable after a request is made, the commissioner shall arrange for an inspector to conduct an investigation of the work and the inspector shall exercise the inspector's powers under this Act that the inspector considers necessary in relation to the work.

### **73 Alternative work**

Nothing in this division shall be taken to affect an employer's right to require an employee to perform alternative work while work that is usually performed by the employee is the subject of a direction under section 72 (1) (b).

## **Division 5.4 Entry to workplaces by authorised representatives**

### **74 Definitions for div 5.4**

In this division:

*authorised representative* means a person authorised under section 75 (1).

**registered organisation** means an organisation registered under the *Workplace Relations Act 1996* (Cwlth), schedule 1B.

**office**, in a registered organisation, means an office of the organisation, or a branch of the organisation, under the *Workplace Relations Act 1996* (Cwlth), schedule 1B, section 9.

## **75 Authorised representatives**

- (1) A registered organisation may, in writing, authorise a person for this division.
- (2) However, the registered organisation must not authorise a person unless—
  - (a) the person—
    - (i) is an employee of the organisation; or
    - (ii) holds an office in the organisation; and
  - (b) the person has completed the training required under the regulations; and
  - (c) the person is not disqualified under section 76 (1).
- (3) A registered organisation commits an offence if—
  - (a) the organisation authorises a person under subsection (1); and
  - (b) when authorised—
    - (i) the person was not an employee of the organisation and did not hold an office in the organisation; or
    - (ii) the person had not completed the training mentioned in subsection (2) (b).

Maximum penalty: 10 penalty units.

- (4) A registered organisation commits an offence if—
  - (a) the organisation authorises a person under subsection (1); and

- (b) the person has not completed the training required under the regulations to continue to be authorised; and
- (c) the organisation does not revoke the authorisation.

Maximum penalty: 10 penalty units.

- (5) An authorisation under subsection (1) ends if—
- (a) the person authorised stops being an employee of the registered organisation that authorised the employee and does not hold an office in the organisation; or
  - (b) the person authorised stops holding an office in the registered organisation that authorised the person and is not an employee of the organisation.

*Note* The power to make a statutory instrument (including an authorisation) includes power to amend or repeal the instrument (see Legislation Act, s 46).

- (6) A registered organisation commits an offence if—
- (a) the organisation authorises a person under subsection (1); and
  - (b) the organisation does not give the chief executive written notice of the authorisation as soon as practicable after the person is authorised, but not later than 1 week after the day the person is authorised.

Maximum penalty: 5 penalty units.

- (7) A registered organisation commits an offence if—
- (a) the organisation authorised a person under subsection (1); and
  - (b) the authorisation ends; and

- (c) the organisation does not give the chief executive written notice of the authorisation's end as soon as practicable after the person is authorised, but not later than 1 week after the day the authorisation ends.

Maximum penalty: 5 penalty units.

- (8) An offence against this section is a strict liability offence.

## **76 Disqualification of authorised representatives**

- (1) The chief executive may disqualify an authorised representative if the chief executive believes, on reasonable grounds, that the representative—
  - (a) has contravened this division; or
  - (b) is likely to contravene this division; or
  - (c) has, in exercising a function under this division, intentionally hindered or obstructed an employer or employee or otherwise acted improperly.
- (2) Before disqualifying an authorised representative under subsection (1), the chief executive must give the representative written notice—
  - (a) that the chief executive intends to disqualify the representative; and
  - (b) telling the representative why the chief executive intends to disqualify the representative; and
  - (c) telling the representative that the representative may, within 14 days after the day the representative is given the notice, give a written response to the chief executive about the matters in the notice.
- (3) In deciding whether to disqualify an authorised representative under subsection (1), the chief executive must take into account any response given by the representative within the 14-day period.

- (4) If a person is disqualified under subsection (1), the chief executive must, in writing—
  - (a) tell the person about the disqualification; and
  - (b) tell a registered organisation about the disqualification if the chief executive knows, or believes, that the person is an employee of, or holds office in, the organisation.
- (5) The chief executive may revoke a disqualification under subsection (1) if the chief executive believes, on reasonable grounds, that it is no longer appropriate for the disqualification to remain in force.
- (6) The chief executive may take action under subsection (5) on application or on the chief executive's own initiative.

## **77 Entry to workplaces by authorised representatives**

- (1) This section applies if an authorised representative of a registered organisation suspects on reasonable grounds that—
  - (a) a contravention of this Act may have happened, may be happening or is likely to happen at premises; and
  - (b) the premises are a workplace where members of the organisation (or people who are eligible to be members of the organisation) work.

- (2) The authorised representative may enter the premises to investigate the contravention.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

- (3) However, the authorised representative may enter the premises only at a time when work is carried on, or is usually carried on, at the premises by those members (or people).

- (4) Also, this section does not authorise entry into a part of premises that is being used only for residential purposes.

## **78 Notice of entry by authorised representative**

- (1) This section applies to an authorised representative who is authorised to enter premises under this division.
- (2) The authorised representative may enter the premises without notice.
- (3) The authorised representative must tell the occupier of the premises that the representative is on the premises as soon as reasonably practicable after entering the premises.
- (4) However, the authorised representative need not tell the occupier of the premises that the representative is on the premises if—
- (a) to do so would defeat the purpose for which the premises were entered; or
  - (b) the occupier had been told in writing when the representative would enter the premises.

## **79 Production of authorised representative's authorisation**

An authorised representative must not remain at premises entered under this part if the representative does not produce his or her authorisation for inspection when asked by the occupier.

*Note* An authorisation must be in writing (see s 74, def *authorised representative*).

## **80 Powers available to authorised representative on entry**

- (1) This section applies if an authorised representative enters premises under section 77 (Entry to workplaces by authorised representatives) to investigate a suspected contravention of this Act.

- (2) The authorised representative may investigate the contravention by doing 1 or more of the following:
- (a) inspect or view work, materials, plant or systems at the premises;
  - (b) interview members of the registered organisation (or people who are eligible to be members of the organisation) with their consent;
  - (c) take measurements and make sketches, drawings or any other kind of record (including photographs, films, or audio, video or other recordings) at the premises;
  - (d) require the production for inspection of documents relating to occupational health and safety at the premises;
  - (e) examine and copy, or take extracts from, any document produced as required under paragraph (d);
- Note* It is an offence for a person (including an authorised representative) to disclose protected information obtained while exercising a function under this Act (see s 207).
- (f) require the occupier, an employee or anyone else working at the premises, to give the representative any assistance reasonably needed to exercise a function under this part at the premises.
- (3) However, the authorised representative must not make a requirement of a person under subsection (2) (d) or (f) unless the representative has shown the person his or her authorisation.

## **81 Damage etc to be minimised by authorised representative**

- (1) In the exercise, or purported exercise, of a function under this division, an authorised representative must take all reasonable steps to ensure that the representative causes as little inconvenience, detriment and damage as is practicable.



- (2) If an authorised representative damages anything in the exercise or purported exercise of a function under this division, the representative must give written notice of particulars of the damage to the person whom the representative believes, on reasonable grounds, is the owner of the thing.
- (3) If the damage happens at premises entered under this division in the absence of the occupier, the authorised representative may give the notice by leaving it secured in a conspicuous place at the premises.

**82 Compensation for exercise of function by authorised representative**

- (1) A person may claim compensation from a registered organisation if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by an authorised representative of the organisation.
- (2) Compensation may be claimed and ordered in a proceeding for compensation brought in a court of competent jurisdiction.
- (3) A court may order the payment of reasonable compensation for the loss or expense 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, must or must not be taken into account by the court in considering whether it is just to make the order.

**83 Authorised representative to tell occupier about findings**

- (1) This section applies if an authorised representative enters premises under section 77.
- (2) Within 2 days after the day the authorised representative enters the premises, the representative must give the occupier and chief executive a written notice telling the occupier whether the representative believes that this Act has been, or may have been, contravened at the premises.

**84 Pretending to be authorised representative**

A person commits an offence if the person pretends that the person is an authorised representative.

Maximum penalty: 100 penalty units.

**85 Obstructing etc authorised representative**

- (1) A person commits an offence if the person obstructs, hinders, intimidates or resists an authorised representative in the exercise of his or her functions as an authorised representative.

Maximum penalty: 50 penalty units.

- (2) Strict liability applies to an offence against subsection (1).

**Division 5.5 Health and safety committee**

**86 Functions**

- (1) A health and safety committee in relation to an employer's employees has the following functions:
- (a) to assist the employer to develop and implement measures designed to protect the health and safety at work of the employees and to keep the adequacy of those measures under review;
  - (b) to facilitate cooperation between the employer and the employees in relation to occupational health and safety matters;
  - (c) to assist the employer to disseminate among the employees, in appropriate languages, information relating to health and safety at work;
  - (d) the functions (if any) that are prescribed;
  - (e) the other functions that are agreed on between the employer and the committee.

- (2) A health and safety committee has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

## **87 Duties of employers**

- (1) If there is a health and safety committee in relation to the employees of an employer, the employer shall—
- (a) subject to subsections (2) and (3), make available to the committee any information possessed by the employer relating to risks to the health and safety of employees—
    - (i) at any workplace under the employer's control; or
    - (ii) arising from the conduct by the employer of any undertaking, or from plant or substances used for the purposes of the undertaking; and
  - (b) permit any member of the committee who is an employee of the employer to take the time off work, without loss of remuneration or other entitlements, that is necessary and reasonable for the member to attend meetings of the committee or, with the approval of the committee, to engage in the affairs of the committee.

Maximum penalty: 10 penalty units.

- (2) An employer shall not make available to a health and safety committee information of a confidential medical nature relating to a person who is or was an employee of the employer, unless—
- (a) the person has given the employer a written authority permitting the information to be made available to the committee; or

- (b) the information is in a form that does not identify the person or enable the identity of the person to be discovered.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) An employer is not required to make available to a health and safety committee any information in relation to which the employer is entitled to claim, and does claim, legal professional privilege.
- (4) If—
- (a) a declaration under section 55 is in force in relation to a construction site; and
- (b) a worker to whom the declaration relates is a member of a health and safety committee established in relation to employees on the site;

the subcontractor who employs the worker shall permit the worker to take the time off work, without loss of remuneration or other entitlements, that is necessary and reasonable for the worker to attend meetings of the committee or, with the approval of the committee, to engage in the affairs of the committee.

Maximum penalty: 10 penalty units.

## **88 Liability**

An action or other proceeding, civil or criminal, does not lie against a member of a health and safety committee for or in relation to an act done, or omission made, in good faith by the member in connection with the member's functions under this Act.

## **Part 6**                      **Enforcement powers**

### **Division 6.1**              **General**

#### **89**              **Definitions for pt 6**

In this part:

*connected*—a thing is *connected* with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

*data* includes—

- (a) information in any form; and
- (b) a program (or part of a program).

*data storage device* means a thing containing, or designed to contain, data for use by a computer.

*offence* includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.

*person assisting*, in relation to a search warrant, means a person authorised by an inspector to assist in executing the warrant.

*search warrant* means a warrant issued under division 6.3 (Search warrants) that is in force.

### **Division 6.2**              **General powers of inspectors**

#### **90**              **General power of inspectors to enter premises**

- (1) For this Act, an inspector may—

- (a) at any reasonable time, enter premises that the inspector believes, on reasonable grounds, are a workplace; or
- (b) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
- (c) at any time, enter premises with the occupier's consent; or
- (d) enter premises in accordance with a search warrant; or
- (e) at any time, enter premises if the inspector believes, on reasonable grounds, that the circumstances are of such seriousness and urgency as to require immediate entry to the premises without the authority of a search warrant.

*Note* **Premises** includes any land, structure or vehicle and any part of an area of land, a structure or vehicle (see dict).

- (2) However, subsection (1) (a) does not authorise entry into a part of premises that is being used only for residential purposes.
- (3) For subsection (1), an inspector may stop and detain a vehicle that the inspector believes, on reasonable grounds—
  - (a) is a workplace; or
  - (b) contains documents relating to occupational health or safety at a workplace.
- (4) For subsection (3), the inspector—
  - (a) may direct the driver of the vehicle to move the vehicle to a place (or another place) to which the public has access; and
  - (b) may exercise the inspector's powers in relation to the vehicle at the place; and
  - (c) must not detain the vehicle for longer than is reasonably necessary to exercise the inspector's powers under this division.

- (5) An inspector may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.
- (6) To remove any doubt, an inspector may enter premises under subsection (1) without payment of an entry fee or other charge.
- (7) For subsection (1) (e), the inspector may enter the premises with any necessary assistance and force.
- (8) In this section:

*at any reasonable time* means at any time—

- (a) for subsection (1) (a)—during normal business hours or any other time when the premises are being used as a workplace; or
- (b) for subsection (1) (b)—when the public is entitled to use the premises, or when the premises are open to or used by the public, whether or not on payment of money.

## **91 Production of identity card by inspectors**

An inspector must not remain at premises entered under this part if the inspector does not produce his or her identity card for inspection when asked by the occupier.

## **92 Consent to entry by inspectors**

- (1) When seeking the consent of an occupier to enter premises under section 90 (1) (c) (General power of inspectors to enter premises), an inspector must—
  - (a) produce his or her identity card; and
  - (b) tell the occupier—
    - (i) the purpose of the entry; and
    - (ii) that anything found and seized under this part may be used in evidence in court; and

- (iii) that consent may be refused.
- (2) If the occupier consents, the inspector must ask the occupier to sign a written acknowledgment (an *acknowledgment of consent*)—
  - (a) that the occupier was told—
    - (i) the purpose of the entry; and
    - (ii) that anything found and seized under this part may be used in evidence in court; and
    - (iii) that consent may be refused; and
  - (b) that the occupier consented to the entry; and
  - (c) stating the time and date when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the inspector must immediately give a copy to the occupier.
- (4) A court must find that the occupier did not consent to entry to the premises by the inspector under this part if—
  - (a) the question whether the occupier consented to the entry arises in a proceeding in the court; and
  - (b) an acknowledgment of consent for the entry is not produced in evidence for the entry; and
  - (c) it is not proved that the occupier consented to the entry.

### **93 General powers of inspectors for premises**

An inspector who enters premises under this part may, for this Act, do 1 or more of the following in relation to the premises:

- (a) examine anything;
- (b) examine and copy, or take extracts from, documents relating to a contravention, or possible contravention, of this Act;



- (c) take measurements, conduct tests and make sketches, drawings or any other kind of record (including photographs, films, or audio, video or other recordings);
- (d) open or operate (or require to be opened or operated) plant or a system;
- (e) take for analysis samples of water, soil or anything else that is part of the environment to find out whether the environment poses a risk to the health or safety of people;
- (f) subject to division 6.5 (Taking and analysis of samples), take for analysis samples of anything else;
- (g) carry out any other examination to find out whether this Act has been, or is being, complied with;
- (h) take onto the premises any people, equipment or material the inspector reasonably needs to exercise a power under this Act;
- (i) require the occupier, or anyone at the premises, to give information, answer questions, or produce documents or anything else, reasonably needed to exercise the inspector's functions under this part;
- (j) require the occupier, or anyone at the premises, to give the inspector reasonable assistance to exercise a function under this part.

*Note 1* **At** premises includes in or on the premises (see dict).

*Note 2* **Examine** includes inspect, weigh, count, test and measure (see dict).

*Note 3* The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

*Note 4* A reference to an Act includes a reference to statutory instruments made or in force under the Act, including regulations and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

**94 General powers of inspectors for public places**

- (1) An inspector may exercise 1 or more of the powers mentioned in section 90 at a public place if the inspector suspects, on reasonable grounds, that the place is a workplace.
- (2) This Act applies in relation to the exercise of a power under subsection (1) as if—
  - (a) the public place were premises entered by the inspector under this part; and
  - (b) all other necessary changes were made.
- (3) Without limiting subsection (2), if a person is required to do something by an inspector under subsection (1), the person need not comply with the requirement if the inspector does not produce his or her identity card for inspection when asked by the person.

**95 Contravention of requirement by inspector**

A person must take all reasonable steps to comply with a requirement made of the person under section 93 (i) or (j) (including a requirement made in relation to something at a public place).

Maximum penalty: 50 penalty units.

**96 Power of inspectors to take action to prevent etc imminent risk**

- (1) This section applies if an inspector believes, on reasonable grounds, that—
  - (a) premises are a workplace; and
  - (b) there is an imminent risk of serious harm to a person at or near the premises; and

(c) it is necessary for the inspector to take action without delay to prevent or minimise the risk.

*Note 1* *At* premises includes in or on the premises (see dict).

*Note 2* **Premises** includes any land, structure or vehicle and any part of an area of land, a structure or vehicle (see dict).

- (2) This section applies even if an inspector has given a person an improvement or prohibition notice in relation to the premises and the time for complying with the notice has not ended.
- (3) The inspector may take the action the inspector believes, on reasonable grounds, is necessary to prevent or minimise the risk.
- (4) For subsection (3), the inspector may enter the premises with any necessary assistance and force.
- (5) In deciding the action to be taken, the inspector must, to the extent that is reasonably practicable, consult with the occupier of the premises and the chief executive.
- (6) The action an inspector may take includes asking someone the inspector believes, on reasonable grounds, has appropriate knowledge and experience to help the inspector prevent or minimise the risk.
- (7) If an inspector asks someone to help under subsection (6), the person is taken to have the powers of an inspector to the extent reasonably necessary for the person to help prevent or minimise the risk.
- (8) The power to enter premises under this section is additional to the powers under section 90 (General power of inspectors to enter premises).

**97 Report about action under s 96**

As soon as practicable after taking action under section 96, an inspector must—

- (a) prepare a report that outlines why the action was taken, the action that was taken and any damage to property because of the action; and
- (b) give a copy of the report to the occupier of the premises and the chief executive.

**98 Recovery of Territory's costs for action under s 96**

- (1) This section applies if an inspector takes action under section 96 (Power of inspectors to take action to prevent etc imminent risk) to prevent or minimise a risk.
- (2) Costs incurred by the Territory in relation to the action are a debt owing to the Territory by, and are recoverable together and separately from, the following people:
  - (a) each employer in relation to work performed at the premises to which the action related;
  - (b) each owner and lessee of the premises to which the action related;
  - (c) the person who caused the risk.
- (3) However, costs are not recoverable from a person if the person establishes that—
  - (a) the risk was caused by the act or omission of someone other than the person or the person's employee or agent; and
  - (b) reasonable precautions were taken and appropriate diligence was exercised by the person to avoid the act or omission.
- (4) This section does not limit the powers the Territory has apart from this Act.

**99 Power of entry etc in relation to dangerous occurrences**

- (1) This section applies if an inspector believes, on reasonable grounds, that a dangerous occurrence has happened, is happening or is about to happen at premises.
- (2) The inspector may enter the premises to investigate the dangerous occurrence, ensure the premises are safe and prevent the concealment, loss or destruction of anything reasonably relevant to the investigation of the occurrence.
- (3) For subsection (2), the inspector may enter the premises with any necessary assistance and force.
- (4) The inspector may do anything reasonably necessary for a purpose mentioned in subsection (2).
- (5) If an inspector acts under this section in the absence of the occupier of the premises, the inspector must, when leaving the premises, leave a written notice, secured in a conspicuous place, setting out—
  - (a) the inspector's name; and
  - (b) the time and date of the entry; and
  - (c) the purpose of the entry; and
  - (d) how to contact the inspector.
- (6) The power to enter premises under this section is additional to the powers under section 90 (General power of inspectors to enter premises).

**100 Power of inspectors to seize things**

- (1) An inspector who enters premises under this part with the consent of the occupier may seize anything at the premises if—
  - (a) the inspector is satisfied, on reasonable grounds, that the thing is connected with an offence against this Act; and

- (b) seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.
- (2) An inspector who enters premises under a warrant issued under this part may seize anything at the premises that the inspector is authorised to seize under the warrant.
- (3) An inspector who enters premises under this part (whether with the consent of the occupier, under a warrant or otherwise) may seize anything at the premises if satisfied, on reasonable grounds, that—
  - (a) the thing is connected with an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing from being—
    - (i) concealed, lost or destroyed; or
    - (ii) used to commit, continue or repeat the offence.
- (4) Also, an inspector who enters premises under this part (whether with the consent of the occupier, under a warrant or otherwise) may seize anything at the premises if satisfied, on reasonable grounds, that the thing poses a risk to the health or safety of people at a workplace.
- (5) The powers of an inspector under subsections (3) and (4) are additional to any powers of the inspector under subsection (1) or (2) or any other Territory law.

### **101 Action by inspector in relation to seized thing**

- (1) This section applies if an inspector has seized a thing at premises (the *place of seizure*) under section 100.
- (2) The inspector may—
  - (a) remove the thing from the place of seizure to another place; or
  - (b) leave the thing at the place of seizure but restrict access to it; or

- (c) for a thing mentioned in section 102 (1)—destroy or otherwise dispose of the thing under section 102 (5).

**Example of how access may be restricted for par (b)**

The inspector may—

- (a) place the seized thing in a room or other enclosed area, compartment or cabinet at the place of seizure; and
- (b) fasten and seal the door or opening providing access to the room, area, compartment or cabinet; and
- (c) mark the door or opening in a way that indicates that access to it has been restricted under this Act.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) A person commits an offence if—
- (a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (2); and
- (b) the person does not have an inspector's approval to interfere with the thing.

Maximum penalty: 100 penalty units.

- (4) An offence against this section is a strict liability offence.

**102 Power of inspectors to destroy unsafe things**

- (1) This section applies to anything inspected or seized under this part by an inspector if the inspector is satisfied, on reasonable grounds, that the thing poses a risk to the health or safety of people.
- (2) The inspector may require the occupier of the premises where the thing is to destroy or otherwise dispose of the thing.
- (3) The requirement may state 1 or more of the following:
- (a) how the thing must be destroyed or otherwise disposed of;

- (b) how the thing must be kept until it is destroyed or otherwise disposed of;
  - (c) the period within which the thing must be destroyed or otherwise disposed of.
- (4) The occupier of the premises where the thing is commits an offence if the person contravenes a requirement under subsection (2).
- Maximum penalty: 100 penalty units.
- (5) Alternatively, if the thing has been seized under this part, the inspector may destroy or otherwise dispose of the thing.
- (6) Costs incurred by the Territory in relation to the disposal of a thing under subsection (5) are a debt owing to the Territory by, and are recoverable together and separately from, the following people:
- (a) each employer in relation to work performed in relation to the thing seized or, if there is no such employer, each employer in relation to work performed at the premises from which the thing was seized;
  - (b) the person who owned the thing.

### **103 Power of inspectors to require name and address**

- (1) An inspector may require a person to state the person's name and home address if the inspector suspects, on reasonable grounds, that the person is committing, is about to commit, or has just committed, an offence against this Act.
- Note* A reference to an Act includes a reference to statutory instruments made or in force under the Act, including regulations and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).
- (2) If an inspector makes a requirement of a person under subsection (1), the inspector must—
- (a) tell the person the reasons for the requirement; and



(b) as soon as practicable, record the reasons.

- (3) A person commits an offence if the person contravenes a requirement under subsection (1).

Maximum penalty: 10 penalty units.

- (4) However, a person is not required to comply with a requirement under subsection (1) if, when asked by the person, the inspector does not produce his or her identity card for inspection by the person.

- (5) An offence against this section is a strict liability offence.

- (6) In this section:

*home address*, of a person, means the address of the place where the person usually lives.

## **104 Power of inspectors to require production of authorisation**

- (1) This section applies if—
- (a) an inspector suspects, on reasonable grounds, that the person is doing something, is about to do something, or has just done something; and
  - (b) the regulations require doing the thing to be authorised (however described) under this Act.

