



Australian Capital Territory

Occupational Health and Safety Amendment Act 2004

A2004-29

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2003 006B

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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Australian Capital Territory

Occupational Health and Safety Amendment Act 2004

A2004-29

An Act to amend the *Occupational Health and Safety Act 1989*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

2003 006B

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 Name of Act

This Act is the *Occupational Health and Safety Amendment Act 2004*.

2 Commencement

- (1) This Act, other than section 16, commences 28 days after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

- (2) Section 16 (which inserts new division 4.3A dealing with entry to workplaces by authorised representatives) commences on 1 January 2005.

3 Legislation amended

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

Note This Act also amends the following legislation:

- *Occupational Health and Safety Regulations 1991* (see sch 2)
- *Public Sector Management Act 1994* (see sch 3)

4 Part 3 heading

substitute

Part 3 Safety duties for occupational health and safety

Division 3.1 Safety duties

**5 Duties of employers in relation to employees
Section 27 (1), penalty**

omit

**6 Duties of employers in relation to third parties
Section 28 (1), penalty**

omit

**7 Duties of persons in control of workplaces
Section 29 (1), penalty**

omit

**8 Duties of employees
Section 30 (1), penalty**

omit

**9 Duties of self-employed persons
Section 31, penalty**

omit

**10 Duties of manufacturers in relation to plant and
substances
Section 32 (1) and (2), penalty**

omit

**11 Duties of suppliers in relation to plant and substances
section 33 (1), penalty**

omit

**12 Duties of persons erecting or installing plant in a
workplace
Section 34 (1), penalty**

omit

**13 Commencement of prosecution in Magistrates Court
Section 35A**

relocate as section 35G

14 New division 3.2

insert

Division 3.2 Failure to comply with safety duties

35B Meaning of *safety duty* for div 3.2

In this division:

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

- section 27 (Duties of employers in relation to employees)
- section 28 (