### **Example**

a person is operating a forklift and, under this Act, is required to hold a certificate to operate the forklift

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The inspector may require the person to produce for inspection anything that authorises the person to do the thing.

- (3) If an inspector makes a requirement of a person under subsection (2), the inspector must—
  - (a) tell the person the reasons for the requirement; and
  - (b) as soon as practicable, record the reasons.
- (4) A person commits an offence if the person contravenes a requirement under subsection (2).

Maximum penalty: 5 penalty units.
- (5) However, a person is not required to comply with a requirement under subsection (2) if, when asked by the person, the inspector does not produce his or her identity card for inspection by the person.
- (6) An offence against this section is a strict liability offence.
- (7) For this section, the regulations may declare that a person authorised to do a thing under a corresponding law is authorised to do the thing under this Act.
- (8) In this section:

*corresponding law* means a State law that corresponds to this Act.

## **Division 6.3 Search warrants**

### **105 Warrants generally**

- (1) An inspector may apply to a magistrate for a warrant to enter premises.
- (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.

- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
- (a) there is a particular thing or activity connected with an offence against this Act; and
  - (b) the thing or activity is, or is being engaged in, at the premises, or may be, or may be engaged in, at the premises within the next 14 days.

*Note* *At* premises includes in or on the premises (see dict).

- (5) The warrant must state—
- (a) that an inspector may, with any necessary assistance and force, enter the premises and exercise the inspector's powers under this part; and
  - (b) the offence for which the warrant is issued; and
  - (c) the things that may be seized under the warrant; and
  - (d) the hours when the premises may be entered; and
  - (e) the date, within 14 days after the day of the warrant's issue, that the warrant ends.

- (6) In this section:

***connected***—an activity is ***connected*** with an offence if—

- (a) the offence has been committed by engaging or not engaging in it; or
- (b) it will provide evidence of the commission of the offence.

*Note* For the meaning of thing ***connected*** with an offence, see s 89.

## **106 Warrants—application made other than in person**

- (1) An inspector may apply for a warrant by phone, fax, radio or other form of communication if the inspector considers it necessary because of—

- (a) urgent circumstances; or
  - (b) other special circumstances.
- (2) Before applying for the warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.
- (3) The inspector may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the inspector if it is practicable to do so.
- (5) If it is not practicable to fax a copy to the inspector—
- (a) the magistrate must—
    - (i) tell the inspector what the terms of the warrant are; and
    - (ii) tell the inspector the date and time the warrant was issued; and
  - (b) the inspector must complete a form of warrant (the *warrant form*) and write on it—
    - (i) the magistrate's name; and
    - (ii) the date and time the magistrate issued the warrant; and
    - (iii) the warrant's terms.
- (6) The faxed copy of the warrant, or the warrant form properly completed by the inspector, authorises the entry and exercise of the inspector's powers under this part.
- (7) The inspector must, at the first reasonable opportunity, send to the magistrate—
- (a) the sworn application; and
  - (b) if the inspector completed a warrant form—the completed warrant form.

- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) A court must find that a power exercised by an inspector was not authorised by a warrant under this section if—
  - (a) the question arises in a proceeding before the court whether the exercise of power was authorised by a warrant; and
  - (b) the warrant is not produced in evidence; and
  - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

#### **107 Search warrants—announcement before entry**

- (1) An inspector must, before anyone enters premises under a search warrant—
  - (a) announce that the inspector is authorised to enter the premises; and
  - (b) give anyone at the premises an opportunity to allow entry to the premises; and
  - (c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify himself or herself to the person.
- (2) The inspector is not required to comply with subsection (1) if the inspector believes, on reasonable grounds, that immediate entry to the premises is required to ensure—
  - (a) the safety of anyone (including the inspector or any person assisting); or
  - (b) that the effective execution of the warrant is not frustrated.

**108                      Details of search warrant to be given to occupier etc**

If the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the inspector or a person assisting must make available to the person—

- (a) a copy of the warrant; and
- (b) a document setting out the rights and obligations of the person.

**109                      Occupier entitled to be present during search etc**

- (1) If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.
- (2) However, the person is not entitled to observe the search if—
  - (a) to do so would impede the search; or
  - (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

**110                      Moving things to another place for examination or processing under search warrant**

- (1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—
  - (a) both of the following apply:
    - (i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;

- (ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or
  - (b) the occupier of the premises agrees in writing.
- (2) The thing may be moved to another place for examination or processing for no longer than 72 hours.
- (3) An inspector may apply to a magistrate for an extension of time if the inspector believes, on reasonable grounds, that the thing cannot be examined or processed within 72 hours.
- (4) The inspector must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.
- (5) If a thing is moved to another place under this section, the inspector must, if practicable—
  - (a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and
  - (b) allow the occupier or the occupier's representative to be present during the examination or processing.
- (6) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

## **111 Use of electronic equipment under search warrant**

- (1) An inspector or a person assisting may operate electronic equipment at premises entered under a search warrant to access data (including data not held at the premises) if the inspector or person believes, on reasonable grounds, that—
  - (a) the data might be something to which the warrant relates; and

- (b) the equipment can be operated without damaging the data.
- (2) If the inspector or person assisting believes, on reasonable grounds, that any data accessed by operating the electronic equipment might be something to which the warrant relates, the inspector or person may—
  - (a) copy the data to a data storage device brought to the premises;  
or
  - (b) if the occupier of the premises agrees in writing—copy the data to a data storage device at the premises.
- (3) The inspector or person assisting may take the device from the premises.
- (4) The inspector or person assisting may do the following things if the inspector or person finds that anything to which the warrant relates (the *material*) is accessible using the equipment:
  - (a) seize the equipment and any data storage device;
  - (b) if the material can, by using facilities at the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documents produced.
- (5) An inspector may seize equipment under subsection (4) (a) only if—
  - (a) it is not practicable to copy the data as mentioned in subsection (2) or to put the material in documentary form as mentioned in subsection (4) (b); or
  - (b) possession of the equipment by the occupier could be an offence.

**112            Person with knowledge of computer systems to assist access etc under search warrant**

- (1) An inspector may apply to a magistrate for an order requiring a stated person to provide any information or assistance that is



reasonably necessary to allow the inspector or a person assisting to do 1 or more of the following:

- (a) access data held in or accessible from a computer that is at the premises;
  - (b) copy the data to a data storage device;
  - (c) convert the data into documentary form.
- (2) The magistrate may make an order if satisfied that—
- (a) there are reasonable grounds for suspecting that something to which the warrant relates is accessible from the computer; and
  - (b) the stated person is—
    - (i) reasonably suspected of possessing, or having under the person's control, something to which the warrant relates; or
    - (ii) the owner or lessee of the computer; or
    - (iii) an employee or agent of the owner or lessee of the computer; and
  - (c) the stated person has knowledge of—
    - (i) the computer or a computer network of which the computer forms a part; or
    - (ii) measures applied to protect data held in or accessible from the computer.
- (3) A person commits an offence if the person contravenes an order under this section.
- Maximum penalty: 50 penalty units, imprisonment for 6 months or both.
- (4) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the making of an order under this section.

### 113            **Securing electronic equipment under search warrant**

- (1) This section applies if the inspector or a person assisting believes, on reasonable grounds, that—
  - (a) something to which the warrant relates (the *material*) may be accessible by operating electronic equipment at the premises; and
  - (b) expert assistance is needed to operate the equipment; and
  - (c) the material may be destroyed, altered or otherwise interfered with if the inspector or person does not take action.
- (2) The inspector or person may do whatever is necessary to secure the equipment.

**Examples**

locking the equipment up or placing a guard

*Note*            An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) The inspector or a person assisting must give written notice to the occupier of the premises of—
  - (a) the securing of the equipment; and
  - (b) the fact that the equipment may be secured for up to 24 hours.
- (4) The equipment may be secured until the earlier of the following events happens:
  - (a) the end of the 24-hour period;
  - (b) the equipment is operated by the expert.
- (5) If the inspector or a person assisting believes on reasonable grounds that the expert assistance will not be available within the 24-hour period, the inspector or person may apply to a magistrate to extend the period.

- (6) The inspector or a person assisting must tell the occupier of the premises of the intention to apply for an extension, and the occupier is entitled to be heard on the application.
- (7) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

**114 Copies of things seized under search warrant to be provided**

- (1) This section applies if—
  - (a) the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is executed; and
  - (b) the inspector seizes—
    - (i) a document, film, computer file or something else that can be readily copied; or
    - (ii) a data storage device containing information that can be readily copied.
- (2) The person may ask the inspector to give the person a copy of the thing or information.
- (3) The inspector must give the person the copy as soon as practicable after the seizure.
- (4) However, the inspector is not required to give the copy if—
  - (a) the thing was seized under section 111 (Use of electronic equipment under search warrant); or
  - (b) possession of the thing or information by the occupier or person would be an offence.

## Division 6.4 Return and forfeiture of things seized

### 115 Receipt for things seized

- (1) As soon as practicable after a thing is seized by an inspector under this part, the inspector must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the inspector must leave the receipt, secured conspicuously, at the place of seizure under section 101 (2) (b) (Action by inspector in relation to seized thing).
- (3) A receipt under this section must include the following:
  - (a) a description of the thing seized;
  - (b) an explanation of why the thing was seized;
  - (c) an explanation of the person's right to apply to a court under section 118 for an order disallowing the seizure;
  - (d) if the thing is removed from the premises where it is seized—where the thing is to be taken;
  - (e) the inspector's name, and how to contact the inspector.

### 116 Access to things seized

- (1) This section applies to a document or anything else seized under this part.
- (2) If asked by a person who would be entitled to inspect the thing if it were not seized under this part, an inspector must allow the person, at any reasonable time—
  - (a) for a document—to inspect it, take extracts from it or make copies of it; and
  - (b) for anything else—to inspect it.
- (3) This section does not apply to—

- (a) a thing seized under section 99 (4) (which is about the seizure of a thing that poses a risk to occupational health or safety); or
- (b) a thing seized under section 111 (Use of electronic equipment under search warrant); or
- (c) a thing or information if possession of it by the person otherwise entitled to inspect it would be an offence.

## **117 Return of things seized**

- (1) A thing seized under this part must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the thing, if—
  - (a) an infringement notice for an offence connected with the thing is not served on the owner within 1 year after the day of the seizure and either—
    - (i) a prosecution for an offence connected with the thing is not begun within the 1-year period; or
    - (ii) a prosecution for an offence connected with the thing is begun within the 1-year period but the court does not find the offence proved; or
  - (b) an infringement notice for an offence connected with the thing is served on the owner within 1 year after the day of the seizure, the infringement notice is withdrawn and—
    - (i) a prosecution for an offence connected with the thing is not begun within 1 year after the day of the seizure; or
    - (ii) a prosecution for an offence connected with the thing is begun within 1 year after the day of the seizure but the court does not find the offence proved; or
  - (c) an infringement notice for an offence connected with the thing is served on the owner within 1 year after the day of the seizure, liability for the offence is disputed in accordance with

the *Magistrates Court Act 1930*, section 132 (Disputing liability for infringement notice offence) and—

- (i) an information is not laid in the Magistrates Court against the person for the offence within 60 days after the day notice is given under section 132 that liability is disputed; or
  - (ii) the Magistrates Court does not find the offence proved; or
- (d) before the thing is forfeited to the Territory under section 121 (Forfeiture of seized things), the chief executive—
- (i) becomes satisfied that there has been no offence against this Act with which the thing was connected; or
  - (ii) decides not to prosecute or serve an infringement notice for the offence.
- (2) However, this section does not apply—
- (a) to a thing seized under section 99 (4) (which is about the seizure of a thing that poses a risk to occupational health or safety); or
  - (b) to a thing if the chief executive believes, on reasonable grounds, that the only practical use of the thing in relation to the premises where it was seized would be an offence against this Act; or
  - (c) to a thing if possession of it by its owner would be an offence.

## **118 Application for order disallowing seizure**

- (1) A person claiming to be entitled to anything seized under this part may apply to the Magistrates Court within 10 days after the day of the seizure for an order disallowing the seizure.
- (2) However, this section does not apply to a thing seized under section 100 (4) (which is about the seizure of a thing that poses a risk to occupational health or safety).

- (3) The application may be heard only if the applicant has served a copy of the application on the chief executive.
- (4) The chief executive is entitled to appear as respondent at the hearing of the application.

### **119 Order for return of seized thing**

- (1) This section applies if a person claiming to be entitled to anything seized under this part applies to the Magistrates Court under section 118 for an order disallowing the seizure.
- (2) The Magistrates Court must make an order disallowing the seizure if the court is satisfied that—
  - (a) the applicant would, apart from the seizure, be entitled to the return of the seized thing; and
  - (b) the thing is not connected with an offence against this Act; and
  - (c) possession of the thing by the person would not be an offence.
- (3) The Magistrates Court may also make an order disallowing the seizure if satisfied there are exceptional circumstances justifying the making of the order.
- (4) If the Magistrates Court makes an order disallowing the seizure, the court may make 1 or more of the following ancillary orders:
  - (a) an order directing the chief executive to return the thing to the applicant or to someone else that appears to be entitled to it;
  - (b) if the thing cannot be returned or has depreciated in value because of the seizure—an order directing the Territory to pay reasonable compensation;
  - (c) an order about the payment of costs in relation to the application.

**120 Adjourment pending hearing of other proceedings**

- (1) This section applies to the hearing of an application under section 118 (Application for order disallowing seizure).
- (2) If it appears to the Magistrates Court that the seized thing is required to be produced in evidence in a pending proceeding in relation to an offence against a Territory law, the court may, on the application of the chief executive or its own initiative, adjourn the hearing until the end of that proceeding.

**121 Forfeiture of seized things**

- (1) This section applies if—
  - (a) anything seized under this part has not been destroyed or otherwise disposed of under section 102 (Power of inspectors to destroy unsafe things) or returned under section 117 (Return of things seized); and
  - (b) an application for disallowance of the seizure under section 118 (Application for order disallowing seizure)—
    - (i) has not been made within 10 days after the day of the seizure; or
    - (ii) has been made within that period, but the application has been refused or has been withdrawn before a decision in relation to the application had been made.
- (2) If this section applies to the seized thing—
  - (a) it is forfeited to the Territory; and
  - (b) it may be sold, destroyed or otherwise disposed of as the chief executive directs.

**122 Return of forfeited things**

- (1) This section applies to something forfeited under section 96 that has not been disposed of in a way that would prevent its return.



- (2) If the chief executive becomes satisfied that there has been no offence against this Act with which the thing was connected, the chief executive must, as soon as practicable, return the thing to the person from whom it was seized or someone else who appears to the chief executive to be entitled to it.
- (3) On its return, any proprietary and other interests in the thing that existed immediately before its forfeiture are restored.

### **123 Cost of disposal of things forfeited**

- (1) This section applies if—
  - (a) a person is convicted, or found guilty, of an offence against this Act in relation to something forfeited to the Territory under this part; and
  - (b) the thing was connected with an offence against this Act; and
  - (c) the person was the owner of the thing immediately before its forfeiture.

*Note* For the meaning of *found guilty*, see Legislation Act, dict, pt 1.

- (2) If this section applies, costs incurred by or on behalf of the Territory in relation to the lawful disposal of the thing (including storage costs) are a debt owing to the Territory by the person.

## **Division 6.5 Taking and analysis of samples**

### **124 Inspector may buy samples without complying with div 6.5**

This division does not stop an inspector from buying a sample of a substance for analysis for the routine monitoring of compliance with this Act without complying with the requirements of this part.

**125 Occupier etc to be told sample to be analysed**

- (1) This section applies if an inspector proposes to take, or takes, a sample of a substance for analysis from premises that are a workplace.
- (2) Before or as soon as practicable after taking the sample, the inspector must tell the occupier of the premises of the inspector's intention to have the sample analysed.
- (3) If the occupier is not present or readily available, the inspector must instead tell the person from whom the sample was obtained of the inspector's intention to have the sample analysed.

**126 Payment for samples**

- (1) This section applies if an inspector takes a sample of a substance for analysis from premises that are a workplace.
- (2) The inspector must pay, or offer to pay, to the person from whom the sample is taken—
  - (a) the amount (if any) prescribed under the regulations as the amount payable for the sample; or
  - (b) if no amount is prescribed—the current market value of the sample.

**127 Samples from packaged substances**

If a package of a substance contains 2 or more smaller packages of the same substance, the inspector may take 1 of the smaller packages for analysis.

**128 Procedures for dividing samples**

- (1) This section applies to a sample of a substance being taken by an inspector for analysis and is subject to section 129.
- (2) The inspector must—

- (a) divide the sample into 3 separate parts, and mark and seal or fasten each part; and
  - (b) leave 1 part with the person told under section 125 (Occupier etc to be told sample to be analysed) of the inspector's intention to have the sample analysed; and
  - (c) keep 1 of the parts for analysis; and
  - (d) keep 1 part for future comparison with the other parts of the sample.
- (3) If a sample of a substance taken by an inspector is in the form of separate or severable objects, the inspector—
- (a) may take a number of the objects; and
  - (b) divide them into 3 parts each consisting of 1 or more of the objects, or of the severable parts of the objects, and mark and seal or fasten each part; and
  - (c) deal with the sample under subsection (2) (b) to (d).

## **129 Exceptions to s 128**

- (1) This section applies to a sample of a substance being taken by an inspector for analysis if dividing the substance into 3 separate parts would, in the inspector's opinion—
- (a) so affect or impair the composition or quality of the sample as to make the separate parts unsuitable for accurate analysis; or
  - (b) result in the separate parts being of an insufficient size for accurate analysis; or
  - (c) otherwise make the sample unsuitable for analysis (including a method of analysis prescribed under the regulations for the substance in relation to which the sample was taken).
- (2) The inspector may take as many samples as the inspector considers necessary to allow an accurate analysis to be made, and may deal

with the sample or samples in any way that is appropriate in the circumstances, instead of complying with section 128.

### **130 Certificates of analysis by authorised analysts**

- (1) The analysis of a sample of a substance for the chief executive must be carried out by, or under the supervision of, an authorised analyst.
- (2) The authorised analyst must give to the chief executive a certificate of analysis that—
  - (a) is signed and dated by the analyst; and
  - (b) contains a written report of the analysis that sets out the findings; and
  - (c) identifies the method of analysis.

*Note 1* If a form is approved under s 226 for the certificate, the form must be used.

*Note 2* For the evidentiary status of a certificate under this section, see s 219.

## **Division 6.6 Other enforcement provisions**

### **131 Damage etc by inspectors to be minimised**

- (1) In the exercise, or purported exercise, of a function under this part, an inspector must take all reasonable steps to ensure that the inspector, and any person assisting, causes as little inconvenience, detriment and damage as is practicable.
- (2) If an inspector, or a person assisting, damages anything in the exercise or purported exercise of a function under this part, the inspector must give written notice of particulars of the damage to the person the inspector believes, on reasonable grounds, is the owner of the thing.
- (3) If the damage happens at premises entered under this part in the absence of the occupier of the premises, the notice may be given by leaving it secured in a conspicuous place at the premises.

**132 Compensation for exercise of function by inspector**

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by an inspector or person assisting.
- (2) Compensation may be claimed and ordered in a proceeding for—
  - (a) compensation brought in a court of competent jurisdiction; or
  - (b) an order under section 118 (Application for order disallowing seizure); or
  - (c) an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense 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, must or must not be taken into account by the court in considering whether it is just to make the order.

## Part 7 Compliance measures

### Division 7.1 Interpretation for pt 7

#### 133 Meaning of *responsible person* for pt 7

In this part:

*responsible person*, for a contravention of a provision of this Act, means a person who is required to do something, or not do something, under the provision.

### Division 7.2 Information and documents

#### 134 Chief executive may require answers to questions and production of documents

- (1) This section applies if the chief executive believes, on reasonable grounds, that a person (the *relevant person*) may have contravened, or may be contravening, a provision of this Act.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

- (2) The chief executive may, by written notice given to a person (including the relevant person), require the person to attend before the chief executive at a stated reasonable time and place to do either or both of the following:
- (a) answer questions that the chief executive considers necessary to decide whether the relevant person has contravened or is contravening this Act;
  - (b) produce the documents stated in the notice.

*Note* For how the notice may be served, see Legislation Act, pt 19.5.

- (3) The chief executive may require a person to produce a document under subsection (2) (b) only if the chief executive considers the production necessary to decide whether the relevant person has contravened or is contravening this Act.
- (4) The notice must—
  - (a) state that the requirement is made under this section; and
  - (b) contain a statement to the effect that failure to comply with the notice is an offence; and
  - (c) if the notice requires the person to answer questions—
    - (i) contain a statement about the effect of section 138 (Privileges against selfincrimination and exposure to civil penalties); and
    - (ii) state that the person may attend with a lawyer.
- (5) To remove any doubt, for this section, a person answers a question if the person explains why the person or an entity did or did not do something.

### **135 Compliance with notice to produce**

- (1) This section applies if a person is required by a notice under section 134 to produce a document but not to answer questions.
- (2) The person is taken to have complied with the requirement to produce the document if the person—
  - (a) does not attend before the chief executive; but
  - (b) gives the document to the chief executive before the time stated for attendance in the notice.

### **136 Failure to attend before chief executive or produce documents**

- (1) A person commits an offence if—

- (a) the person is required by a notice under section 134 to attend and answer questions before the chief executive; and
- (b) the person fails to attend before the chief executive in accordance with the notice.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—

- (a) the person is required by a notice under section 134 to produce a stated document; and
- (b) the person fails to produce the document.

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.

### **137 Attendance before chief executive—offences**

- (1) A person commits an offence if—

- (a) the person is required under section 134 to attend and answer questions before the chief executive; and
- (b) the person attends before the chief executive; and
- (c) the chief executive requires the person to answer a question; and
- (d) the person fails to answer the question.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—

- (a) the person is required by a notice under section 134 to attend and answer questions before the chief executive; and
- (b) the person attends before the chief executive; and



- (c) the person fails to continue to attend as reasonably required by the chief executive until excused from further attendance.

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.

**138 Privileges against selfincrimination and exposure to civil penalties**

- (1) This section applies if—
- (a) a person is attending before the chief executive in accordance with a requirement under section 134; and
- (b) the chief executive requires the person to answer a question.
- (2) This section also applies if a person is required by a notice under section 134 to produce a document.
- (3) The person cannot rely on the common law privileges against selfincrimination and exposure to the imposition of a civil penalty to refuse to answer the question or produce the document.

*Note* The Legislation Act, s 171 deals with client legal privilege.

- (4) However, any information, document or thing obtained, directly or indirectly, because of the giving of the answer or the production of the document is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for an offence against this part or the Criminal Code, part 3.4 (False or misleading statements, information and documents).

**Division 7.3 Compliance agreements**

**139 Meaning of *relevant responsible person* for div 7.3**

In this division:

*relevant responsible person*, for a compliance agreement, means the responsible person for a workplace who enters into the agreement.

## 140 Inspector may seek compliance agreement

- (1) This section applies if an inspector believes, on reasonable grounds, that a provision of this Act has been, is being or may be contravened in relation to a workplace.

*Note* A reference to an Act includes a reference to statutory instruments made or in force under the Act, including regulations and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

- (2) The inspector may ask a responsible person for the workplace, other than an employee at the workplace, to enter into an agreement (a **compliance agreement**) in relation to the contravention.
- (3) If the responsible person agrees to enter into a compliance agreement, the agreement must—
- (a) state that it is a compliance agreement under this Act; and
  - (b) state the contravention of this Act in relation to which the agreement is entered into; and
  - (c) state the period for which the agreement is to operate; and
  - (d) state the measures to be taken by the responsible person or anyone else to ensure this Act is complied with and the times within which the measures must be taken; and
  - (e) be signed by the inspector and the responsible person.

### Examples of measures for par (d)

- 1 only direct people to work in confined place if they have appropriate safety training
- 2 fit scaffolding with handrails and kickboards before using the scaffolding
- 3 repair or replace particular plant

*Note* An example is part of this Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) The compliance agreement may include anything else the inspector and the relevant responsible person consider appropriate.

- (5) The inspector must give a copy of the compliance agreement to the relevant responsible person.

**141 Term of compliance agreement**

- (1) A compliance agreement commences when the agreement is signed by the inspector and relevant responsible person, or at any later time stated in the agreement.
- (2) The compliance agreement ends—
- (a) at the end of the period of operation stated in the agreement; or
  - (b) if the inspector and relevant responsible person agree to extend the period of operation before the end of the stated period—at the end of the extended period.
- (3) If an inspector is satisfied that the compliance agreement has been complied with before it ends, the inspector must revoke the agreement by written notice given to the relevant responsible person.

**142 Compliance agreement not admission of fault etc**

- (1) This section applies if a responsible person for a workplace enters into a compliance agreement in relation to a contravention of this Act.
- (2) Entering into the compliance agreement—
- (a) is not an express or implied admission of fault or liability by the responsible person in relation to the contravention; and
  - (b) is not relevant to deciding fault or liability in relation to the contravention.
- (3) Also, evidence of the existence or contents of the compliance agreement is not—
- (a) admissible in a civil proceeding as evidence of the fault or liability of a person in relation to the contravention; or

- (b) admissible in a criminal proceeding in relation to the contravention; or
- (c) relevant to the taking of action in relation to an authorisation (however described) held by a person under this Act.

*Note 1* This section does not prevent the giving of an improvement notice or prohibition notice in relation to the relevant contravention (see Legislation Act, s 44 and s 197).

*Note 2* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

### **143 Notification and display of compliance agreements**

- (1) This section applies to the relevant responsible person for a compliance agreement.
- (2) The person commits an offence if the person fails to—
  - (a) tell each person (an *affected person*) whose work is affected by the measures to be taken under the agreement about the agreement, including the measures; or
  - (b) give a copy of the agreement to each other person in control of each workplace where an affected person works.

Maximum penalty: 20 penalty units.

- (3) The person commits an offence if the person fails to ensure that, while the agreement is operating, a copy of the agreement is displayed in a prominent place at each premises affected by the contravention of this Act in relation to which the agreement was entered into.

Maximum penalty: 20 penalty units.

- (4) An offence against this section is a strict liability offence.

**144 Compliance agreement not to be removed etc**

- (1) A person commits an offence if—
- (a) a copy of a compliance agreement is displayed at premises; and
  - (b) the person removes, alters, damages, defaces or covers the copy while the agreement is operating.

Maximum penalty: 20 penalty units.

- (2) An offence against this section is a strict liability offence.

**Division 7.4 Improvement notices**

**145 Meaning of *relevant responsible person* for div 7.4**

In this division:

*relevant responsible person*, for an improvement notice, means the person to whom the inspector gives the notice.

**146 Giving improvement notices**

An inspector may give a notice (an *improvement notice*) to a responsible person for a workplace if the inspector believes, on reasonable grounds, that a person has contravened, is contravening, or is likely to contravene, this Act in relation to the workplace.

*Note 1* For how documents may be served, see Legislation Act, pt 19.5.

*Note 2* A reference to an Act includes a reference to statutory instruments made or in force under the Act, including regulations and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

**147 Contents of improvement notices**

- (1) An improvement notice may require the relevant responsible person to do 1 or more of the following:

- (a) put stated premises, plant or a system into a safe condition, including, for example, by repairing or replacing the premises, plant or system;
- (b) comply with a particular provision of this Act in relation to the workplace;
- (c) do anything else to ensure that this Act is complied with in relation to the workplace.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) Also, the improvement notice must—
  - (a) state that it is an improvement notice under this Act; and
  - (b) state the contravention of this Act in relation to which the notice is given; and
  - (c) state the period for complying with the notice.
- (3) The improvement notice may include any other information the inspector considers appropriate.

## 148 Scope of improvement notices

- (1) An improvement notice for a workplace may relate to 1 or more of the following:
  - (a) premises forming the workplace;
  - (b) plant or a system at the workplace;
  - (c) an activity at the workplace;
  - (d) a circumstance at the workplace.

*Note* **Premises** includes any land, structure or vehicle and any part of an area of land, a structure or vehicle (see dict).

- (2) This section does not limit the scope of an improvement notice for a workplace.

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

- (1) This section applies if a responsible person for a workplace has been given an improvement notice.
- (2) An inspector may, by written notice given to the responsible person, extend the compliance period for the improvement notice on the inspector's own initiative or if asked by the responsible person.
- (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 147 (2) (c), and includes that period as extended under this section.

**150 Notification and display of improvement notices**

- (1) This section applies to the relevant responsible person for an improvement notice.
- (2) The person commits an offence if the person fails to—
  - (a) tell each person (an *affected person*) whose work is affected by anything required to be done under the notice about the notice, including the things required to be done under it; or

- (b) give a copy of the notice to each other person in control of each workplace where an affected person works.

Maximum penalty: 20 penalty units.

- (3) The person commits an offence if the person fails to ensure that, while the notice is in force, a copy of the notice is displayed in a prominent place at each premises affected by the contravention of this Act in relation to which the notice was given.

Maximum penalty: 20 penalty units.

- (4) An offence against this section is a strict liability offence.

#### **151 Improvement notice not to be removed etc**

- (1) A person commits an offence if—
- (a) a copy of an improvement notice is displayed at premises; and
- (b) the person removes, alters, damages, defaces or covers the copy while the notice is in force.

Maximum penalty: 20 penalty units.

- (2) An offence against this section is a strict liability offence.

#### **152 Revocation of improvement notice on compliance**

If an inspector is satisfied that an improvement notice has been complied with, the inspector must revoke the notice by written notice given to the relevant responsible person.

#### **153 Contravention of improvement notices**

- (1) The relevant responsible person for an improvement notice commits an offence if the person fails to take all reasonable steps to comply with a requirement of the notice.

Maximum penalty: 100 penalty units.

- (2) An offence against this section is a strict liability offence.



## **Division 7.5            Prohibition notices**

### **154            Definitions for div 7.5**

In this division:

*basis*, for giving a prohibition notice, means—

- (a) the contravention of this Act in relation to which the prohibition notice was given and the risk to be prevented or minimised under the notice (see section 155 (1)); or
- (b) the inspection, testing or monitoring to be allowed under the notice (see section 155 (2) (a)); or
- (c) the accident or other incident to be investigated under the notice (see section 155 (2) (b)).

*relevant responsible person*, for a prohibition notice, means the responsible person for a workplace to whom the notice is given.

### **155            Giving prohibition notices**

- (1) An inspector may give a notice (a *prohibition notice*) to a responsible person for a workplace if the inspector believes, on reasonable grounds, that—
  - (a) someone at the workplace has contravened, is contravening, or is likely to contravene, this Act; and
  - (b) giving the notice is necessary to prevent or minimise risk of serious harm to the health or safety of people from a hazard at the workplace.
- (2) An inspector may also give a notice (also a *prohibition notice*) to a responsible person for a workplace if the inspector believes, on reasonable grounds, that giving the notice is necessary to allow—
  - (a) the inspection, testing or monitoring of anything at the workplace; or

- (b) the investigation of an accident or other incident (including a dangerous occurrence) at the workplace.

**Example for par (2) (a)**

to allow for routine compliance testing of plant and systems if the responsible person has not voluntarily agreed to the plant or system being shut down for the test

*Note 1* For how documents may be served, see the Legislation Act, pt 19.5.

*Note 2* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

*Note 3* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## 156 Contents of prohibition notices

- (1) A prohibition notice in relation to a workplace may require a responsible person for the workplace not to do 1 or more of the following until the notice ends:
  - (a) use stated premises, plant, systems, substances or things;
  - (b) disturb stated premises, plant, systems, substances or things;
  - (c) something else at or in relation to the workplace.
- (2) Also, the prohibition notice—
  - (a) must state the following:
    - (i) that it is a prohibition notice under this Act;
    - (ii) the workplace to which the notice relates;
    - (iii) the basis for giving the notice; and
  - (b) if the notice is given under section 155 (1) (which is about a notice given to prevent or minimise risk of serious harm from contravention of this Act)—must include a statement to the effect that the relevant responsible person may ask for a

reinspection of the situation or circumstances that caused the notice to be given if the person considers that the situation or circumstances comply with this Act; and

- (c) if the notice is given under section 155 (2) (which is about notices given to allow inspection, testing, monitoring and investigation)—must state the reasonable period that the inspector considers necessary to carry out the inspection, testing, monitoring or investigation to which the notice relates.

### **157 Scope of prohibition notices**

- (1) A prohibition notice for a workplace may relate to 1 or more of the following:
- (a) premises forming the workplace;
  - (b) plant or a system at the workplace;
  - (c) an activity at the workplace;
  - (d) a circumstance at the workplace.

*Note* **Premises** includes any land, structure or vehicle and any part of an area of land, a structure or vehicle (see dict).

- (2) This section does not limit the scope of a prohibition notice for a workplace.

### **158 Extension of time for inspection etc**

- (1) This section applies if a prohibition notice is given under section 155 (2).
- (2) An inspector may, by written notice given to the relevant responsible person for the prohibition notice, extend the relevant period for the notice on the inspector's own initiative or if asked by the relevant responsible person.
- (3) However, the inspector may extend the relevant period only if the period has not ended.

- (4) In this section:

*relevant period* means the period stated in the prohibition notice under section 156 (2) (c), and includes that period as extended under this section.

### **159 Notification and display of prohibition notices**

- (1) This section applies to the relevant responsible person for a prohibition notice.
- (2) The person commits an offence if the person fails to—
- (a) tell everyone who works at the workplace to which the notice relates about the notice, including anything required not to be done under it; or
  - (b) give a copy of the notice to each person (or each other person) in control of the workplace to which the notice relates.

Maximum penalty: 20 penalty units.

- (3) The person commits an offence if the person fails to ensure that, while the notice is in force, a copy of the notice is displayed in a prominent place at each premises to which the notice relates.

Maximum penalty: 20 penalty units.

- (4) An offence against this section is a strict liability offence.

### **160 Prohibition notice not to be removed etc**

- (1) A person commits an offence if—
- (a) a copy of a prohibition notice is displayed at premises; and
  - (b) the person removes, alters, damages, defaces or covers the copy while the notice is in force.

Maximum penalty: 20 penalty units.

- (2) An offence against this section is a strict liability offence.

**161 Ending of prohibition notices for contravention of Act etc**

- (1) This section applies to a prohibition notice if the notice was given under section 155 (1) (which is about a notice given to prevent or minimise risk of serious harm from contravention of this Act).
- (2) The prohibition notice ends when the notice is revoked under section 163.

**162 Request for reinspection**

- (1) This section applies to a prohibition notice given under section 155 (1).
- (2) The relevant responsible person for the prohibition notice may ask the commissioner, in writing, for a reinspection of the situation or circumstances that caused the notice to be given if the person considers that the situation or circumstances comply with this Act.
- (3) If the request relates to a vehicle or equipment, the vehicle or equipment must be made available for reinspection where it was originally inspected or at another place agreed to by an inspector.

**163 Revocation on reinspection**

- (1) This section applies if a request has been made under section 162.
- (2) If the inspector who carries out the reinspection is satisfied that there are no grounds for the prohibition notice to continue to operate, the inspector may revoke the notice by written notice given to the relevant responsible person for the prohibition notice.
- (3) Also, the prohibition notice is taken to be revoked on the 3rd business day after the day the request for reinspection is received by the commissioner if—
  - (a) an inspector does not make the reinspection within 2 business days after the day the request is received; and

- (b) the person who made the request is not responsible, completely or partly, for the delay in making the reinspection.

*Note* For the meaning of *business day*, see Legislation Act, dict, pt 1.

- (4) This section does not prevent an improvement notice or another prohibition notice being given to the same person in relation to the same contravention of this Act.

#### **164 Ending of prohibition notices given for inspection etc**

- (1) This section applies to a prohibition notice if the notice was given under section 155 (2) (which is about notices given to allow inspection, testing, monitoring and investigation).
- (2) The prohibition notice ends at the end of the period stated in the notice under section 156 (2) (c) (Contents of prohibition notices) or, if the period is extended under section 158, the end of the extended period.

#### **165 Contravention of prohibition notices**

- (1) The relevant responsible person for a prohibition notice commits an offence if the person fails to take all reasonable steps to ensure the notice is not contravened.

Maximum penalty: 200 penalty units.

- (2) An offence against this section is a strict liability offence.

#### **166 Request for compensation for prohibition notice**

- (1) This section applies if—
- (a) a prohibition notice is given in relation to a workplace; and
- (b) a person suffers loss or expense because of the giving of the notice; and
- (c) the person considers that there were insufficient grounds for giving the notice.

- (2) The person may apply, in writing, to the Minister for compensation.
- (3) The application must give reasons why the person considers that there were insufficient grounds for giving the prohibition notice.

### **167 Compensation for prohibition notice**

- (1) This section applies if a person applies under section 166 for compensation in relation to the giving of a prohibition notice.
- (2) If, after considering the application, the Minister is satisfied that there were insufficient grounds for giving the prohibition notice, the Territory must pay the person the reasonable compensation decided by the Minister.
- (3) However, compensation is not payable to the person—
  - (a) in relation to any loss or expense suffered by the person because of an act or omission of the person; or
  - (b) if the person caused or contributed to the situation or circumstances that caused the prohibition notice to be given.
- (4) The Minister must give the person written notice of the Minister's decision on the application.
- (5) If the Minister does not decide the application within 28 days after the day the Minister receives the application, the Minister is taken to have refused to pay compensation.

## **Division 7.6 Enforceable undertakings**

### **168 Definitions for div 7.6**

In this division:

*alleged contravention*—see section 169 (3) (b).

*enforceable undertaking* means a safety undertaking that has been accepted under section 170.

*relevant person*, for an enforceable undertaking, means the person who gave the undertaking.

*safety undertaking*—see section 169 (2).

## 169 Making of safety undertakings

- (1) This section applies if the chief executive alleges that a person has contravened a provision of this Act.

*Note* A reference to an Act includes a reference to statutory instruments made or in force under the Act, including regulations and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

- (2) The person may give the chief executive a written undertaking (a *safety undertaking*) to comply with the provision.
- (3) The safety undertaking must—
- (a) state that it is an enforceable undertaking under this Act; and
  - (b) acknowledge that the chief executive alleges that the person has contravened a stated provision of this Act (the *alleged contravention*); and
  - (c) identify the facts and circumstances of the alleged contravention; and
  - (d) include 1 or more undertakings relating to the alleged contravention.

### Examples of undertakings

- 1 to cease a certain conduct
- 2 to take particular action to compensate people adversely affected by a contravention of this Act
- 3 to take particular action to rectify a state of affairs that arose as a direct or indirect result of the contravention
- 4 to take particular action (including implementing particular systems) to prevent future contraventions of this Act



5 to implement publicity or education programs

*Note* An example is part of this Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

### **170 Acceptance of safety undertaking**

- (1) The chief executive may accept a safety undertaking by written notice given to the person who gave the undertaking.
- (2) On acceptance of the safety undertaking, the undertaking becomes an enforceable undertaking.

### **171 Withdrawal from or amendment of enforceable undertaking**

- (1) A relevant person for an enforceable undertaking may withdraw from or amend the undertaking only with the chief executive's written agreement.
- (2) However, the enforceable undertaking may not be amended to provide for a different alleged contravention.

### **172 Term of enforceable undertaking**

- (1) A safety undertaking is enforceable from the time it becomes an enforceable undertaking.
- (2) The chief executive may end an enforceable undertaking by written notice to the relevant person for the undertaking if satisfied that the undertaking is no longer necessary or desirable.
- (3) The chief executive may act under subsection (2) on the chief executive's own initiative or on the application of the relevant person for the enforceable undertaking.
- (4) The undertaking ends when the relevant person for the enforceable undertaking receives the chief executive's notice.

**173 Safety undertaking not admission of fault etc**

- (1) This section applies if a person gives the chief executive a safety undertaking, whether or not the undertaking is accepted by the chief executive.
- (2) Giving the safety undertaking—
  - (a) is not an express or implied admission of fault or liability by the person in relation to the alleged contravention; and
  - (b) is not relevant to deciding fault or liability in relation to the alleged contravention.

**174 Contravention of enforceable undertakings**

- (1) If the chief executive believes, on reasonable grounds, that an enforceable undertaking has been contravened by anyone, the chief executive may apply to the Magistrates Court for an order under subsection (2).
- (2) If the Magistrates Court is satisfied that the enforceable undertaking has been contravened, the court may make 1 or more of the following orders:
  - (a) an order requiring the relevant person for the undertaking to ensure that the undertaking is not contravened;
  - (b) an order requiring the relevant person for the undertaking to pay to the Territory the amount assessed by the court as the value of the benefits anyone derived, directly or indirectly, from the contravention of the undertaking;
  - (c) an order that the court considers appropriate requiring the relevant person for the undertaking to compensate someone who has suffered loss or damage because of the contravention of the undertaking;
  - (d) any other order that the court considers appropriate.

- (3) A person commits an offence if the person fails to take all reasonable steps to comply with an order under subsection (2).

Maximum penalty: 200 penalty units.

- (4) An offence against this section is a strict liability offence.

## **Division 7.7                      Injunctions**

### **175                      Injunctions to restrain offences against Act**

- (1) This section applies if a person has committed, is committing, or is likely to commit, an offence against this Act.

*Note 1* A reference to an offence against a territory law includes a reference to a related ancillary offence, eg attempt (see Legislation Act, s 189).

*Note 2* A reference to an Act includes a reference to statutory instruments made or in force under the Act, including regulations and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

- (2) The chief executive or any other interested person may apply to the Magistrates Court for an injunction.
- (3) On application under subsection (2), the Magistrates Court may grant an injunction restraining the person from contravening this Act (including by requiring the person to do something).
- (4) The Magistrates Court may grant the injunction—
- (a) whether or not it appears to the court that the person intends to contravene this Act, contravene this Act again or continue to contravene this Act; and
  - (b) whether or not the person has previously contravened this Act; and
  - (c) whether or not there is a likelihood of the health or safety of a person being affected if the person contravenes this Act; and

- (d) whether or not a proceeding for an offence against this Act has begun or is about to begin.
- (5) The Magistrates Court may grant an interim injunction restraining the person from committing an offence against this Act (including requiring the person to do something) before deciding an application for an injunction under this section.

**176 Enforcement of injunctions**

The Magistrates Court has the same powers as the Supreme Court to enforce an injunction (including an interim injunction) made under this division.

**177 Amendment or discharge of injunctions**

The Magistrates Court may amend or discharge an injunction (including an interim injunction) made under this division on the application of the chief executive or any other interested person.

**178 Interim injunctions—undertakings about damages**

- (1) If the chief executive applies for an injunction under this division, the Magistrates Court must not require the chief executive to give an undertaking about costs or damages as a condition of granting an interim injunction.
- (2) The Magistrates Court must accept an undertaking from the chief executive about costs or damages, and not require a further undertaking from anyone else, if—
- (a) the applicant for an injunction under this division is not the chief executive; and
  - (b) the court would, apart from this subsection, require the applicant to give an undertaking about costs or damages; and
  - (c) the chief executive gives the undertaking.

**179 Magistrates Court's other powers not limited**

- (1) The powers given to the Magistrates Court under this division are in addition to any other powers of the court.
- (2) In particular, an application to the Magistrates Court for an injunction under this division may be made without notice to the person against whom the injunction is sought.

## **Part 8**                      **Review of decisions**

### **Division 8.1**              **Review authority**

#### **180**                      **Establishment**

There is established by this section a review authority called the Occupational Health and Safety Review Authority.

#### **181**                      **Constitution**

- (1) The review authority is to be constituted by a member of the commission appointed by the president.
- (2) If—
  - (a) the person constituting the authority for a proceeding ceases to be available to complete the proceeding; and
  - (b) in accordance with subsection (1) the authority is reconstituted by another member of the commission;

the reconstituted authority must complete the proceeding and, for that purpose, may have regard to any record of the authority as previously constituted, including any transcript of evidence taken in the proceeding.

#### **182**                      **Disclosure of interest**

- (1) If the person constituting the review authority has any interest, pecuniary or otherwise, that could conflict with the proper exercise of the person's functions in relation to a proceeding—
  - (a) the person must disclose the interest to the parties to the proceeding; and
  - (b) unless all the parties to the proceeding consent, the person must not take part or any further part in the proceeding.

- (2) If the president directs the member who constitutes the authority not to take part or any further part in a proceeding before the authority, the member must not act, or act further, in the proceeding.

## **Division 8.2            Reconsideration and review of decisions**

### **183            Meaning of *inspector* in div 8.2**

In this division:

*inspector* does not include the commissioner.

### **184            Internally reviewable decisions, reviewable decisions and eligible people**

For this part—

- (a) a decision of an inspector mentioned in schedule 1, part 1.1 is an *internally reviewable decision*; and
- (b) a person mentioned in schedule 1, part 1.1 in relation to an internally reviewable decision is an *eligible person* for the decision; and
- (c) a decision of the commissioner or chief executive mentioned in schedule 1, part 1.2 or part 1.3 is a *reviewable decision*; and
- (d) a person mentioned in schedule 1, part 1.2 or part 1.3 in relation to reviewable decision is an *eligible person* for the decision.

### **185            Applications for internal review**

- (1) An eligible person for a internally reviewable decision may apply to the commissioner for review of the decision.
- (2) The application must be made within—

- (a) 28 days after the day the applicant is told about the decision by the inspector; or
  - (b) any longer period allowed by the commissioner, whether before or after the end of the 28-day period.
- (3) The application must set out the grounds on which internal review of the decision is sought.
  - (4) The making of the application for internal review of the decision does not affect the operation of the decision.

### **186 Internal review**

- (1) This section applies if an application for internal review of a decision has been made under section 185.
- (2) The commissioner must review the decision, and confirm, vary or revoke the decision, within the time prescribed under the regulations.
- (3) If the decision is not varied or revoked within the prescribed period, the decision is taken to have been confirmed by the commissioner.
- (4) As soon as practicable after reviewing the decision, the commissioner must give written notice of the decision on the internal review to the applicant.
- (5) The notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

### **187 Review of decisions**

- (1) A request to the review authority for the review of a reviewable decision must be in writing.

*Note* A fee may be determined under s 225 (Determination of fees) for this section.



- (2) Subject to subsection (3), a request for a review of a reviewable decision does not affect the operation of the decision or prevent the taking of action to implement the decision, except to the extent that the authority makes an order to the contrary.
- (3) If a request is made for a review of a decision to give an improvement notice, the operation of a decision is suspended pending determination of the review, except to the extent that the authority makes an order to the contrary.
- (4) If an eligible person in relation to a reviewable decision requests the authority to review the decision, the authority must, subject to this part, review the decision and must—
  - (a) confirm or vary the decision; or
  - (b) revoke the decision and, if considered appropriate, make a decision in substitution for the decision revoked.
- (5) A reviewable decision of a person, as varied by the authority, or a decision of the authority made in substitution for a reviewable decision of a person, is for all purposes (other than for this section) taken to be a decision of that person and, on the coming into operation of the decision of the authority, unless that authority orders otherwise, is taken to have had effect on and from the date when the reviewable decision would, apart from this section, have had effect.
- (6) The authority must give written notice of its decision to each party to the proceeding, setting out the reasons for its decision.

## **188 Parties to proceedings before review authority**

- (1) For this part, the parties to a proceeding before the review authority are—
  - (a) any eligible person who, in writing, requests the authority to review the reviewable decision; and
  - (b) the person who made the decision; and

(c) any other person joined as a party to the proceeding by the authority in accordance with subsection (2).

(2) The review authority may—

(a) on written application by a person—

(i) who is an eligible person in relation to a reviewable decision; or

(ii) whose interests are affected by a reviewable decision; and

(b) by written notice given to the applicant;

join the applicant as a party to a proceeding for the review of the decision.

### **189 Representation before review authority**

A party to a proceeding before the review authority may appear in person or may be represented by some other person.

### **190 Notice of proceeding**

Before beginning a proceeding, the review authority must give each party a notice specifying—

(a) the time and place for the proceeding; and

(b) the matters to which the proceeding relates.

### **191 Procedure of review authority**

(1) In proceedings before the review authority—

(a) the authority is not bound by the rules of evidence but may inform itself on any matter in the way as it considers appropriate; and

(b) the procedure of the authority is, subject to this part, within the discretion of the authority; and

- (c) the proceedings must be conducted with as little formality and technicality, and with as much expedition as the requirements of this Act and the substantial merits of the case permit; and
  - (d) the authority may give directions relating to procedure, including directions that it considers will enable costs to be reduced and will help to achieve a prompt hearing of the matters in issue between the parties to the proceeding.
- (2) Without limiting subsection (1), the review authority must ensure that each party to a proceeding is given a reasonable opportunity to—
- (a) call or give evidence; and
  - (b) examine or cross-examine witnesses; and
  - (c) inspect any documents to which the authority proposes to have regard in reaching a decision in the proceeding; and
  - (d) make submissions.

## **192 Hearings to be in public except in special circumstances**

- (1) Subject to this section, a proceeding before the review authority must be in public.
- (2) If the review authority believes on reasonable grounds that it is desirable to do so because of the confidential nature of any evidence or matter or for any other reason, the authority may—
  - (a) direct that a proceeding or part of a proceeding shall take place in private and give directions about the persons who may be present; and
  - (b) give directions prohibiting or restricting the publication of evidence given before the authority, whether in public or in private, or of matters contained in documents lodged with the authority or received in evidence by the authority; and

- (c) give directions prohibiting or restricting the disclosure to some or all of the parties to a proceeding of evidence given before the authority, or of the contents of a document lodged with the authority or received in evidence by the authority, in relation to the proceeding.
- (3) A person shall not, without reasonable excuse, contravene a direction given by the authority under subsection (2) (b) or (c).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

### **193 Reference of questions of law to Supreme Court**

- (1) The review authority may, on its own initiative or at the request of a party, refer a question of law arising in a proceeding before it to the Supreme Court for decision.
- (2) The Supreme Court has jurisdiction to hear and decide a question of law referred to it under this section.
- (3) If a question of law arising in a proceeding has been referred to the Supreme Court under this section, the authority must not, in that proceeding—
  - (a) give a decision to which the question is relevant while the reference is pending; or
  - (b) proceed in a way, or make a decision, that is inconsistent with the determination of the Supreme Court on the question.

### **194 Appeals from review authority to Supreme Court**

A party to a proceeding before the review authority may appeal to the Supreme Court on a question of law from a decision of the review authority in the proceeding.

*Note* See the *Court Procedures Rules 2006*, r 5052 (Appeals to Supreme Court—general powers) and r 5103 (Appeals to Supreme Court—time for filing notice of appeal).

## **Division 8.3                      Miscellaneous**

### **195                      Powers of review authority**

- (1) For the purposes of a proceeding, the review authority may—
- (a) take evidence on oath and, for that purpose, may require a person attending before the authority to take an oath; and  
*Note*        **Oath** includes affirmation and **take** an oath includes make an affirmation (see Legislation Act, dict, pt 1).
  - (b) require a person attending before the authority to answer a question relevant to the proceeding; and  
*Note*        The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.
  - (c) proceed in the absence of a party who has been given notice of the proceeding under section 190; and
  - (d) adjourn the proceeding from time to time.
- (2) The authority may, in writing, direct a person to attend a proceeding at the time and place specified in the notice and to give evidence and produce any document in the person's custody or under the person's control that the person is required by the notice to produce.
- (3) If a person is directed to produce a document and the document is not—
- (a) in writing; or
  - (b) written in the English language; or
  - (c) decipherable on sight;

the person must produce, in addition to the document if it is in writing, or instead of the document if it is not in writing, a statement written in the English language and decipherable on sight, containing the whole of the information in the document.

**196            Inspection and keeping of documents**

- (1) The review authority may inspect any document produced before it and may keep the document for the period that is necessary for this part and may make copies of, or take extracts from, the document.
- (2) If a document is kept by the authority under subsection (1)—
  - (a) a person otherwise entitled to possession of the document is, on request, entitled to be supplied with a copy certified by the authority to be a true copy of the document; and
  - (b) a person who would be entitled to inspect the document, if it were not in the possession of the authority, or a person authorised by such a person, may at any reasonable time inspect, make copies of, or take extracts from, the document.

**197            Application of Criminal Code, ch 7**

A proceeding before the review authority is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

*Note*        That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to review authority proceedings.

**200            Protection of review authority etc**

- (1) The review authority has, in the exercise of its functions, the same protection and immunity as a judge of the Supreme Court.
- (2) A lawyer or other person appearing before the authority on behalf of a party, or if the party appears personally, the party, has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.
- (3) Subject to this Act, a person directed to attend or appearing before the authority as a witness has the same protection, and is subject to the same liabilities, as a witness in proceedings in the Supreme Court.

## Part 9 Administration

### 201 Inspectors

- (1) Each of the following is an inspector for this Act:
  - (a) the commissioner;
  - (b) a public servant appointed under subsection (2).
- (2) The chief executive may appoint a public servant as an inspector for this Act.

*Note 1* For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

### 202 Identity cards

- (1) This section applies only to an inspector appointed under section 201 (2).
- (2) The chief executive must give each inspector an identity card that states the person's name and appointment as an inspector, and shows—
  - (a) a recent photograph of the person; and
  - (b) the date of issue of the card; and
  - (c) the date of expiry of the card; and
  - (d) anything else prescribed under the regulations.
- (3) A person commits an offence if—
  - (a) the person ceases to be an inspector; and

- (b) the person does not return the person's identity card to the chief executive as soon as practicable (but within 7 days) after the day the person ceases to be an inspector.

Maximum penalty: 1 penalty unit.

- (4) An offence against this section is a strict liability offence.

### **203 Protection of officials from liability**

- (1) In this section:

*official* means—

- (a) the Minister; or
  - (b) the chief executive; or
  - (c) the commissioner; or
  - (d) an inspector; or
  - (e) anyone else, other than an authorised representative, exercising functions under this Act.
- (2) An official does not incur civil liability for an act or omission done honestly and without negligence for this Act.
  - (3) Any civil liability that would, apart from this section, attach to an official attaches instead to the Territory.



## Part 10                      Miscellaneous

### 204            Notice of events

- (1) If an employer is aware of the occurrence of any of the following events at or near the workplace:
- (a) the death of a person;
  - (b) an injury to a person other than an employee of the employer;
  - (c) an injury to an employee as a result of which the employee is incapacitated for work for the prescribed period;
  - (d) a dangerous occurrence;

and the event is attributable to the conduct of the employer's undertaking at the workplace, the employer must, in accordance with the regulations, give notice of the event to the commissioner.

- (2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (3) Without limiting the regulations that may be made for subsection (1) (other than subsection (1) (c)), the regulations may include provisions relating to—
- (a) the time within which, and how, notice of an accident or dangerous occurrence is to be given; and
  - (b) the time within which, and how, notice of an accident or dangerous occurrence is to be given.

**205 Records of accidents etc**

- (1) An employer must maintain, in accordance with the regulations, a record of each accident or dangerous occurrence in relation to which the employer is required by section 204 to notify the commissioner.
- (2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence.

Maximum penalty: 10 penalty units.

- (3) Without limiting the regulations that may be made for subsection (1), the regulations may include provisions relating to—
  - (a) the nature and contents of a record required to be maintained under this section; and
  - (b) the retention of such a record.

**206 Codes of practice**

- (1) The Minister may, in writing, approve a code of practice for providing practical guidance for this Act.

*Note* Power given under an Act to make a statutory instrument (including a code of practice) includes power to amend or repeal the instrument (see Legislation Act, s 46 (1)).

- (2) Before approving a proposed code of practice, the Minister must—
  - (a) refer the proposed code to the council for its consideration; and
  - (b) take into account any relevant recommendation made by the council.

- (3) An approved code of practice may consist of any code, standard, rule, specification or provision relating to occupational health and safety and may apply, adopt or incorporate a law or instrument, or a provision of a law or instrument, as in force from time to time.

*Note 1* A statutory instrument may also apply, adopt or incorporate (with or without change) a law or instrument (or a provision of a law or

instrument) as in force at a particular time (see Legislation Act, s 47 (1)).

*Note 2* If a statutory instrument applies, adopts or incorporates a law or instrument (or a provision of a law or instrument), the law, instrument or provision may be taken to be a notifiable instrument that must be notified under the Legislation Act (see s 47 (5) and (6)).

- (4) A code of practice approved under subsection (1) is a disallowable instrument.

*Note 1* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

*Note 2* An amendment or repeal of a code of practice approved under subsection (1) is also a disallowable instrument (see Legislation Act, s 46 (2)).

- (5) The commissioner must publish in a newspaper circulating in the ACT a notice of each approval given under subsection (1)—

- (a) specifying the date when the approval takes effect; and
- (b) specifying the place where copies of the code to which the approval relates may be purchased; and
- (c) containing a statement to the effect that an up-to-date copy of each approved code, and any document the provisions of which are applied, adopted or incorporated in an approved code, may be inspected by members of the public at the office of the commissioner.

- (6) The commissioner must, at all times, ensure that an up-to-date copy of each approved code of practice, and of any document the provisions of which are applied, adopted or incorporated in an approved code of practice, are made available for inspection by members of the public at the office of the commissioner.

## **207 Protected information**

- (1) If a person exercising any function under or because of this Act obtains protected information about the affairs of another person,

the firstmentioned person shall not disclose that information to any other person, unless the disclosure—

- (a) is necessary for the exercise of a duty by the firstmentioned person under or in connection with this Act; or
- (b) is made with the written consent of the person to whom the information relates; or
- (c) is required by any court, tribunal, authority or person having lawful authority to require the production of documents or the answering of questions.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) In this section:

*protected information* means—

- (a) information relating to the personal affairs of a person; or
- (b) information the disclosure of which would, or could reasonably be expected—
  - (i) to disclose a trade secret; or
  - (ii) to adversely affect a person in relation to the lawful business affairs of that person.

- (3) A reference in this section to the disclosure of protected information includes a reference to the production of a document containing protected information.

**208 Interfering with safety equipment**

- (1) A person shall not, without reasonable excuse, interfere with equipment at or near a workplace, being equipment that the person knows, or ought reasonably to know, is provided in the interests of the health or safety of persons at work.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) In subsection (1):

*interfere* means do any act or thing that is calculated or likely to inhibit or prevent the effective operation of the equipment.

**209 Employer not to levy employees**

An employer shall not levy on any of the employer's employees any charge in relation to anything done or provided, in accordance with this Act, to ensure the health, safety or welfare of the employees at work.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**210 Employer not to discriminate**

An employer shall not—

- (a) dismiss an employee; or
- (b) injure an employee in his or her employment; or
- (c) prejudicially alter the employee's position (whether by the deduction or withholding of remuneration or by any other means); or
- (d) threaten to take action, in relation to the employee, that is referred to in paragraph (a), (b) or (c);

because the employee—

- (e) has complained or proposes to complain about a matter concerning the health, safety or welfare of employees at work; or
- (f) has assisted or proposes to assist, by the giving of information or otherwise, the conduct of an investigation or inspection by an inspector; or
- (g) has ceased, or proposes to cease, to perform work in accordance with—
  - (i) a direction under section 72 (1) (b); or
  - (ii) a provisional improvement notice, an improvement notice or a prohibition notice.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

## 211 Acts and omissions of representatives

- (1) In this section:

*person* means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

*representative*, of a person, means an employee or agent of the person.

*state of mind*, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for any offence against this Act.

- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

## **212 Notices of noncompliance by Territory entities**

- (1) This section applies if a Territory entity (other than a Territory owned corporation) commits an offence against this Act and the offence is an infringement notice offence.

*Note 1* For the meaning of *Territory owned corporation*, see Legislation Act, dict, pt 1.

*Note 2* A reference to an Act includes a reference to statutory instruments made or in force under the Act, including regulations and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

- (2) An authorised person for the infringement notice offence may serve a notice of noncompliance on the responsible chief executive for the Territory entity.

*Note* For how documents may be served, see Legislation Act, pt 19.5.

- (3) The responsible chief executive must include in the chief executive's annual report a statement of the number of notices of noncompliance serviced on the chief executive and matter to which each notice related.

- (4) In this section:

*annual report* means a report under the *Annual Reports (Government Agencies) Act 2004*.

*authorised person*, for an infringement notice offence, means an authorised person for the infringement notice offence under the *Magistrates Court Act 1930*.

*infringement notice offence*—see the *Magistrates Court Act 1930*, section 117.

*responsible chief executive*—see the *Auditor-General Act 1996*, dictionary.

*Territory entity* means an administrative unit or a Territory entity under the *Auditor-General Act 1996*.

## 213 Electronic service

- (1) This section applies to a notice required or allowed to be given to a person under this Act.
- (2) To remove any doubt, the notice may be given by emailing it to the person's email address even if the notice is required to be in writing.
- (3) This section is in addition to, and does not limit, any other method of service provided under another law.

*Note* Service is also dealt with in the *Legislation Act*, pt 19.5 and the *Electronic Transactions Act 2001*, s 8 (which is about electronically giving information required or allowed to be in writing).

- (4) In this section:



*email address*, of a person in relation to anything done or to be done under this Act, includes the latest email address of the person (if any) recorded in a register or other records kept under this Act.

## **214 Publication by chief executive of convictions etc**

- (1) This section applies if a person, or a representative of the person, is convicted or found guilty of an offence against this Act and—
- (a) the time for making an appeal against the conviction, or finding of guilt, ends without an application for an appeal being made; or
  - (b) if an appeal is made against the conviction or finding of guilt—
    - (i) the conviction or finding is confirmed on appeal, and the time for making any further appeal in relation to the conviction or finding ends without an application for an appeal being made; or
    - (ii) the appeal is withdrawn, struck out or discontinued or lapses; or
  - (c) if a retrial has been ordered—the time for making an appeal on the retrial ends in accordance with paragraph (a) or (b).

*Note* For the meaning of *found guilty*, see Legislation Act, dict, pt 1.

- (2) The chief executive may publish the following information in relation to the conviction or finding of guilt in a way that the chief executive considers appropriate:
- (a) particulars that allow the public to identify the person;
  - (b) details of the offence;
  - (c) the decision of the court and the penalty imposed on the person or a representative of the person;

### **Examples for par (a)**

- 1 the person's name and ACN (if any)
- 2 any name (and, if relevant, ACN) used in the past by the person

3 the person's current and previous business addresses

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) If the conviction or finding of guilt is quashed or set aside on appeal, the information must not be published.
- (4) If the penalty is changed on appeal, this section applies in relation to the penalty as changed.
- (5) In this section:

*executive officer*, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

*representative of the person* means—

- (a) if the person is an individual—an employee or agent of the person; or
- (b) if the person is a corporation—an employee, agent or executive officer of the person.

## **215 Court-directed publicity for offences**

If a person is convicted or found guilty of an offence against this Act, the court may direct the person to publish a statement in accordance with the directions of the court in relation to the offence.

*Note* For the meaning of *found guilty*, see Legislation Act, dict, pt 1.

## **216 Remedial orders by courts for offences**

- (1) This section applies if—
  - (a) a person is convicted, or found guilty, of an offence against this Act; and

- (b) the prosecutor asks the court to make an order under this section; and
- (c) it appears to the court that the person could partly or completely rectify a state of affairs that arose as a direct or indirect result of the conduct that was the subject of the offence.

*Note* For the meaning of *found guilty*, see Legislation Act, dict, pt 1.

- (2) The court may order the person to take any steps that it considers are necessary and appropriate to rectify the state of affairs and that are within the person's power to take.
- (3) If a court makes an order under this section, it may also make any other consequential orders (including orders about costs) that it considers appropriate.

## **217 Court may order costs and expenses**

- (1) A court that hears a proceeding for an offence against this Act may make any order it considers appropriate in relation to costs and expenses in relation to the examination, seizure, detention, storage, analysis (including further analysis), destruction or other disposition of anything the subject of the proceeding.
- (2) This section does not affect any other power of the court to award costs.

## **218 Presumptions about substances**

In a proceeding for an offence against this Act, it is presumed until the contrary is proved, on the balance of probabilities, that—

- (a) a substance that is part of a batch, lot or consignment of the substance of the same kind or description is representative of all of the substance in the batch, lot or consignment; and

- (b) each part of a sample of a substance divided for analysis for this Act is of uniform composition with every other part of the sample.

### **219 Evidence of analysts**

- (1) A certificate of the results of an analysis is admissible in a proceeding for an offence against this Act, and is evidence of the facts stated in it, if a copy of the certificate is served by the party who obtained the analysis on the other party to the proceeding at least 14 days before the day of the hearing.
- (2) However, a court may order, at the request of a party to the proceeding or on its own initiative, that the period mentioned in subsection (1) be reduced to the period stated in the court's order.
- (3) An analyst who carried out an analysis in relation to which a certificate is produced as evidence in a proceeding for an offence against this Act need not be called as a witness in the proceeding by the party producing the certificate unless the court hearing the proceeding orders, at the request of a party to the proceeding or on its own initiative, that the analyst be called as a witness.

### **220 Power of court to order further analysis**

- (1) This section applies if the court before which a person is being prosecuted for an offence against this Act is satisfied that there is a disagreement between the evidence of the analysts for the parties to the proceeding.
- (2) The court may order that the part or parts of a sample kept under section 128 (Procedures for dividing samples) be sent by the chief executive to an independent analyst.
- (3) For subsection (2), the order may require the sample to be sent to a particular analyst or to an analyst agreed to by the parties.
- (4) An analyst who is sent a part or parts of a sample for analysis under this section must make the analysis for the information of the court.

- (5) Subject to section 217 (Court may order costs and expenses), the cost of an analysis under this section is payable by the Territory.

## **221 Appointment of authorised analysts**

The chief executive may appoint a person as an authorised analyst for this Act.

*Note 1* For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

## **222 Contracting out prohibited**

A term of any agreement or contract that purports to exclude, limit or modify the operation of this Act is void.

## **223 Civil liability not affected**

Nothing in this Act shall be taken—

- (a) to give a right of action in any civil proceeding in relation to any contravention of any provision of this Act; or
- (b) to give a defence to an action in any civil proceeding or affect a right of action in any civil proceeding.

## **224 Inconsistency with associated laws**

- (1) A provision of an associated law has no effect to the extent that it is inconsistent with this Act, but such a provision shall be taken to be so consistent to the extent that it is capable of operating concurrently with this Act.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

- (2) This section does not apply in relation to an associated law that is a Commonwealth law.

## 225 Determination of fees

- (1) The Minister may, in writing, determine fees for this Act.

*Note* The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## 226 Approved forms

- (1) The Minister may, in writing, approve forms for this Act.

*Note* For other provisions about forms, see Legislation Act, s 255.

- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

## 227 Commissioner's annual report

A report prepared by the commissioner under the *Annual Reports (Government Agencies) Act 2004* for a financial year must include—

- (a) a copy of any direction given under section 32 (Ministerial directions) during the year; and
- (b) a statement by the commissioner about action taken during the year to give effect to any direction given (whether before or during the year) under that section.

*Note* **Financial year** has an extended meaning in the *Annual Reports (Government Agencies) Act 2004*.

**228 Quarterly reports**

- (1) The commissioner must, as soon as practicable after the end of each quarter, prepare and give to the Minister a report on the operations of this Act and of the commissioner during that quarter.
- (2) The Minister must present a copy of a quarterly report to the Legislative Assembly within 6 sitting days after the Minister receives the report.
- (3) In this section:

*quarter* means a period of 3 months commencing on 1 July, 1 October, 1 January or 1 April in a financial year.

**229 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.
- (2) The regulations may make provision in relation to any matter affecting, or likely to affect, the occupational health and safety of employees, including provision—
  - (a) prohibiting or regulating the performance of all work or specified work at a workplace or by employees at work; and
  - (b) prohibiting or regulating—
    - (i) the manufacture or supply of plant for use; or
    - (ii) the use of plant;  
at a workplace or by employees at work; and
  - (c) prohibiting or regulating the carrying out of all processes or a specified process at a workplace or by employees at work; and
  - (d) prohibiting or regulating—
    - (i) the manufacture or supply of any substance for use; or

- (ii) the transport, storage or use of any substance;  
at a workplace or by employees at work; and
- (e) specifying the form in which information required to be made available to an employer under section 42 (1) (c) or section 43 (1) (c) is to be made available; and
- (f) prohibiting, except in accordance with licences or certificates of competency granted under the regulations, the use of specified plant or specified substances at a workplace or by employees at work; and
- (g) providing for the issue, variation, renewal, transfer, suspension and cancellation of such licences, the conditions to which the licences may be subject; and
- (h) providing for the issue, variation, renewal, suspension and cancellation of certificates of competency, the conditions to which those certificates may be subject; and
- (i) regulating the maintenance and testing of plant used at a workplace or by employees at work; and
- (j) regulating the labelling or marking of substances used at a workplace or by employees at work; and
- (k) regulating the transport of specified plant that is, or specified substances that are, for use at a workplace or by employees at work; and
- (l) prohibiting the performance, at a workplace or by employees at work, of specified activities or work except—
  - (i) by people who satisfy requirements of the regulations about qualifications, training or experience; or
  - (ii) under the supervision specified in the regulations; and
- (m) requiring the taking of specified action to avoid accidents or dangerous occurrences; and



- (n) providing for, or prohibiting, the taking of specified action in the event of accidents or dangerous occurrences; and
- (o) providing for the employment at workplaces of persons to perform specified duties relating to the maintenance of occupational health and safety at workplaces; and
- (p) regulating the provision and use, at a workplace or by employees at work, of protective clothing and equipment, safety equipment and rescue equipment; and
- (q) providing for the monitoring of the health of employees and the conditions at workplaces; and
- (r) requiring the keeping by employers of records of matters related to the occupational health and safety of employees; and
- (s) providing for the provision of first-aid equipment and facilities at workplaces; and
- (t) in relation to samples taken under section 93 (f), including provisions relating to—
  - (i) the analysis of samples; and
  - (ii) the issuing of certificates in relation to the analysis of samples; and
- (u) in relation to health and safety committees, including provision—
  - (i) relating to the establishment of committees; and
  - (ii) relating to the constitution, and selection of members, of committees; and
  - (iii) relating to the exercise of the functions of committees; and
- (v) in relation to the training of health and safety representatives, deputy health and safety representatives or members of health

and safety committees, in the knowledge and skills relevant to occupational health and safety, including provisions—

- (i) relating to the approval of training programs; and
  - (ii) relating to the accreditation of people who conduct training programs; and
  - (iii) requiring health and safety representatives, deputy health and safety representatives or members of committees to undertake training programs; and
  - (iv) determining the liability for the fees and expenses incurred in relation to the attendance by health and safety representatives, deputy health and safety representatives or members of committees at training programs; and
- (w) in relation to the reconsideration or review of reviewable decisions under part 8, including provisions relating to the manner in which, and the time within which, a request for reconsideration or review may be made.
- (3) The regulations may also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.
- (4) Before making regulations in relation to a matter mentioned in subsection (2) (v), the Executive shall—
- (a) consult with the council in relation to that matter; and
  - (b) have regard to the recommendations (if any) made to the Executive by the council in relation to that matter.

**230 Review of Act**

- (1) The Minister must review the operation of this Act as soon as practicable after 30 June 2007.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (2) Employee organisations and employer organisations must be consulted as part of the review.
- (3) The Minister must present to the Legislative Assembly a report of the outcome of the review on or before the Assembly's 3rd sitting day in 2008.

- (4) In this section:

***employee organisation*** means a registered organisation that is an employee organisation.

***employer organisation*** means a registered organisation that is an employer organisation.

***registered organisation***—see section 74.

- (5) This section expires on 30 June 2008.

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## **Schedule 1**      **Appeal rights**

(see s 184)

### **Part 1.1**                      **Internally reviewable decisions**

| <b>column 1<br/>item</b> | <b>column 2<br/>decisions</b>   | <b>column 3<br/>eligible person</b>  |
|--------------------------|---|--|
| 1                        | revoking a provisional improvement notice under section 71 (4)                | (a) the health and safety representative who gave the notice; or<br>(b) an involved union in relation to an employee whose work is affected by the notice              |
| 2                        | refusing to revoke a provisional improvement notice under section 71 (4)      | (a) the person to whom the notice was given; or<br>(b) an employer whose undertaking is adversely affected by the refusal  |
| 3                        | deciding to seize plant, a substance or thing under section 100               | (a) the owner of, or a person with a property interest in, the plant, substance or thing; or<br>(b) an employer whose undertaking is adversely affected by the seizure |
| 4                        | revoking, or refusing to revoke, a compliance agreement under section 141 (3) | (a) a responsible person for contravention to which the compliance agreement relates; or<br>(b) an employer whose undertaking is adversely affected by the agreement   |

| <b>column 1<br/>item</b> | <b>column 2<br/>decisions</b>   | <b>column 3<br/>eligible person</b>   |
|--------------------------|---|---|
| 5                        | giving an improvement notice under section 146  | (a) a responsible person for the contravention to which the improvement notice relates; or<br>(b) an employer whose undertaking is adversely affected by the notice   |
| 6                        | refusing to extend the compliance period for an improvement notice, or extending the period for less than the period asked for, under section 149 | (a) the relevant responsible person for the compliance notice; or<br>(b) an employer whose undertaking is adversely affected by the notice  |
| 7                        | revoking an improvement notice under section 152  | (a) the health and safety representative for a designated work group in which there is an employee whose work is affected by the notice; or<br>(b) if there is no health and safety representative for an employee whose work is affected by the notice—an employee whose work is affected by the notice; or<br>(c) an involved union in relation to an employee whose work is affected by the notice |

**Schedule 1**  
**Part 1.1**

Appeal rights  
Internally reviewable decisions

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| <b>column 1<br/>item</b> | <b>column 2<br/>decisions</b>   | <b>column 3<br/>eligible person</b>  |
|--------------------------|---|--|
| 8                        | refusing to revoke an improvement notice under section 152  | (a) the relevant responsible person for the improvement notice; or<br>(b) an employer whose undertaking is adversely affected by the notice          |
| 9                        | giving a prohibition notice under section 155   | (a) the relevant responsible person for the prohibition notice; or<br>(b) an employer whose undertaking is adversely affected by the notice          |
| 10                       | extending the relevant period for a prohibition notice under section 158  | (a) the relevant responsible person for the prohibition notice; or<br>(b) an employer whose undertaking is adversely affected by the notice          |
| 11                       | refusing under section 162 (3) to agree to inspect a vehicle or equipment at a place other than where it was originally inspected | (a) the owner of, or a person with a property interest in, the vehicle; or<br>(b) an employer whose undertaking is adversely affected by the refusal |

| <b>column 1<br/>item</b> | <b>column 2<br/>decisions</b>                             | <b>column 3<br/>eligible person</b>  |
|--------------------------|---|--|
| 12                       | revoking a prohibition notice under section 163           | <p>(a) the health and safety representative for a designated work group in which there is an employee whose work is affected by the notice; or</p> <p>(b) if there is no health and safety representative for an employee whose work is affected by the notice—an employee whose work is affected by the notice; or</p> <p>(c) an involved union in relation to an employee whose work is affected by the notice</p> |
| 13                       | refusing to revoke a prohibition notice under section 163 | <p>(a) the relevant responsible person for the prohibition notice; or</p> <p>(b) an employer whose undertaking is adversely affected by the notice</p>   |

## **Part 1.2**

## **Reviewable decisions of commissioner**

| <b>column 1<br/>item</b> | <b>column 2<br/>decisions</b>                                    | <b>column 3<br/>eligible person</b>   |
|--------------------------|--|---|
| 1                        | establishing a designated work group under section 54 (1) or (2) | <p>(a) an involved union in relation to the designated work group; or</p> <p>(b) an employer whose employee is in the designated work group</p> |

**Schedule 1**  
**Part 1.2**

Appeal rights  
Reviewable decisions of commissioner

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| <b>column 1<br/>item</b> | <b>column 2<br/>decisions</b>  | <b>column 3<br/>eligible person</b>  |
|--------------------------|--|--|
| 2                        | varying a designated work group under section 54 (3)                     | (a) an involved union in relation to the designated work group; or<br>(b) an employer whose employee is in the designated work group                                   |
| 3                        | refusing to declare that section 55 applies to a site                    | the applicant for the declaration  |
| 4                        | disqualifying a health and safety representative under section 64 (1)    | the person disqualified  |
| 5                        | revoking a provisional improvement notice under section 71 (4)           | (a) the health and safety representative who gave the notice; or<br>(b) an involved union in relation to an employee whose work is affected by the notice              |
| 6                        | refusing to revoke a provisional improvement notice under section 71 (4) | (a) the person to whom the notice was given; or<br>(b) an employer whose undertaking is adversely affected by the refusal  |
| 7                        | deciding to seize plant, a substance or thing under section 100          | (a) the owner of, or a person with a property interest in, the plant, substance or thing; or<br>(b) an employer whose undertaking is adversely affected by the seizure |

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| <b>column 1<br/>item</b> | <b>column 2<br/>decisions</b>   | <b>column 3<br/>eligible person</b>  |
|--------------------------|---|--|
| 8                        | revoking, or refusing to revoke, a compliance agreement under section 141 (3)   | (a) a responsible person for the contravention to which the compliance agreement relates; or<br>(b) an employer whose undertaking is adversely affected by the agreement |
| 9                        | giving an improvement notice under section 146  | (a) a responsible person for the contravention to which the improvement notice relates; or<br>(b) an employer whose undertaking is adversely affected by the notice      |
| 10                       | refusing to extend the compliance period for an improvement notice, or extending the period for less than the period asked for, under section 149 | (a) the relevant responsible person for the compliance notice; or<br>(b) an employer whose undertaking is adversely affected by the notice                               |

**Schedule 1**  
**Part 1.2**

Appeal rights  
Reviewable decisions of commissioner

| <b>column 1<br/>item</b> | <b>column 2<br/>decisions</b>  | <b>column 3<br/>eligible person</b>   |
|--------------------------|--|---|
| 11                       | revoking an improvement notice under section 152                         | (a) the health and safety representative for a designated work group in which there is an employee whose work is affected by the notice; or<br><br>(b) if there is no health and safety representative for an employee whose work is affected by the notice—an employee whose work is affected by the notice; or<br><br>(c) an involved union in relation to an employee whose work is affected by the notice |
| 12                       | refusing to revoke an improvement notice under section 152               | (a) the relevant responsible person for the improvement notice; or<br><br>(b) an employer whose undertaking is adversely affected by the notice   |
| 13                       | giving a prohibition notice under section 155                            | (a) the relevant responsible person for the prohibition notice; or<br><br>(b) an employer whose undertaking is adversely affected by the notice   |
| 14                       | extending the relevant period for a prohibition notice under section 158 | (a) the relevant responsible person for the prohibition notice; or<br><br>(b) an employer whose undertaking is adversely affected by the notice   |
| 15                       | refusing to reinspect a situation or circumstances under section 162     | the relevant responsible person for the prohibition notice  |

| <b>column 1<br/>item</b> | <b>column 2<br/>decisions</b>   | <b>column 3<br/>eligible person</b>   |
|--------------------------|---|---|
| 16                       | refusing under section 162 (3) to agree to inspect a vehicle or equipment at a place other than where it was originally inspected | (a) the owner of, or a person with a property interest in, the vehicle; or<br>(b) an employer whose undertaking is adversely affected by the refusal  |
| 17                       | revoking a prohibition notice under section 163   | (a) the health and safety representative for a designated work group in which there is an employee whose work is affected by the notice; or<br>(b) if there is no health and safety representative for an employee whose work is affected by the notice—an employee whose work is affected by the notice; or<br>(c) an involved union in relation to an employee whose work is affected by the notice |
| 18                       | refusing to revoke a prohibition notice under section 163   | (a) the relevant responsible person for the prohibition notice; or<br>(b) an employer whose undertaking is adversely affected by the notice   |



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| <b>column 1<br/>item</b> | <b>column 2<br/>decisions</b>  | <b>column 3<br/>eligible person</b>     |
|--------------------------|--|---|
| 4                        | refusing to agree to the relevant person for an enforceable undertaking withdrawing from, or amending, the undertaking under section 171 | the relevant person for the undertaking |
| 5                        | ending, or refusing to end, an enforceable undertaking under section 172   | the relevant person for the undertaking |

## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1 defines the following terms:

- chief executive
- found guilty
- under.

***alleged contravention***, for division 7.6 (Enforceable undertakings)—see section 169 (3) (b) (Making of safety undertakings).

***analysis***, of a substance or other thing, includes examining or testing the thing.

***appointed member*** means a member appointed under section 14 (a), (b) or (c).

***approved code of practice*** means a code of practice approved under section 206 (Codes of practice).

***associated law*** means any of the following laws:

- (a) the *Machinery Act 1949*;
- (b) the *Road Transport Reform (Dangerous Goods) Act 1995* (Cwlth);
- (c) the *Scaffolding and Lifts Act 1912*;
- (d) the *Workers Compensation Act 1951*;
- (e) any other Act or subordinate law, or provision of an Act or subordinate law, prescribed by regulation.

***at*** premises includes in or on the premises.

**authorised analyst** means a person appointed as an authorised analyst under section 221.

**authorised representative**, for division 5.4 (Entry to workplaces by authorised representatives)—see section 74.

**basis**, for giving a prohibition notice, for division 7.5 (Prohibition notices)—see section 154.

**chair** means the chair of the council appointed under section 16.

**commission** means the Australian Industrial Relations Commission.

**commissioner** means the Occupational Health and Safety Commissioner appointed under section 26.

**compliance agreement**—see section 140 (2).

**connected**, for part 6 (Enforcement powers)—see section 89.

**council** means the Occupational Health and Safety Council established by section 11.

**dangerous occurrence** means an occurrence, at a workplace, that is declared by the regulations to be a dangerous occurrence.

**data**, for part 6 (Enforcement powers)—see section 89.

**data storage device**, for part 6 (Enforcement powers)—see section 89.

**deputy chair** means the deputy chair of the council appointed under section 16.

**designated work group** means—

- (a) a group of employees established as a designated work group under section 53 (1) or section 54 (1) or (2);
- (b) such a group as varied under section 53 (3) or section 54 (3).

**eligible person**, for part 8 (Review of decisions)—

- (a) for an internally reviewable decision—see section 184 (b);

(b) for a reviewable decision—see section 184 (d).

**employee** means an individual who is employed under a contract of service.

**employer** means a person who employs an individual under a contract of service.

**enforceable undertaking**, for division 7.6 (Enforceable undertakings)—see section 168.

**examine** includes inspect, weigh, count, test and measure.

**hazard**—a thing (including an intrinsic property of a thing), or a situation is a **hazard** if it has the potential to kill or injure a person.

**health and safety committee** means a health and safety committee established under the regulations.

**health and safety representative** means a health and safety representative selected in accordance with section 56.

**improvement notice** means a notice in force under section 145 (1).

**injury** includes—

- (a) the contraction of a disease; and
- (b) the aggravation, acceleration or recurrence of an injury or a disease.

**inspector**—

- (a) means an inspector under section 201; and
- (b) for division 8.2 (Reconsideration and review of decisions)—see section 183.

**internally reviewable decision**, for part 8 (Review of decisions)—see section 184 (a).



***involved union*** means—

- (a) in relation to an employee of an employer—a registered union of which the employee is a member, being an employee who is qualified to be such a member because of the work that the employee performs as an employee of the employer; or
- (b) in relation to a designated work group—a registered union of which an employee included in the group is a member, being an employee who is qualified to be such a member because of the work the employee performs as an employee included in the group.

***occupier***—

- (a) of a workplace—includes a person believed, on reasonable grounds, to be the person in charge of the performance of work at the workplace and a person apparently in charge of the performance of the work; and
- (b) of premises—includes a person believed, on reasonable grounds, to be the occupier or person in charge of the premises and a person apparently in charge of the premises.

***offence***, for part 6 (Enforcement powers)—see section 89.

***office***, in a registered organisation, for division 5.4 (Entry to workplaces by authorised representatives)—see section 74.

***person assisting***, in relation to a search warrant, for part 6 (Enforcement powers)—see section 89.

***plant*** includes—

- (a) machinery, equipment or a tool; and
- (b) a component of, or accessory to machinery, equipment or a tool.

***premises*** includes—

- (a) a structure, building, aircraft, vehicle or vessel; and

- (b) a place (whether enclosed or built on or not); and
- (c) a part of premises (including premises of a kind mentioned in paragraph (a) or (b)).

**president** means the president of the commission.

**prohibition notice**—see section 155.

**provisional improvement notice** means a notice in force under section 67 (1).

**registered organisation**, for division 5.4 (Entry to workplaces by authorised representatives)—see section 74.

**relevant person**, for an enforceable undertaking, for division 7.6—see section 168.

**relevant responsible person**—

- (a) for division 7.3 (Compliance agreements)—see section 139; and
- (b) for division 7.4 (Improvement notices)—see section 145; and
- (c) for division 7.5 (Prohibition notices)—see section 154.

**responsible person**, for a contravention of a provision of this Act, for part 7 (Compliance measures)—see section 133.

**reviewable decision**, for part 8 (Review of decisions)—see section 184 (c).

**review authority** means the Occupational Health and Safety Review Authority established by section 180.

**risk** means the likelihood of death or harm to a person from a hazard.

**safety duty**, for division 4.2 (Failure to comply with safety duties)—see section 46.

**safety undertaking**, for division 7.6 (Enforceable undertakings)—see section 169 (2).

***search warrant***, for part 6 (Enforcement powers)—see section 89.

***self-employed person*** means an individual who works for gain or reward otherwise than as an employee (whether or not the individual employs another person).

***serious harm***, to a person—see the Criminal Code, dictionary.

***substance*** includes a matter, material or thing, whether solid, liquid or gas or in a mixture.

***vehicle*** means any kind of vehicle on wheels (including a vehicle used on railways or tramways), and includes an aircraft or vessel used on water.

***work*** means work as an employee or as a self-employed person.

***workplace*** means any premises where employees or self-employed persons work.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

|   |   |
|---|---|
| am = amended  | ord = ordinance   |
| amdt = amendment                                    | orig = original   |
| ch = chapter  | par = paragraph/subparagraph                                      |
| def = definition                                    | pres = present  |
| dict = dictionary                                   | prev = previous   |
| disallowed = disallowed by the Legislative Assembly | (prev...) = previously  |
| div = division                                      | pt = part   |
| exp = expires/expired                               | r = rule/subrule  |
| Gaz = gazette                                       | renum = renumbered  |
| hdg = heading                                       | reloc = relocated   |
| IA = Interpretation Act 1967                        | R[X] = Republication No   |
| ins = inserted/added                                | RI = reissue  |
| LA = Legislation Act 2001                           | s = section/subsection  |
| LR = legislation register                           | sch = schedule  |
| LRA = Legislation (Republication) Act 1996          | sdiv = subdivision  |
| mod = modified/modification                         | sub = substituted   |
| o = order   | SL = Subordinate Law  |
| om = omitted/repealed                               | <u>underlining</u> = whole or part not commenced or to be expired |

### 3 Legislation history

After 11 May 1989 and before 10 November 1999, Acts commenced on notification day unless otherwise stated (see *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 25).

#### **Occupational Health and Safety Act 1989 No 18**

notified 14 November 1989 (Gaz 1989 No S35)

s 1, s 2 commenced 14 November 1989 (s 2 (1))

s 3, s 5, pt 2, s 88, s 95 and s 97 commenced 21 February 1990 (s 2 (2) and Gaz 1990 No S6)

s 4 commenced 14 May 1990 (s 2 (3))

s 6, s 7 and div 5.2 commenced 26 March 1990 (s 2 (2) and Gaz 1990 No S6)

s 8, pt 3, div 5.1, pts 6 and 7, ss 85-87, 89-94 and 96 commenced 9 April 1990 (s 2 (2) and Gaz 1990 No S6)

pt 4 commenced 10 May 1990 (s 2 (2) and Gaz 1990 No S6)

as amended by

#### **Occupational Health and Safety (Amendment) Act 1991 No 11**

notified 3 April 1991 (Gaz 1991 No S19)

commenced 3 April 1991

#### **Occupational Health and Safety (Amendment) Act 1992 No 58**

notified 28 October 1992 (Gaz 1992 No S174)

ss 1-3 commenced 28 October 1992 (s 2 (1))

remainder commenced 1 July 1993 (s 2 (2))

#### **Acts Revision (Position of Crown) Act 1993 No 44 sch 2**

notified 27 August 1993 (Gaz 1993 No S165)

commenced 27 August 1993 (s 2)

#### **Supreme Court (Amendment) Act (No 2) 1993 No 91 sch 3**

notified 17 December 1993 (Gaz 1993 No S258)

commenced 17 December 1993 (s 2)

#### **Public Sector Management (Consequential and Transitional Provisions) Act 1994 No 38 sch 1 pt 62**

notified 30 June 1994 (Gaz 1994 No S121)

s 1, s 2 commenced 30 June 1994 (s 2 (1))

sch 1 pt 62 commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

## Endnotes

3 Legislation history

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**Statute Law Revision (Penalties) Act 1994 No 81 sch**

notified 29 November 1994 (Gaz 1994 No S253)  
s 1, s 2 commenced 29 November 1994 (s 2 (1))  
remainder commenced 29 November 1994 (s 2 (2) and Gaz 1994  
No S269)

**Statutory Offices (Miscellaneous Provisions) Act 1994 No 97 sch pt 1**

notified 15 December 1994 (Gaz 1994 No S280)  
s 1, s 2 commenced 15 December 1994 (s 2 (1))  
sch pt 1 commenced 15 December 1994 (s 2 (2) and Gaz 1994 No  
S293)

**Annual Reports (Government Agencies) (Consequential Provisions)  
Act 1995 No 25 sch**

notified 5 September 1995 (Gaz 1995 No S212)  
commenced 5 September 1995 (s 2)

**Statute Law Revision Act 1995 No 46 sch**

notified 18 December 1995 (Gaz 1995 No S306)  
commenced 18 December 1995 (s 2)

**Occupational Health and Safety (Amendment) Act 1996 No 12**

notified 1 May 1996 (Gaz 1996 No S71)  
commenced 1 May 1996 (s 2)

**Remuneration Tribunal (Consequential Amendments) Act 1997 No 41  
sch 1 (as am by Act 2002 No 49 amdt 3.222)**

notified 19 September 1997 (Gaz 1997 No S264)  
commenced 24 September 1997 (s 2 as am by Act 2002 No 49  
amdt 3.222)

**Occupational Health and Safety (Amendment) Act 1997 No 44**

notified 19 September 1997 (Gaz 1997 No S264)  
s 4 (a), s 10 never commenced and rep 2001 No 11 pt 4.3  
remainder commenced 19 September 1997 (s 2 (2))

**Legal Practitioners (Consequential Amendments) Act 1997 No 96  
sch 1**

notified 1 December 1997 (Gaz 1997 No S380)  
s 1, s 2 commenced 1 December 1997 (s 2 (1))  
sch 1 commenced 1 June 1998 (s 2 (2))

**Statute Law Revision (Penalties) Act 1998 No 54 sch**

notified 27 November 1998 (Gaz 1998 No S207)  
s 1, s 2 commenced 27 November 1998 (s 2 (1))  
sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

**Occupational Health and Safety (Amendment) Act 1999 No 24**

notified 6 May 1999 (Gaz 1999 No S22)  
ss 1-3 commenced 6 May 1999 (s 2 (1))  
remainder commenced 6 November 1999 (s 2 (2) and 2 (3))

**Law Reform (Miscellaneous Provisions) Act 1999 No 66 sch 3**

notified 10 November 1999 (Gaz 1999 No 45)  
commenced 10 November 1999 (s 2)

**Occupational Health and Safety (Amendment) Act (No 2) 1999 No 82**

notified 23 December 1999 (Gaz 1999 No S65)  
ss 1-3 commenced 23 December 1999 (s 2 (1))  
remainder commenced 23 June 2000 (s 2 (2) and 2 (3))

**Occupational Health and Safety Amendment Act 2000 No 20**

notified 15 June 2000 (Gaz 2000 No 24)  
s 1, s 2 commenced 15 June 2000 (IA s 10B)  
remainder commenced 23 June 2000 (s 2)

**Occupational Health and Safety Amendment Act 2000 (No 2) No 62**

notified 2 November 2000 (Gaz 2000 No 44)  
commenced 2 November 2000 (s 2)

**Statute Law Amendment Act 2000 No 80 amdt 3.16, amdt 3.17**

notified 21 December 2000 (Gaz 2000 No S69)  
s 1, s 2 commenced 21 December 2000 (IA s 10B)  
amdt 3.16, amdt 3.17 taken to have commenced 23 June 2000 (s 2 (2),  
amdt 3.16, amdt 3.17)

**Statute Law Amendment Act 2001 No 11 sch 3, sch 4**

notified 29 March 2001 (Gaz 2001 No 13)  
commenced 29 March 2001 (s 2)

**Occupational Health and Safety Amendment Act 2001 No 21 pt 2**

notified 19 April 2001 (Gaz 2001 No 16)  
s 1, s 2 commenced 19 April 2001 (IA s 10B)  
pt 2 commenced 19 October 2001 (IA s 10E)

## Endnotes

3 Legislation history

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**Legislation (Consequential Amendments) Act 2001 No 44 pt 264**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 264 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

**Legislation Amendment Act 2002 No 11 pt 2.36**

notified LR 27 May 2002  
s 1, s 2 commenced 27 May 2002 (LA s 75)  
pt 2.36 commenced 28 May 2002 (s 2 (1))

**Criminal Code 2002 No 51 pt 1.13**

notified LR 20 December 2002  
s 1, s 2 commenced 20 December 2002 (LA s 75)  
pt 1.13 commenced 1 January 2003 (s 2 (1))

**Statute Law Amendment Act 2002 (No 2) No 49 amdt 3.222**

notified LR 20 December 2002  
s 1, s 2 taken to have commenced 7 October 1994 (LA s 75 (2))  
amdt 3.222 commenced 24 September 1997 (s 2 (3))

*Note* This Act only amends the Remuneration Tribunal (Consequential Amendments) Act 1997 No 41.

**Dangerous Substances Act 2004 A2004-7 sch 1 pt 1.5**

notified LR 19 March 2004  
s 1, s 2 commenced 19 March 2004 (LA s 75 (1))  
sch 1 pt 1.5 commenced 5 April 2004 (s 2 and CN2004-6)

**Annual Reports Legislation Amendment Act 2004 A2004-9 sch 1 pt 1.24**

notified LR 19 March 2004  
s 1, s 2 commenced 19 March 2004 (LA s 75 (1))  
sch 1 pt 1.24 commenced 13 April 2004 (s 2 and see Annual Reports (Government Agencies) Act 2004 A2004-8, s 2 and CN2004-5)

**Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004 A2004-15 sch 1 pt 1.32, sch 2 pt 2.58**

notified LR 26 March 2004  
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))  
sch 1 pt 1.32, sch 2 pt 2.58 commenced 9 April 2004 (s 2 (1))



**Occupational Health and Safety Amendment Act 2004 A2004-29**

notified LR 8 July 2004

s 1, s 2 commenced 8 July 2004 (LA s 75 (1))

s 16 commenced 1 January 2005 (s 2 (2))

remainder commenced 5 August 2004 (s 2 (1))

**Statute Law Amendment Act 2005 A2005-20 sch 1 pt 1.3, sch 3 pt 3.43**

notified LR 12 May 2005

s 1, s 2 taken to have commenced 8 March 2005 (LA s 75 (2))

sch 1 pt 1.3, sch 3 pt 3.43 commenced 2 June 2005 (s 2 (1))

**Occupational Health and Safety Legislation Amendment Act 2005 A2005-38 s 6**

notified LR 30 August 2005

s 1, s 2 commenced 30 August 2005 (LA s 75 (1))

s 6 commenced 31 August 2005 (s 2)

**Criminal Code (Administration of Justice Offences) Amendment Act 2005 A2005-53 sch 1 pt 1.23**

notified LR 26 October 2005

s 1, s 2 commenced 26 October 2005 (LA s 75 (1))

sch 1 pt 1.23 commenced 23 November 2005 (s 2)

**Emergencies Amendment Act 2005 A2005-56 sch 1 pt 1.2**

notified LR 23 November 2005

s 1, s 2 commenced 23 November 2005 (LA s 75 (1))

sch 1 pt 1.2 commenced 24 November 2005 (s 2)

**Workers Compensation Amendment Act 2006 A2006-4 sch 2 pt 2.1 (as am by A2007-3 pt 3.112)**

notified LR 22 February 2006

s 1, s 2 commenced 22 February 2006 (LA s 75 (1))

sch 2 pt 2.1 commenced 1 July 2006 (s 2 (2))

**Administrative (Miscellaneous Amendments) Act 2006 A2006-30 sch 1 pt 1.8**

notified LR 16 June 2006

s 1, s 2 commenced 16 June 2006 (LA s 75 (1))

sch 1 pt 1.8 commenced 1 July 2006 (s 2 (1))

## Endnotes

4 Amendment history

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### **Justice and Community Safety Legislation Amendment Act 2006 A2006-40 sch 2 pt 2.25**

notified LR 28 September 2006

s 1, s 2 commenced 28 September 2006 (LA s 75 (1))

sch 2 pt 2.25 commenced 29 September 2006 (s 2 (1))

### **Statute Law Amendment Act 2007 A2007-3 sch 3 pt 3.112**

notified LR 22 March 2007

s 1, s 2 taken to have commenced 1 July 2006 (LA s 75 (2))

sch 3 pt 3.112 taken to have commenced 1 July 2006 (s 2 (2))

*Note* This Act only amends the Workers Compensation Amendment Act 2006 A2006-4.

### **Occupational Health and Safety Amendment Act 2007 A2007-31**

notified LR 24 October 2007

s 1, s 2 commenced 24 October 2007 (LA s 75 (1))

remainder commenced 25 October 2007 (s 2)

## 4 Amendment history

### **Name of Act**

s 1 sub A2004-29 amdt 1.1

### **Objects**

s 2 orig s 2 om R8 LRA  
(prev s 3) renum R16 LA (see A2004-29 amdt 1.16)

### **Dictionary**

s 3 orig s 3 renum as s 2  
(prev s 4) ins A2004-29 amdt 1.2  
renum R16 LA (see A2004-29 amdt 1.16)

### **Notes**

s 4 orig s 4 om 1993 No 44 sch 2  
prev s 4 renum as s 3  
(prev s 4A) ins A2004-29 amdt 1.2  
renum R16 LA (see A2004-29 amdt 1.16)

### **Notes**

s 4A renum as s 4

### **Offences against Act—application of Criminal Code etc**

s 4B renum as s 5

**Offences against Act—application of Criminal Code etc**

s 5 orig s 5 renum as s 6  
(prev s 4B) ins A2004-29 amdt 1.2  
renum R16 LA (see A2004-29 amdt 1.16)

**References to employee of employer at workplace**

s 5A renum as s 7

**Employee taken to be at work for Act**

s 6 orig s 6 renum as s 8  
(prev s 5) am 2001 No 44 amdts 1.3000-1.3002, amdt 1.3035;  
2002 No 11 amdt 2.73; ss renum R10 LA (see 2002 No 11  
amdt 2.74)  
defs reloc to dict A2004-29 amdt 1.6  
def **administering authority** ins 2001 No 21 s 4  
om A2004-29 amdt 1.3  
def **authorised person** ins 2001 No 21 s 4  
om A2004-29 amdt 1.3  
def **commencement date** om A2004-29 amdt 1.3  
def **Crimes Act** om A2004-29 amdt 1.3  
def **date of service** ins 2001 No 21 s 4  
om A2004-29 amdt 1.3  
def **determined fee** ins 1997 No 44 s 4  
om 2001 No 44 amdt 1.2999  
def **infringement notice** ins 2001 No 21 s 4  
om A2004-29 amdt 1.5  
def **infringement notice offence** ins 2001 No 21 s 4  
om A2004-29 amdt 1.5  
def **infringement notice penalty** ins 2001 No 21 s 4  
om A2004-29 amdt 1.5  
def **inspector** sub 1994 No 97 sch pt 1  
om A2004-29 amdt 1.5  
def **occupier** om A2004-29 amdt 1.5  
def **plant** om A2004-29 amdt 1.5  
def **prohibition notice** om A2004-29 amdt 1.5  
def **registrar** sub 1994 No 97 sch pt 1  
om 1999 No 82 s 4  
def **reminder notice** ins 2001 No 21 s 4  
om A2004-29 amdt 1.5  
sub A2004-29 amdt 1.7  
renum R16 LA (see A2004-29 amdt 1.16)

**References to employee of employer at workplace**

s 7 orig s 7 renum as s 9  
(prev s 5A) ins A2004-29 amdt 1.7  
renum R16 LA (see A2004-29 amdt 1.16)

## Endnotes

### 4 Amendment history

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#### **Voluntary workers etc**

s 8 orig s 8 renum as s 10  
(prev s 6) am 2001 No 44 amdts 1.3003-1.3006  
renum R16 LA (see A2004-29 amdt 1.16)

#### **Exemptions**

s 9 orig s 9 renum as s 11  
(prev s 7) sub 1997 No 44 s 5  
am 2001 No 44 amdt 1.3007, amdt 1.3008, amdt 1.3035  
renum R16 LA (see A2004-29 amdt 1.16)

#### **Service of documents etc on employers**

s 10 orig s 10 renum as s 12  
(prev s 8) am 2001 No 44 amdt 1.3035; pars renum R16 LA  
(see A2004-29 amdt 1.16)  
renum R16 LA (see A2004-29 amdt 1.16)

#### **Establishment, functions and powers**

div 2.1 hdg (prev pt 2 div 1 hdg) renum R9 LA

#### **Establishment**

s 11 orig s 11 renum as s 13  
(prev s 9) renum R16 LA (see A2004-29 amdt 1.16)

#### **Functions**

s 12 orig s 12 am 1991 No 11 s 4  
om 1995 No 25 sch  
(prev s 10) am 1996 No 12 s 4; 2001 No 44  
amdts 1.3009-1.3011; pars renum R16 LA (see A2004-29  
amdt 1.16)  
renum R16 LA (see A2004-29 amdt 1.16)  
am A2006-4 amdt 2.1; A2007-31 ss 4-6

#### **Powers**

s 13 orig s 13 renum as s 14  
(prev s 11) renum R16 LA (see A2004-29 amdt 1.16)  
om A2007-31 s 7

#### **Constitution and meetings**

div 2.2 hdg (prev pt 2 div 2 hdg) renum R9 LA

#### **Membership**

s 14 orig s 14 renum as s 15  
(prev s 13) am 1994 No 38 sch 1 pt 62; 1996 No 12 s 5; 1999  
No 82 s 5  
renum R16 LA (see A2004-29 amdt 1.16)  
am A2007-31 ss 8-10

**Terms of appointment**

s 15 orig s 15 om 1996 No 12 s 6  
(prev s 14) am 1999 No 82 s 6  
renum R16 LA (see A2004-29 amdt 1.16)  
sub A2007-31 s 11

**Appointment of chair and deputy chair**

s 16 sub A2007-31 s 11

**Leave of absence**

s 17 orig s 17 om 1997 No 41 sch 1  
(prev s 18) renum R16 LA (see A2004-29 amdt 1.16)  
sub A2007-31 s 11

**Disclosure of interest**

s 18 orig s 18 renum as s 17  
(prev s 19) renum R16 LA (see A2004-29 amdt 1.16)

**Resignation**

s 19 orig s 19 renum as s 18  
(prev s 20) am 1999 No 82 s 7  
renum R16 LA (see A2004-29 amdt 1.16)  
om A2007-31 s 12

**Ending appointment of council member**

s 20 orig s 20 renum as s 19  
(prev s 21) am 1999 No 82 s 8  
renum R16 LA (see A2004-29 amdt 1.16)  
sub A2007-31 s 13

**Acting members**

s 21 orig s 21 renum as s 20  
(prev s 22) am 1999 No 82 s 9  
renum R16 LA (see A2004-29 amdt 1.16)  
om A2007-31 s 14

**Convening meetings**

s 22 orig s 22 renum as s 21  
(prev s 23) renum R16 LA (see A2004-29 amdt 1.16)  
am A2007-31 s 15

**Procedure at meetings**

s 23 orig s 23 renum as s 22  
(prev s 24) am 1996 No 12 s 7; ss renum R9 LA  
renum R16 LA (see A2004-29 amdt 1.16)  
am A2007-31 s 16

## Endnotes

### 4 Amendment history

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#### **Immunity from suit**

s 24 orig s 24 renum as s 23  
(prev s 24A) ins 1996 No 12 s 8  
renum R16 LA (see A2004-29 amdt 1.16)  
am A2007-31 s 17

#### **Immunity from suit**

s 24A renum as s 24

#### **Advisory committees**

div 2.3 hdg (prev pt 2 div 3 hdg) renum R9 LA

#### **Occupational Health and Safety Commissioner**

pt 2A hdg renum as pt 3 hdg

#### **Appointment**

s 25A renum as s 26

#### **Functions**

s 25B renum as s 27

#### **Resignation**

s 25C renum as s 28

#### **Retirement**

s 25D renum as s 29

#### **Removal of commissioner**

s 25E renum as s 30

#### **Suspension and removal of commissioner**

s 25F renum as s 31

#### **Ministerial directions**

s 25G renum as s 32

#### **Acting commissioner**

s 25H renum as s 33

#### **Staff**

s 25I renum as s 34

#### **Delegation**

s 25J renum as s 35

#### **Application of Financial Management Act**

s 25K renum as s 36

#### **Occupational Health and Safety Commissioner**

pt 3 hdg orig pt 3 hdg renum as pt 4 hdg  
(prev pt 2A hdg) ins 1999 No 82 s 10  
renum R16 LA (see A2004-29 amdt 1.16)

**Appointment**

s 26 orig s 26 om 1997 No 41 sch 1  
(prev s 25A) ins 1999 No 82 s 10  
renum R16 LA (see A2004-29 amdt 1.16)

**Functions**

s 27 orig s 27 renum as s 37  
(prev s 25B) ins 1999 No 82 s 10  
renum R16 LA (see A2004-29 amdt 1.16)

**Resignation**

s 28 orig s 28 renum as s 38  
(prev s 25C) ins 1999 No 82 s 10  
renum R16 LA (see A2004-29 amdt 1.16)

**Retirement**

s 29 orig s 29 renum as s 39  
(prev s 25D) ins 1999 No 82 s 10  
renum R16 LA (see A2004-29 amdt 1.16)

**Removal of commissioner**

s 30 orig s 30 renum as s 40  
(prev s 25E) ins 1999 No 82 s 10  
renum R16 LA (see A2004-29 amdt 1.16)

**Suspension and removal of commissioner**

s 31 orig s 31 renum as s 41  
(prev s 25F) ins 1999 No 82 s 10  
renum R16 LA (see A2004-29 amdt 1.16)

**Ministerial directions**

s 32 orig s 32 renum as s 42  
(prev s 25G) ins 1999 No 82 s 10  
am 2000 No 80 amdt 3.16  
renum R16 LA (see A2004-29 amdt 1.16)  
am A2006-30 amdt 1.71

**Acting commissioner**

s 33 orig s 33 renum as s 43  
(prev s 25H) ins 1999 No 82 s 10  
renum R16 LA (see A2004-29 amdt 1.16)

**Staff**

s 34 orig s 34 renum as s 44  
(prev s 25I) ins 1999 No 82 s 10  
am 2000 No 20 s 4  
renum R16 LA (see A2004-29 amdt 1.16)

## Endnotes

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### **Delegation**

s 35 orig s 35 renum as s 45  
(prev s 25J) ins 1999 No 82 s 10  
renum R16 LA (see A2004-29 amdt 1.16)

### **Commencement of prosecution in Magistrates Court**

s 35A orig s 35A renum and reloc as s 35G

### **Meaning of *safety duty* for div 3.2**

s 35B renum as s 46

### **Failure to comply with safety duty—general offence**

s 35C renum as s 47

### **Failure to comply with safety duty—exposing people to substantial risk of serious harm**

s 35D renum as s 48

### **Failure to comply with safety duty—causing serious harm to people**

s 35E renum as s 49

### **Alternative verdicts for failure to comply with safety duties**

s 35F renum as s 50

### **Commencement of prosecution in Magistrates Court**

s 35G renum as s 51

### **Application of Financial Management Act**

s 36 orig s 36 renum as s 52  
(prev s 25K) ins 2000 No 20 s 5  
renum R16 LA (see A2004-29 amdt 1.16)  
om A2006-30 amdt 1.72

### **Safety duties for occupational health and safety**

pt 4 hdg orig pt 4 hdg renum as pt 5 hdg  
(prev pt 3 hdg) sub A2004-29 s 4  
renum R16 LA (see A2004-29 amdt 1.16)

### **Safety duties**

div 4.1 hdg orig pt 4.1 hdg renum as pt 5.1 hdg  
(prev pt 3.1 hdg) ins A2004-29 s 4  
renum R16 LA (see A2004-29 amdt 1.16)

### **Duties of employers in relation to employees**

s 37 orig s 37 renum as s 53  
(prev s 27) am 1994 No 81 sch; 2001 No 21 s 5; A2004-29 s 5  
renum R16 LA (see A2004-29 amdt 1.16)

### **Duties of employers in relation to third parties**

s 38 orig s 38 renum as s 54  
(prev s 28) am 1994 No 81 sch; 2001 No 21 s 6; A2004-29 s 6  
renum R16 LA (see A2004-29 amdt 1.16)



**Duties of people in control of workplaces**

- s 39 hdg orig s 39 hdg renum as s 55 hdg  
(prev s 29 hdg) sub A2004-29 amdt 1.8  
renum R16 LA (see A2004-29 amdt 1.16)
- s 39 orig s 39 renum as s 55  
(prev s 29) am 1994 No 81 sch; 2001 No 21 s 7; A2004-29 s 7  
renum R16 LA (see A2004-29 amdt 1.16)

**Duties of employees**

- s 40 orig s 40 renum as s 56  
(prev s 30) am 1994 No 81 sch; 2001 No 44 amdt 1.3012,  
amdt 1.3013, amdt 1.3035; A2004-29 s 8, amdt 1.9  
renum R16 LA (see A2004-29 amdt 1.16)

**Duties of self-employed people**

- s 41 hdg orig s 41 hdg renum as s 57 hdg  
(prev s 31 hdg) sub A2004-29 amdt 1.10  
renum R16 LA (see A2004-29 amdt 1.16)
- s 41 orig s 41 renum as s 57  
(prev s 31) am 1994 No 81 sch; A2004-29 s 9  
renum R16 LA (see A2004-29 amdt 1.16)

**Duties of manufacturers in relation to plant and substances**

- s 42 orig s 42 renum as s 58  
(prev s 32) am 1994 No 81 sch; A2004-29 s 10  
renum R16 LA (see A2004-29 amdt 1.16)

**Duties of suppliers in relation to plant and substances**

- s 43 orig s 43 renum as s 59  
(prev s 33) am 1994 No 81 sch; A2004-29 s 11  
renum R16 LA (see A2004-29 amdt 1.16)

**Duties of people erecting or installing plant in workplace**

- s 44 hdg orig s 44 hdg renum as s 60 hdg  
(prev s 34 hdg) sub A2004-29 amdt 1.11  
renum R16 LA (see A2004-29 amdt 1.16)
- s 44 orig s 44 renum as s 60  
(prev s 34) am 1994 No 81 sch; 2001 No 21 s 8; A2004-29  
s 12  
renum R16 LA (see A2004-29 amdt 1.16)

**Reliance on information supplied or results of research**

- s 45 orig s 45 renum as s 61  
(prev s 35) renum R16 LA (see A2004-29 amdt 1.16)

**Failure to comply with safety duties**

- div 4.2 hdg orig div 4.2 hdg renum as div 5.2 hdg  
(prev div 3.2 hdg) ins A2004-29 s 14  
renum R16 LA (see A2004-29 amdt 1.16)

## Endnotes

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#### **Meaning of *safety duty* for div 4.2**

s 46 orig s 46 renum as s 62  
(prev s 35B) ins A2004-29 s 14  
renum R16 LA (see A2004-29 amdt 1.16)

#### **Failure to comply with safety duty—general offence**

s 47 orig s 47 renum as s 63  
(prev s 35C) ins A2004-29 s 14  
renum R16 LA (see A2004-29 amdt 1.16)

#### **Failure to comply with safety duty—exposing people to substantial risk of serious harm**

s 48 orig s 48 renum as s 64  
(prev s 35D) ins A2004-29 s 14  
renum R16 LA (see A2004-29 amdt 1.16)  
am A2007-31 s 18

#### **Failure to comply with safety duty—causing serious harm to people**

s 49 orig s 49 renum as s 65  
(prev s 35E) ins A2004-29 s 14  
renum R16 LA (see A2004-29 amdt 1.16)  
am A2007-31 s 19

#### **Alternative verdicts for failure to comply with safety duties**

s 50 orig s 50 renum as s 66  
(prev s 35F) ins A2004-29 s 14  
renum R16 LA (see A2004-29 amdt 1.16)  
table renum R16 LA

#### **Commencement of prosecution in Magistrates Court**

s 51 orig s 51 renum as s 67  
(prev s 35A) ins 1999 No 24 s 4  
sub 2000 No 62 s 4  
renum and reloc as s 35G A2004-29 s 13  
renum as s 51 R16 LA (see A2004-29 amdt 1.16)

#### **Workplace arrangements**

pt 5 hdg orig pt 5 hdg renum as pt 6 hdg  
(prev pt 4 hdg) renum R16 LA (see A2004-29 amdt 1.16)

#### **Health and safety representatives**

div 5.1 hdg orig pt 5.1 hdg renum as pt 6.1 hdg  
(prev pt 4 div 1 hdg) renum R9 LA  
(prev pt 4.1 hdg) renum R16 LA (see A2004-29 amdt 1.16)

#### **Small employers not affected**

s 52 orig s 52 renum as s 68  
(prev s 36) am 1992 No 58 s 4  
renum R16 LA (see A2004-29 amdt 1.16)

**Work groups designated by employers**

s 53 orig s 53 renum as s 69  
(prev s 37) am 1994 No 81 sch; A2004-29 amdts 1.12-1.14;  
ss renum R16 LA (see A2004-29 amdt 1.16)  
renum R16 LA (see A2004-29 amdt 1.16)

**Work groups designated by commissioner**

s 54 orig s 54 renum as s 70  
(prev s 38) am 1994 No 81 sch; 1999 No 82 sch; A2004-29  
amdt 1.15  
renum R16 LA (see A2004-29 amdt 1.16)

**Work groups on construction sites**

s 55 orig s 55 renum as s 71  
(prev s 39) am 1999 No 82 sch; 2001 No 44 amdt 1.3014  
renum R16 LA (see A2004-29 amdt 1.16)

**Selection**

s 56 orig s 56 renum as s 72  
(prev s 40) am 1994 No 81 sch  
renum R16 LA (see A2004-29 amdt 1.16)

**Objections to selection**

s 57 orig s 57 renum as s 73  
(prev s 41) am 1994 No 81 sch; 1999 No 82 sch  
renum R16 LA (see A2004-29 amdt 1.16)

**Definitions for div 4.3A**

s 57A renum as s 74

**Authorised representatives**

s 57B renum as s 75

**Disqualification of authorised representatives**

s 57C renum as s 76

**Entry to workplaces by authorised representatives**

s 57D renum as s 77

**Notice of entry by authorised representative**

s 57E renum as s 78

**Production of authorised representative's authorisation**

s 57F renum as s 79

**Powers available to authorised representative on entry**

s 57G renum as s 80

**Damage etc to be minimised by authorised representative**

s 57H renum as s 81

**Compensation for exercise of function by authorised representative**

s 57I renum as s 82

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### **Authorised representative to tell occupier about findings**

s 57J renum as s 83

### **Pretending to be authorised representative**

s 57K renum as s 84

### **Obstructing etc authorised representative**

s 57L renum as s 85

### **Lists of health and safety representatives**

s 58 orig s 58 renum as s 86  
(prev s 42) am 1994 No 81 sch  
renum R16 LA (see A2004-29 amdt 1.16)

### **Powers**

s 59 orig s 59 renum as s 87  
(prev s 43) renum R16 LA (see A2004-29 amdt 1.16)

### **Access to information**

s 60 orig s 60 renum as s 88  
(prev s 44) renum R16 LA (see A2004-29 amdt 1.16)

### **Duties of employers**

s 61 orig s 61 renum as s 89  
(prev s 45) am 1991 No 11 s 5; 1994 No 81 sch; pars renum  
R9 LA  
renum R16 LA (see A2004-29 amdt 1.16)

### **Term of office**

s 62 orig s 62 renum as s 90  
(prev s 46) renum R16 LA (see A2004-29 amdt 1.16)

### **Production of identity card by inspectors**

s 62A renum as s 91

### **Consent to entry by inspectors**

s 62B renum as s 92

### **General powers of inspectors for premises**

s 62C renum as s 93

### **General powers of inspectors for public places**

s 62D renum as s 94

### **Contravention of requirement by inspector**

s 62E renum as s 95

### **Power of inspectors to take action to prevent etc imminent risk**

s 62F renum as s 96

### **Report about action under s 62F**

s 62G renum as s 97

**Recovery of Territory's costs for action under s 62F**

s 62H renum as s 98

**Power of entry etc in relation to dangerous occurrences**

s 62I renum as s 99

**Power of inspectors to seize things**

s 62J renum as s 100

**Action by inspector in relation to seized thing**

s 62K renum as s 101

**Power of inspectors to destroy unsafe things**

s 62L renum as s 102

**Power of inspectors to require name and address**

s 62M renum as s 103

**Power of inspectors to require production of authorisation**

s 62N renum as s 104

**Resignation etc**s 63 orig s 63 renum as s 105  
(prev s 47) renum R16 LA (see A2004-29 amdt 1.16)**Warrants—application made other than in person**

s 63A renum as s 106

**Search warrants—announcement before entry**

s 63B renum as s 107

**Details of search warrant to be given to occupier etc**

s 63C renum as s 108

**Occupier entitled to be present during search etc**

s 63D renum as s 109

**Moving things to another place for examination or processing under search warrant**

s 63E renum as s 110

**Use of electronic equipment under search warrant**

s 63F renum as s 111

**Person with knowledge of computer systems to assist access etc under search warrant**

s 63G renum as s 112

**Securing electronic equipment under search warrant**

s 63H renum as s 113

**Copies of things seized under search warrant to be provided**

s 63I renum as s 114

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#### **Disqualification**

s 64 orig s 64 renum as s 115  
(prev s 48) am 1999 No 82 sch; 2001 No 44 amdt 1.3035  
renum R16 LA (see A2004-29 amdt 1.16)

#### **Access to things seized**

s 64A renum as s 116

#### **Return of things seized**

s 64B renum as s 117

#### **Application for order disallowing seizure**

s 64C renum as s 118

#### **Order for return of seized thing**

s 64D renum as s 119

#### **Adjournment pending hearing of other proceedings**

s 64E renum as s 120

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

s 64F renum as s 121

#### **Return of forfeited things**

s 64G renum as s 122

#### **Cost of disposal of things forfeited**

s 64H renum as s 123

#### **Liability**

s 65 orig s 65 renum as s 124  
(prev s 49) am 2001 No 44 amdt 1.3035  
renum R16 LA (see A2004-29 amdt 1.16)

#### **Occupier etc to be told sample to be analysed**

s 65A renum as s 125

#### **Payment for samples**

s 65B renum as s 126

#### **Samples from packaged substances**

s 65C renum as s 127

#### **Procedures for dividing samples**

s 65D renum as s 128

#### **Exceptions to s 65D**

s 65E renum as s 129

#### **Certificates of analysis by authorised analysts**

s 65F renum as s 130

**Deputy health and safety representatives**

s 66 orig s 66 am 2001 No 44 amdt 1.3035  
om A2004-29 s 17  
(prev s 50) am 1991 No 11 s 6; 2001 No 44 amdt 1.3015,  
amdt 1.3016  
renum R16 LA (see A2004-29 amdt 1.16)

**Provisional improvement notices**

div 5.2 hdg orig div 5.2 hdg renum as div 6.2 hdg  
(prev pt 4 div 2 hdg) renum R9 LA  
(prev div 4.2 hdg) renum R16 LA (see A2004-29 amdt 1.16)

**Issue**

s 67 orig s 67 renum as s 131  
(prev s 51) am 1994 No 81 sch; 1999 No 82 sch; 2001 No 44  
amdt 1.3035; A2004-29 s 15; ss renum R16 LA (see  
A2004-29 amdt 1.16)  
renum R16 LA (see A2004-29 amdt 1.16)

**Compensation for exercise of function by inspector**

s 67A renum as s 132

**Display**

s 68 orig s 68 am 1994 No 81 sch  
om A2004-15 amdt 2.130  
(prev s 52) am 1994 No 81 sch  
renum R16 LA (see A2004-29 amdt 1.16)

**Compliance**

s 69 orig s 69 am 1994 No 81 sch  
sub 1994 No 97 sch pt 1  
om 1999 No 82 s 11  
(prev s 53) am 1994 No 81 sch  
renum R16 LA (see A2004-29 amdt 1.16)

**Revocation**

s 70 orig s 70 sub 1994 No 97 sch pt 1  
am 1999 No 82 sch  
om A2004-29 s 17  
(prev s 54) am 1999 No 82 sch  
renum R16 LA (see A2004-29 amdt 1.16)

**Review**

s 71 orig s 71 sub 1994 No 97 sch pt 1  
am 1998 No 54; 1999 No 82 sch  
om A2004-29 s 17  
(prev s 55) am 1999 No 82 sch  
renum R16 LA (see A2004-29 amdt 1.16)

## Endnotes

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#### **Emergency procedures**

div 5.3 hdg orig div 5.3 hdg renum as div 6.3 hdg  
(prev pt 4 div 3 hdg) renum R9 LA  
(prev div 4.3 hdg) renum R16 LA (see A2004-29 amdt 1.16)

#### **Action by health and safety representatives**

s 72 orig s 72 om 1994 No 97 sch pt 1  
(prev s 56) am 1999 No 82 sch  
renum R16 LA (see A2004-29 amdt 1.16)

#### **Alternative work**

s 73 orig s 73 am 1994 No 81 sch  
om 1994 No 97 sch pt 1  
(prev s 57) renum R16 LA (see A2004-29 amdt 1.16)

#### **Entry to workplaces by authorised representatives**

div 5.4 hdg orig div 5.4 hdg renum as div 6.4 hdg  
(prev div 4.3A hdg) ins A2004-29 s 16  
renum R16 LA (see A2004-29 amdt 1.16)

#### **Definitions for div 5.4**

s 74 orig s 74 am 1999 No 82 sch; 2001 No 44 amdt 1.3035  
om A2004-29 s 17  
(prev s 57A) ins A2004-29 s 16  
renum R16 LA (see A2004-29 amdt 1.16)

#### **Authorised representatives**

s 75 orig s 75 om 1999 No 82 s 11  
prev s 75 renum as s 133  
(prev s 57B) ins A2004-29 s 16  
renum R16 LA (see A2004-29 amdt 1.16)

#### **Chief executive may require answers to questions and production of documents**

s 75A renum as s 134

#### **Compliance with notice to produce**

s 75B renum as s 135

#### **Failure to attend before chief executive or produce documents**

s 75C renum as s 136

#### **Attendance before chief executive—offences**

s 75D renum as s 137

#### **Privileges against selfincrimination and exposure to civil penalties**

s 75E renum as s 138

#### **Meaning of *relevant responsible person* for div 6.3**

s 75F renum as s 139



**Inspector may seek compliance agreement**

s 75G renum as s 140

**Term of compliance agreement**

s 75H renum as s 141

**Compliance agreement not admission of fault etc**

s 75I renum as s 142

**Notification and display of compliance agreements**

s 75J renum as s 143

**Compliance agreement not to be removed etc**

s 75K renum as s 144

**Reminder notices**s 75L ins 2001 No 21 s 9  
om A2004-29 s 18**Contents of reminder notices**s 75M ins 2001 No 21 s 9  
om A2004-29 s 18**Additional information in reminder notices**s 75N ins 2001 No 21 s 9  
om A2004-29 s 18**Disputing liability for an infringement notice offence**s 75O ins 2001 No 21 s 9  
om A2004-29 s 18**Extension of time to dispute liability**s 75P ins 2001 No 21 s 9  
om A2004-29 s 18**Procedure if liability disputed**s 75Q ins 2001 No 21 s 9  
om A2004-29 s 18**Issue of notices of noncompliance**s 75R ins 2001 No 21 s 9  
om A2004-29 s 18**Report about notices of noncompliance**s 75S ins 2001 No 21 s 9  
om A2004-29 s 18**Power of delegation**s 75T ins 2001 No 21 s 9  
om A2004-29 s 18

## Endnotes

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#### **Evidentiary certificates**

s 75U ins 2001 No 21 s 9  
om A2004-29 s 18

#### **Disqualification of authorised representatives**

s 76 orig s 76 renum as s 145  
(prev s 57C) ins A2004-29 s 16  
renum R16 LA (see A2004-29 amdt 1.16)

#### **Giving improvement notices**

s 76A renum as s 146

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

s 76B renum as s 147

#### **Scope of improvement notices**

s 76C renum as s 148

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

s 76D renum as s 149

#### **Notification and display of improvement notices**

s 76E renum as s 150

#### **Improvement notice not to be removed etc**

s 76F renum as s 151

#### **Revocation of improvement notice on compliance**

s 76G renum as s 152

#### **Contravention of improvement notices**

s 76H renum as s 153

#### **Entry to workplaces by authorised representatives**

s 77 orig s 77 renum as s 154  
(prev s 57D) ins A2004-29 s 16  
renum R16 LA (see A2004-29 amdt 1.16)

#### **Giving prohibition notices**

s 77A renum as s 155

#### **Contents of prohibition notices**

s 77B renum as s 156

#### **Scope of prohibition notices**

s 77C renum as s 157

#### **Extension of time for inspection etc**

s 77D renum as s 158

#### **Notification and display of prohibition notices**

s 77E renum as s 159

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|   |   |
|---|---|
| <b>Prohibition notice not to be removed etc</b>                   |   |
| s 77F   | renum as s 160  |
| <b>Ending of prohibition notices for contravention of Act etc</b> |   |
| s 77G   | renum as s 161  |
| <b>Request for reinspection</b>                                   |   |
| s 77H   | renum as s 162  |
| <b>Revocation on reinspection</b>                                 |   |
| s 77I   | renum as s 163  |
| <b>Ending of prohibition notices given for inspection etc</b>     |   |
| s 77J   | renum as s 164  |
| <b>Contravention of prohibition notices</b>                       |   |
| s 77K   | renum as s 165  |
| <b>Request for compensation for prohibition notice</b>            |   |
| s 77L   | renum as s 166  |
| <b>Compensation for prohibition notice</b>                        |   |
| s 77M   | renum as s 167  |
| <b>Notice of entry by authorised representative</b>               |   |
| s 78  | orig s 78 renum as s 168<br>(prev s 57E) ins A2004-29 s 16<br>renum R16 LA (see A2004-29 amdt 1.16) |
| <b>Making of safety undertakings</b>                              |   |
| s 78A   | renum as s 169  |
| <b>Acceptance of safety undertaking</b>                           |   |
| s 78B   | renum as s 170  |
| <b>Withdrawal from or amendment of enforceable undertaking</b>    |   |
| s 78C   | renum as s 171  |
| <b>Term of enforceable undertaking</b>                            |   |
| s 78D   | renum as s 172  |
| <b>Safety undertaking not admission of fault etc</b>              |   |
| s 78E   | renum as s 173  |
| <b>Contravention of enforceable undertakings</b>                  |   |
| s 78F   | renum as s 174  |
| <b>Production of authorised representative's authorisation</b>    |   |
| s 79  | orig s 79 renum as s 175<br>(prev s 57F) ins A2004-29 s 16<br>renum R16 LA (see A2004-29 amdt 1.16) |
| <b>Enforcement of injunctions</b>                                 |   |
| s 79A   | renum as s 176  |

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### **Amendment or discharge of injunctions**

s 79B renum as s 177

### **Interim injunctions—undertakings about damages**

s 79C renum as s 178

### **Magistrates Court's other powers not limited**

s 79D renum as s 179

### **Powers available to authorised representative on entry**

s 80 orig s 80 renum as s 180  
(prev s 57G) ins A2004-29 s 16  
renum R16 LA (see A2004-29 amdt 1.16)

### **Constitution**

s 80A renum as s 181

### **Disclosure of interest**

s 80B renum as s 182

### **Meaning of *inspector* in div 7.2**

s 80C ins 1994 No 97 sch pt 1  
am 1999 No 82 sch  
om A2004-29 s 20

### **Damage etc to be minimised by authorised representative**

s 81 orig s 81 renum as s 183  
(prev s 57H) ins A2004-29 s 16  
renum R16 LA (see A2004-29 amdt 1.16)

### **Compensation for exercise of function by authorised representative**

s 82 orig s 82 renum as s 184  
(prev s 57I) ins A2004-29 s 16  
renum R16 LA (see A2004-29 amdt 1.16)

### **Authorised representative to tell occupier about findings**

s 83 orig s 83 renum as s 185  
(prev s 57J) ins A2004-29 s 16  
renum R16 LA (see A2004-29 amdt 1.16)

### **Internal review**

s 83A renum as s 186

### **Pretending to be authorised representative**

s 84 orig s 84 renum as s 187  
(prev s 57K) ins A2004-29 s 16  
renum R16 LA (see A2004-29 amdt 1.16)

### **Parties to proceedings before review authority**

s 84A renum as s 188

### **Representation before review authority**

s 84B renum as s 189

**Notice of proceeding**

s 84C renum as s 190

**Procedure of review authority**

s 84D renum as s 191

**Hearings to be in public except in special circumstances**

s 84E renum as s 192

**Reference of questions of law to Supreme Court**

s 84F renum as s 193

**Appeals to the Supreme Court**

s 84G renum as s 194

**Powers of review authority**

s 84H renum as s 195

**Inspection and keeping of documents**

s 84J renum as s 196

**Failure to attend etc**

s 84K renum as s 197

**Contempt**

s 84M renum as s 198

**False information**

s 84N ins 1991 No 11 s 9  
am 1994 No 81 sch  
om A2004-15 amdt 2.130

**Operation and implementation of a decision that is subject to appeal**

s 84P renum as s 199

**Protection of review authority etc**

s 84Q renum as s 200

**Inspectors**

s 84R orig s 84R ins 1991 No 11 s 9  
om 1997 No 44 s 7  
prev s 84R renum as s 201

**Identity cards**

s 84S renum as s 202

**Protection of officials from liability**

s 84T renum as s 203

**Obstructing etc authorised representative**

s 85 orig s 85 renum as s 204  
(prev s 57L) ins A2004-29 s 16  
renum R16 LA (see A2004-29 amdt 1.16)

## Endnotes

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#### **Health and safety committee**

div 5.5 hdg orig div 5.5 hdg renum as div 6.5 hdg  
(prev pt 4 div 4 hdg) renum R9 LA  
(prev div 4.4 hdg) renum R16 LA (see A2004-29 amdt 1.16)

#### **Functions**

s 86 orig s 86 renum as s 205  
(prev s 58) renum R16 LA (see A2004-29 amdt 1.16)

#### **Duties of employers**

s 87 orig s 87 renum as s 206  
(prev s 59) am 1994 No 81 sch  
renum R16 LA (see A2004-29 amdt 1.16)

#### **Liability**

s 88 orig s 88 renum as s 207  
(prev s 60) am 2001 No 44 amdt 1.3035  
renum R16 LA (see A2004-29 amdt 1.16)

#### **Infringements notices for certain offences**

pt 5A hdg ins 2001 No 21 s 9  
om A2004-29 s 18

#### **Interpretation**

div 5A.1 hdg ins 2001 No 21 s 9  
om A2004-29 s 18

#### **Service of documents generally**

div 5A.2 hdg ins 2001 No 21 s 9  
om A2004-29 s 18

#### **Infringement and reminder notices**

div 5A.3 hdg ins 2001 No 21 s 9  
om A2004-29 s 18

#### **Disputing liability**

div 5A.4 hdg ins 2001 No 21 s 9  
om A2004-29 s 18

#### **Miscellaneous**

div 5A.5 hdg ins 2001 No 21 s 9  
om A2004-29 s 18

#### **Enforcement powers**

pt 6 hdg orig pt 6 hdg renum as pt 7 hdg  
(prev pt 5 hdg) sub A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

**General**

div 6.1 hdg orig div 6.1 hdg renum as div 7.1 hdg  
(prev pt 5 div 1 hdg) renum R9 LA  
(prev div 5.1 hdg) sub A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

**Definitions for pt 6**

s 89 orig s 89 renum as s 208  
(prev s 61) sub A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)  
def **connected** ins A2004-29 s 17  
def **data** ins A2004-29 s 17  
def **data storage device** ins A2004-29 s 17  
def **offence** ins A2004-29 s 17  
def **person assisting** ins A2004-29 s 17  
def **search warrant** ins A2004-29 s 17

**General powers of inspectors**

div 6.2 hdg orig div 6.2 hdg renum as div 7.2 hdg  
(prev pt 5 div 2 hdg) renum R9 LA  
(prev div 5.2 hdg) sub A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

**General power of inspectors to enter premises**

s 90 orig s 90 am 1994 No 81 sch  
om A2004-29 s 23  
(prev s 62) am 2001 No 44 amdt 1.3035  
sub A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

**Production of identity card by inspectors**

s 91 orig s 91 renum as s 209  
(prev s 62A) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

**Consent to entry by inspectors**

s 92 orig s 92 renum as s 210  
(prev s 62B) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

**General powers of inspectors for premises**

s 93 orig s 93 renum as s 211  
(prev s 62C) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

**Notices of noncompliance by Territory entities**

s 93A renum as s 212

**Electronic service**

s 93B renum as s 213

## Endnotes

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**Publication by chief executive of convictions etc**

s 93C renum as s 214

**Court-directed publicity for offences**

s 93D renum as s 215

**Remedial orders by courts for offences**

s 93E renum as s 216

**Court may order costs and expenses**

s 93F renum as s 217

**Presumptions about substances**

s 93G renum as s 218

**Evidence of analysts**

s 93H renum as s 219

**Power of court to order further analysis**

s 93I renum as s 220

**Appointment of authorised analysts**

s 93J renum as s 221

**General powers of inspectors for public places**

s 94 orig s 94 renum as s 222  
(prev s 62D) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

**Contravention of requirement by inspector**

s 95 orig s 95 renum as s 223  
(prev s 62E) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

**Power of inspectors to take action to prevent etc imminent risk**

s 96 orig s 96 renum as s 224  
(prev s 62F) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

**Determination of fees**

s 96A renum as s 225

**Approved forms**

s 96B orig s 96B renum as s 96C  
prev s 96B renum as s 226

**Commissioner's annual report**

s 96C orig s 96C renum as s 96D  
prev s 96C (prev s 96B) renum as s 227

**Quarterly reports**

s 96D prev s 96D (prev s 96C) renum as 228



**Report about action under s 96**

s 97 orig s 97 renum as s 229  
(prev s 62G) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

**Review of Act**

s 97A renum as s 230

**Recovery of Territory's costs for action under s 96**

s 98 orig s 98 renum as s 231  
(prev s 62H) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

**Power of entry etc in relation to dangerous occurrences**

s 99 orig s 99 renum as s 232  
(prev s 62I) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

**Power of inspectors to seize things**

s 100 orig s 100 renum as s 233  
(prev s 62J) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

**Action by inspector in relation to seized thing**

s 101 orig s 101 renum as s 234  
(prev s 62K) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

**Power of inspectors to destroy unsafe things**

s 102 orig s 102 renum as s 235  
(prev s 62L) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

**Power of inspectors to require name and address**

s 103 orig s 103 ins 1999 No 82 s 14  
om A2004-29 s 26  
(prev s 62M) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

**Power of inspectors to require production of authorisation**

s 104 orig s 104 ins 1999 No 82 s 14  
om A2004-29 s 26  
(prev s 62N) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

**Search warrants**

div 6.3 hdg orig div 6.3 hdg renum as div 7.3 hdg  
(prev div 5.3 hdg) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

## Endnotes

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### **Warrants generally**

s 105 orig s 105 ins 1999 No 82 s 14  
om A2004-29 s 26  
(prev s 63) sub A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

### **Warrants—application made other than in person**

s 106 orig s 106 ins 1999 No 82 s 14  
om A2004-29 s 26  
(prev s 63A) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

### **Search warrants—announcement before entry**

s 107 orig s 107 ins 1999 No 82 s 14  
om A2004-29 s 26  
(prev s 63B) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

### **Details of search warrant to be given to occupier etc**

s 108 orig s 108 ins 1999 No 82 s 14  
om A2004-29 s 26  
(prev s 63C) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

### **Occupier entitled to be present during search etc**

s 109 (prev s 63D) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

### **Moving things to another place for examination or processing under search warrant**

s 110 (prev s 63E) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

### **Use of electronic equipment under search warrant**

s 111 (prev s 63F) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

### **Person with knowledge of computer systems to assist access etc under search warrant**

s 112 (prev s 63G) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

### **Securing electronic equipment under search warrant**

s 113 (prev s 63H) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

### **Copies of things seized under search warrant to be provided**

s 114 (prev s 63I) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

**Return and forfeiture of things seized**

div 6.4 hdg orig div 6.4 hdg renum as div 7.4 hdg  
(prev div 5.4 hdg) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

**Receipt for things seized**

s 115 (prev s 64) sub A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

**Access to things seized**

s 116 (prev s 64A) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

**Return of things seized**

s 117 (prev s 64B) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)  
am A2005-20 amdt 3.322

**Application for order disallowing seizure**

s 118 (prev s 64C) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

**Order for return of seized thing**

s 119 (prev s 64D) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

**Adjournment pending hearing of other proceedings**

s 120 (prev s 64E) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

**Forfeiture of seized things**

s 121 (prev s 64F) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

**Return of forfeited things**

s 122 (prev s 64G) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

**Cost of disposal of things forfeited**

s 123 (prev s 64H) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

**Taking and analysis of samples**

div 6.5 hdg orig div 6.5 hdg renum as div 7.5 hdg  
(prev div 5.5 hdg) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

**Inspector may buy samples without complying with div 6.5**

s 124 (prev s 65) am 2001 No 44 amdt 1.3035  
sub A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

## Endnotes

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### **Occupier etc to be told sample to be analysed**

s 125 (prev s 65A) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

### **Payment for samples**

s 126 (prev s 65B) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

### **Samples from packaged substances**

s 127 (prev s 65C) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

### **Procedures for dividing samples**

s 128 (prev s 65D) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

### **Exceptions to s 128**

s 129 (prev s 65E) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

### **Certificates of analysis by authorised analysts**

s 130 (prev s 65F) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

### **Other enforcement provisions**

div 6.6 hdg orig div 6.6 hdg renum as div 7.6 hdg  
(prev div 5.6 hdg) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

### **Damage etc by inspectors to be minimised**

s 131 hdg (prev s 67 hdg) sub A2004-15 amdt 2.128  
renum R16 LA (see A2004-29 amdt 1.16)  
s 131 (prev s 67) am 1994 No 81 sch; 2001 No 44 amdt 1.3035;  
A2004-15 amdt 2.129  
sub A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

### **Compensation for exercise of function by inspector**

s 132 (prev s 67A) ins A2004-29 s 17  
renum R16 LA (see A2004-29 amdt 1.16)

### **Compliance measures**

pt 7 hdg orig pt 7 hdg renum as pt 8 hdg  
(prev pt 6 hdg) sub A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

### **Interpretation for pt 7**

div 7.1 hdg orig div 7.1 renum as div 8.1  
(prev div 6.1 hdg) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

**Meaning of *responsible person* for pt 7**

s 133 (prev s 75) ins 2001 No 21 s 9  
sub A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

**Information and documents**

div 7.2 hdg orig div 7.2 hdg renum as div 8.2 hdg  
(prev div 6.2 hdg) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

**Chief executive may require answers to questions and production of documents**

s 134 (prev s 75A) ins 2001 No 21 s 9  
sub A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

**Compliance with notice to produce**

s 135 (prev s 75B) ins 2001 No 21 s 9  
sub A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

**Failure to attend before chief executive or produce documents**

s 136 (prev s 75C) ins 2001 No 21 s 9  
sub A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

**Attendance before chief executive—offences**

s 137 (prev s 75D) ins 2001 No 21 s 9  
sub A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

**Privileges against selfincrimination and exposure to civil penalties**

s 138 (prev s 75E) ins 2001 No 21 s 9  
sub A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

**Compliance agreements**

div 7.3 hdg orig div 7.3 hdg renum as div 8.3 hdg  
(prev div 6.3 hdg) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

**Meaning of *relevant responsible person* for div 7.3**

s 139 (prev s 75F) ins 2001 No 21 s 9  
sub A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

**Inspector may seek compliance agreement**

s 140 (prev s 75G) ins 2001 No 21 s 9  
sub A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

## Endnotes

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### **Term of compliance agreement**

s 141 (prev s 75H) ins 2001 No 21 s 9  
sub A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

### **Compliance agreement not admission of fault etc**

s 142 (prev s 75I) ins 2001 No 21 s 9  
sub A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

### **Notification and display of compliance agreements**

s 143 (prev s 75J) ins 2001 No 21 s 9  
sub A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)  
am A2005-20 amdt 3.323

### **Compliance agreement not to be removed etc**

s 144 (prev s 75K) ins 2001 No 21 s 9  
sub A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

### **Improvement notices**

div 7.4 hdg (prev div 6.4 hdg) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

### **Meaning of *relevant responsible person* for div 7.4**

s 145 (prev s 76) am 1994 No 81 sch; 2001 No 44 amdt 1.3035  
sub A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

### **Giving improvement notices**

s 146 (prev s 76A) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

### **Contents of improvement notices**

s 147 (prev s 76B) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

### **Scope of improvement notices**

s 148 (prev s 76C) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

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

s 149 (prev s 76D) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

### **Notification and display of improvement notices**

s 150 (prev s 76E) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)  
am A2005-20 amdt 3.324

**Improvement notice not to be removed etc**

s 151 (prev s 76F) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

**Revocation of improvement notice on compliance**

s 152 (prev s 76G) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

**Contravention of improvement notices**

s 153 (prev s 76H) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

**Prohibition notices**

div 7.5 hdg (prev div 6.5 hdg) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

**Definitions for div 7.5**

s 154 (prev s 77) am 1998 No 54; 2001 No 44 amdt 1.3035  
sub A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)  
def *basis* sub A2005-20 amdt 1.11

**Giving prohibition notices**

s 155 (prev s 77A) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)  
sub A2005-20 amdt 1.12

**Contents of prohibition notices**

s 156 (prev s 77B) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)  
am A2005-20 amdt 1.13, amdt 1.14

**Scope of prohibition notices**

s 157 (prev s 77C) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

**Extension of time for inspection etc**

s 158 (prev s 77D) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)  
am A2005-20 amdt 1.15

**Notification and display of prohibition notices**

s 159 (prev s 77E) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

**Prohibition notice not to be removed etc**

s 160 (prev s 77F) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

## Endnotes

4 Amendment history

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### **Ending of prohibition notices for contravention of Act etc**

s 161 (prev s 77G) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)  
am A2005-20 amdt 1.16

### **Request for reinspection**

s 162 (prev s 77H) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)  
am A2005-20 amdt 1.17

### **Revocation on reinspection**

s 163 (prev s 77I) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

### **Ending of prohibition notices given for inspection etc**

s 164 (prev s 77J) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)  
am A2005-20 amdt 1.18

### **Contravention of prohibition notices**

s 165 (prev s 77K) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

### **Request for compensation for prohibition notice**

s 166 (prev s 77L) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

### **Compensation for prohibition notice**

s 167 (prev s 77M) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

### **Enforceable undertakings**

div 7.6 hdg (prev div 6.6 hdg) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

### **Definitions for div 7.6**

s 168 (prev s 78) am 1994 No 81 sch  
sub A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

### **Making of safety undertakings**

s 169 (prev s 78A) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

### **Acceptance of safety undertaking**

s 170 (prev s 78B) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

### **Withdrawal from or amendment of enforceable undertaking**

s 171 (prev s 78C) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)



**Term of enforceable undertaking**

s 172 (prev s 78D) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

**Safety undertaking not admission of fault etc**

s 173 (prev s 78E) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

**Contravention of enforceable undertakings**

s 174 (prev s 78F) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

**Injunctions**

div 7.7 hdg (prev div 6.7 hdg) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

**Injunctions to restrain offences against Act**

s 175 (prev s 79) am 1994 No 81 sch  
sub A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)  
am A2005-53 amdt 1.120

**Enforcement of injunctions**

s 176 (prev s 79A) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

**Amendment or discharge of injunctions**

s 177 (prev s 79B) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

**Interim injunctions—undertakings about damages**

s 178 (prev s 79C) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

**Magistrates Court's other powers not limited**

s 179 (prev s 79D) ins A2004-29 s 19  
renum R16 LA (see A2004-29 amdt 1.16)

**Administration**

pt 7A hdg renum as pt 8 hdg

**Review of decisions**

pt 8 hdg orig pt 8 hdg renum as pt 10 hdg  
(prev pt 7 hdg) renum R16 LA (see A2004-29 amdt 1.16)

## Endnotes

### 4 Amendment history

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#### **Review authority**

div 8.1 hdg (prev pt 7 div 1 hdg) ins 1991 No 11 s 7  
renum R9 LA  
(prev div 7.1 hdg) renum R16 LA (see A2004-29 amdt 1.16)

#### **Establishment**

s 180 (prev s 80) sub 1991 No 11 s 7  
renum R16 LA (see A2004-29 amdt 1.16)

#### **Constitution**

s 181 (prev s 80A) ins 1991 No 11 s 7  
renum R16 LA (see A2004-29 amdt 1.16)

#### **Disclosure of interest**

s 182 (prev s 80B) ins 1991 No 11 s 7  
renum R16 LA (see A2004-29 amdt 1.16)

#### **Reconsideration and review of decisions**

div 8.2 hdg (prev pt 7 div 2 hdg) ins 1991 No 11 s 7  
renum R9 LA  
(prev div 7.2 hdg) renum R16 LA (see A2004-29 amdt 1.16)

#### **Meaning of *inspector* in div 8.2**

s 183 (prev s 81) am 1999 No 82 sch  
sub A2004-29 s 20  
renum R16 LA (see A2004-29 amdt 1.16)

#### **Internally reviewable decisions, reviewable decisions and eligible people**

s 184 (prev s 82) am 1999 No 82 sch  
sub A2004-29 s 20  
renum R16 LA (see A2004-29 amdt 1.16)

#### **Applications for internal review**

s 185 (prev s 83) am 1999 No 82 sch  
sub A2004-29 s 21  
renum R16 LA (see A2004-29 amdt 1.16)

#### **Internal review**

s 186 (prev s 83A) ins A2004-29 s 21  
renum R16 LA (see A2004-29 amdt 1.16)

#### **Review of decisions**

s 187 (prev s 84) am 1991 No 11 s 8; 1997 No 44 s 6; 2001 No 44  
amdt 1.3017  
renum R16 LA (see A2004-29 amdt 1.16)

#### **Parties to proceedings before review authority**

s 188 (prev s 84A) ins 1991 No 11 s 9  
renum R16 LA (see A2004-29 amdt 1.16)

**Representation before review authority**

s 189 (prev s 84B) ins 1991 No 11 s 9  
renum R16 LA (see A2004-29 amdt 1.16)

**Notice of proceeding**

s 190 (prev s 84C) ins 1991 No 11 s 9  
renum R16 LA (see A2004-29 amdt 1.16)

**Procedure of review authority**

s 191 (prev s 84D) ins 1991 No 11 s 9  
renum R16 LA (see A2004-29 amdt 1.16)

**Hearings to be in public except in special circumstances**

s 192 (prev s 84E) ins 1991 No 11 s 9  
am 1994 No 81  
renum R16 LA (see A2004-29 amdt 1.16)

**Reference of questions of law to Supreme Court**

s 193 (prev s 84F) ins 1991 No 11 s 9  
renum R16 LA (see A2004-29 amdt 1.16)

**Appeals from review authority to Supreme Court**

s 194 (prev s 84G) ins 1991 No 11 s 9  
am 1993 No 91; 1995 No 46  
renum R16 LA (see A2004-29 amdt 1.16)  
sub A2006-40 amdt 2.166

**Miscellaneous**

div 8.3 hdg (prev pt 7 div 3 hdg) ins 1991 No 11 s 9  
renum R9 LA  
(prev div 7.3 hdg) renum R16 LA (see A2004-29 amdt 1.16)

**Powers of review authority**

s 195 (prev s 84H) ins 1991 No 11 s 9  
renum R16 LA (see A2004-29 amdt 1.16)  
am A2005-53 amdt 1.121; pars renum A2005-53 amdt 1.122

**Inspection and keeping of documents**

s 196 (prev s 84J) ins 1991 No 11 s 9  
am 1995 No 46 sch  
renum R16 LA (see A2004-29 amdt 1.16)

**Application of Criminal Code, ch 7**

s 197 (prev s 84K) ins 1991 No 11 s 9  
am 1994 No 81 sch  
renum R16 LA (see A2004-29 amdt 1.16)  
sub A2005-53 amdt 1.123

## Endnotes

### 4 Amendment history

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#### **Contempt**

s 198 (prev s 84M) ins 1991 No 11 s 9  
am 1994 No 81 sch  
renum R16 LA (see A2004-29 amdt 1.16)  
om A2005-53 amdt 1.123

#### **Operation and implementation of a decision that is subject to appeal**

s 199 (prev s 84P) ins 1991 No 11 s 9  
am 1999 No 66 sch 3  
renum R16 LA (see A2004-29 amdt 1.16)  
om A2006-40 amdt 2.167

#### **Protection of review authority etc**

s 200 (prev s 84Q) ins 1991 No 11 s 9  
am 1997 No 96 sch 1  
renum R16 LA (see A2004-29 amdt 1.16)

#### **Administration**

pt 9 hdg orig pt 9 hdg renum as pt 11 hdg  
(prev pt 7A hdg) ins A2004-29 s 22  
renum R16 LA (see A2004-29 amdt 1.16)

#### **Inspectors**

s 201 (prev s 84R) ins A2004-29 s 22  
renum R16 LA (see A2004-29 amdt 1.16)

#### **Identity cards**

s 202 (prev s 84S) ins A2004-29 s 22  
renum R16 LA (see A2004-29 amdt 1.16)

#### **Protection of officials from liability**

s 203 (prev s 84T) ins A2004-29 s 22  
renum R16 LA (see A2004-29 amdt 1.16)

#### **Miscellaneous**

pt 10 hdg (prev pt 8 hdg) renum R16 LA (see A2004-29 amdt 1.16)

#### **Notice of events**

s 204 (prev s 85) am 1991 No 11 s 10; 1994 No 81 sch; 1999 No 82  
sch; 2001 No 44 amdts 1.3018-1.3020  
renum R16 LA (see A2004-29 amdt 1.16)

#### **Records of accidents etc**

s 205 (prev s 86) am 1994 No 81 sch; 1999 No 82 sch  
renum R16 LA (see A2004-29 amdt 1.16)

#### **Codes of practice**

s 206 (prev s 87) am 1999 No 82 sch; 2001 No 21 s 10; 2001 No 44  
amdt 3021  
renum R16 LA (see A2004-29 amdt 1.16)

**Protected information**

s 207 (prev s 88) am 1994 No 81 sch; 2001 No 44 amdt 1.3035  
renum R16 LA (see A2004-29 amdt 1.16)

**Interfering with safety equipment**

s 208 (prev s 89) am 1994 No 81 sch  
renum R16 LA (see A2004-29 amdt 1.16)

**Employer not to levy employees**

s 209 (prev s 91) am 1994 No 81 sch; 2001 No 44 amdt 1.3035  
renum R16 LA (see A2004-29 amdt 1.16)

**Employer not to discriminate**

s 210 (prev s 92) am 1994 No 81 sch; R16 LA  
renum R16 LA (see A2004-29 amdt 1.16)

**Acts and omissions of representatives**

s 211 (prev s 93) am 2001 No 44 amdt 1.3035; 2002 No 11  
amdt 2.75; 2002 No 51 amdt 1.28  
sub A2004-15 amdt 1.36  
renum R16 LA (see A2004-29 amdt 1.16)

**Notices of noncompliance by Territory entities**

s 212 (prev s 93A) ins A2004-29 s 24  
renum R16 LA (see A2004-29 amdt 1.16)

**Electronic service**

s 213 (prev s 93B) ins A2004-29 s 24  
renum R16 LA (see A2004-29 amdt 1.16)

**Publication by chief executive of convictions etc**

s 214 (prev s 93C) ins A2004-29 s 24  
renum R16 LA (see A2004-29 amdt 1.16)

**Court-directed publicity for offences**

s 215 (prev s 93D) ins A2004-29 s 24  
renum R16 LA (see A2004-29 amdt 1.16)

**Remedial orders by courts for offences**

s 216 (prev s 93E) ins A2004-29 s 24  
renum R16 LA (see A2004-29 amdt 1.16)

**Court may order costs and expenses**

s 217 (prev s 93F) ins A2004-29 s 24  
renum R16 LA (see A2004-29 amdt 1.16)

**Presumptions about substances**

s 218 (prev s 93G) ins A2004-29 s 24  
renum R16 LA (see A2004-29 amdt 1.16)

## Endnotes

4 Amendment history

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### **Evidence of analysts**

s 219 (prev s 93H) ins A2004-29 s 24  
renum R16 LA (see A2004-29 amdt 1.16)

### **Power of court to order further analysis**

s 220 (prev s 93I) ins A2004-29 s 24  
renum R16 LA (see A2004-29 amdt 1.16)

### **Appointment of authorised analysts**

s 221 (prev s 93J) ins A2004-29 s 24  
renum R16 LA (see A2004-29 amdt 1.16)

### **Contracting out prohibited**

s 222 (prev s 94) am 2001 No 44 amdt 1.3035  
renum R16 LA (see A2004-29 amdt 1.16)

### **Civil liability not affected**

s 223 (prev s 95) am 2001 No 44 amdt 1.3035  
renum R16 LA (see A2004-29 amdt 1.16)

### **Inconsistency with associated laws**

s 224 (prev s 96) am 1999 No 82 s 12; 2001 No 44 amdt 1.3022,  
amdt 1.3023, amdt 1.3035  
renum R16 LA (see A2004-29 amdt 1.16)

### **Determination of fees**

s 225 (prev s 96A) ins 1997 No 44 s 8  
sub 2001 No 44 amdt 1.3024  
renum R16 LA (see A2004-29 amdt 1.16)

### **Approved forms**

s 226 (prev s 96B) ins 2001 No 44 amdt 1.3026  
(4)-(7) exp 12 September 2002 (s 96B (7))  
renum R16 LA (see A2004-29 amdt 1.16)

### **Commissioner's annual report**

s 227 (prev s 96B) ins 1999 No 82 s 13  
am 2000 No 80 amdt 3.17  
renum as s 96C 2001 No 44 amdt 1.3025  
sub A2004-9 amdt 1.32  
renum as s 227 R16 LA (see A2004-29 amdt 1.16)

### **Quarterly reports**

s 228 (prev s 96C) ins 1999 No 82 s 13  
renum as s 96D 2001 No 44 amdt 1.3025  
renum as s 228 R16 LA (see A2004-29 amdt 1.16)

**Regulation-making power**

s 229 (prev s 97) am 1991 No 11 s 11; 1994 No 81 sch; 1995 No 46 sch; 1997 No 44 s 9; 2001 No 44 amdts 1.3027-1.3034; pars renum R9 LA  
renum R16 LA (see A2004-29 amdt 1.16)

**Review of Act**

s 230 (prev s 97A) ins A2004-29 s 25  
renum R16 LA (see A2004-29 amdt 1.16)  
sub A2005-38 s 6  
exp 30 June 2008 (s 230 (5))

**Transitional**

pt 11 hdg (prev pt 9 hdg) ins 1999 No 82 s 14  
sub A2004-29 s 26  
renum R16 LA (see A2004-29 amdt 1.16)  
exp 5 February 2005 (s 235)

**Definitions for pt 11**

s 231 (prev s 98) ins 1999 No 82 s 14  
sub A2004-29 s 26  
renum R16 LA (see A2004-29 amdt 1.16)  
exp 5 February 2005 (s 235)

**Improvement notices**

s 232 (prev s 99) ins 1999 No 82 s 14  
sub A2004-29 s 26  
renum R16 LA (see A2004-29 amdt 1.16)  
exp 5 February 2005 (s 235)

**Prohibition notices**

s 233 (prev s 100) ins 1999 No 82 s 14  
sub A2004-29 s 26  
renum R16 LA (see A2004-29 amdt 1.16)  
exp 5 February 2005 (s 235)

**Modification of pt 11's operation**

s 234 (prev s 101) ins 1999 No 82 s 14  
sub A2004-29 s 26  
renum R16 LA (see A2004-29 amdt 1.16)  
exp 5 February 2005 (s 235)

**Expiry of pt 11**

s 235 (prev s 102) ins 1999 No 82 s 14  
sub A2004-29 s 26  
renum R16 LA (see A2004-29 amdt 1.16)  
exp 5 February 2005 (s 235)

## Endnotes

### 4 Amendment history

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#### Appeal rights

sch 1 hdg

sch 1

(prev sch hdg) renum R9 LA

am 1999 No 82 s 15; pts renum R9 LA

sub A2004-29 s 27

#### Dictionary

dict

ins A2004-29 s 28

defs reloc from s 5 A2004-29 amdt 1.6

def **alleged contravention** ins A2004-29 s 28

def **analysis** ins A2004-29 s 28

def **appointed member** ins 1999 No 82 s 4

reloc from s 5 A2004-29 amdt 1.6

def **approved code of practice** sub 2001 No 44 amdt 1.2998

reloc from s 5 A2004-29 amdt 1.6

def **associated law** am 1994 No 97 sch pt 1; 1997 No 44

s 4 (a) (never commenced and rep 2001 No 11 pt 4.3); 1997

No 44 s 4 (b); 1999 No 66 sch 3

sub 1999 No 82 s 4

am 2001 No 11 amdt 3.189, amdt 3.190; A2004-7

amdt 1.6; pars renum R13 LA (see A2004-7 amdt 1.7)

reloc from s 5 A2004-29 amdt 1.6

am A2005-56 amdt 1.6; pars renum A2005-56 amdt 1.7;

A2006-4 amdt 2.2 (as am by A2007-3 amdt 3.562)

def **at** ins A2004-29 s 28

def **authorised analyst** ins A2004-29 s 28

def **authorised representative** ins A2004-29 s 28

def **basis** ins A2004-29 s 28

def **chair** ins A2007-31 s 20

def **chairperson** reloc from s 5 A2004-29 amdt 1.6

om A2007-31 s 20

def **commission** ins 1991 No 11 s 3

reloc from s 5 A2004-29 amdt 1.6

def **commissioner** ins 1999 No 82 s 4

reloc from s 5 A2004-29 amdt 1.6

def **compliance agreement** ins A2004-29 s 28

def **connected** ins A2004-29 s 28

def **council** reloc from s 5 A2004-29 amdt 1.6

def **dangerous occurrence** reloc from s 5 A2004-29 amdt 1.6

def **data** ins A2004-29 s 28

def **data storage device** ins A2004-29 s 28

def **deputy chair** ins A2007-31 s 21

def **deputy chairperson** reloc from s 5 A2004-29 amdt 1.6

om A2007-31 s 21

def **designated work group** sub 1999 No 82 s 4

am A2004-29 amdt 1.4

reloc from s 5 A2004-29 amdt 1.6



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- def **eligible person** ins A2004-29 s 28  
def **employee** reloc from s 5 A2004-29 amdt 1.6  
def **employer** reloc from s 5 A2004-29 amdt 1.6  
def **enforceable undertaking** ins A2004-29 s 28  
def **examine** ins A2004-29 s 28  
def **hazard** ins A2004-29 s 28  
def **health and safety committee** reloc from s 5 A2004-29 amdt 1.6  
def **health and safety representative** am 1991 No 11 s 3  
reloc from s 5 A2004-29 amdt 1.6  
def **improvement notice** reloc from s 5 A2004-29 amdt 1.6  
om R16 LA  
def **improvement notice** ins A2004-29 s 28  
def **injury** reloc from s 5 A2004-29 amdt 1.6  
def **inspector** ins A2004-29 s 28  
def **internally reviewable decision** ins A2004-29 s 28  
def **involved union** reloc from s 5 A2004-29 amdt 1.6  
def **occupier** ins A2004-29 s 28  
def **offence** ins A2004-29 s 28  
def **office** ins A2004-29 s 28  
def **person assisting** ins A2004-29 s 28  
def **plant** ins A2004-29 s 28  
def **premises** reloc from s 5 A2004-29 amdt 1.6  
def **president** ins 1991 No 11 s 3  
reloc from s 5 A2004-29 amdt 1.6  
def **prohibition notice** ins A2004-29 s 28  
def **provisional improvement notice** reloc from s 5 A2004-29 amdt 1.6  
def **registered organisation** ins A2004-29 s 28  
def **relevant person** ins A2004-29 s 28  
def **relevant responsible person** ins A2004-29 s 28  
def **responsible person** ins A2004-29 s 28  
def **reviewable decision** ins A2004-29 s 28  
def **review authority** ins 1991 No 11 s 3  
reloc from s 5 A2004-29 amdt 1.6  
def **risk** ins A2004-29 s 28  
def **safety duty** ins A2004-29 s 28  
def **safety undertaking** ins A2004-29 s 28  
def **search warrant** ins A2004-29 s 28  
def **self-employed person** reloc from s 5 A2004-29 amdt 1.6  
def **serious harm** ins A2004-29 s 28  
def **substance** ins A2004-29 s 28  
def **vehicle** ins A2004-29 s 28  
def **work** reloc from s 5 A2004-29 amdt 1.6  
def **workplace** reloc from s 5 A2004-29 amdt 1.6

## Endnotes

### 5 Earlier republications

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#### 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

| Republication No | Amendments to  | Republication date |
|------------------|----------------|--------------------|
| 1                | Act 1991 No 11 | 31 March 1992      |
| 2                | Act 1993 No 44 | 31 October 1993    |
| 3                | Act 1994 No 38 | 31 July 1994       |
| 4                | Act 1994 No 97 | 28 February 1995   |
| 5                | Act 1995 No 46 | 31 January 1996    |
| 6                | Act 1996 No 12 | 30 November 1996   |
| 7                | Act 1998 No 54 | 31 December 1998   |
| 8                | Act 2000 No 20 | 1 August 2000      |
| 9                | Act 2001 No 44 | 10 December 2001   |
| 10               | Act 2002 No 11 | 29 May 2002        |
| 11               | Act 2002 No 11 | 13 September 2002  |
| 12               | Act 2002 No 51 | 1 January 2003     |
| 12 (RI)          | A2002-51 †     | 13 February 2003   |
| 13               | A2004-7        | 5 April 2004       |
| 14               | A2004-15       | 9 April 2004       |
| 15               | A2004-15       | 13 April 2004      |
| 16*              | A2004-29       | 5 August 2004      |
| 17               | A2004-29       | 1 January 2005     |
| 18               | A2004-29       | 6 February 2005    |
| 19               | A2005-20       | 2 June 2005        |

| Republication No | Amendments to | Republication date |
|------------------|---------------|--------------------|
| 20               | A2005-38      | 31 August 2005     |
| 21               | A2005-53      | 23 November 2005   |
| 22               | A2005-56      | 24 November 2005   |
| 23               | A2006-30      | 1 July 2006        |
| 24               | A2006-40      | 29 September 2006  |
| 25*              | A2007-3       | 22 March 2007      |

† includes retrospective amendments by A2002-49

## 6 Renumbered provisions

This Act was renumbered under the *Legislation Act 2001*, in R16 (see *Occupational Health and Safety Amendment Act 2004* A2004-29 amdt 1.16). Details of renumbered provisions are shown in endnote 4 (Amendment history). For a table showing the renumbered provisions, see R24.

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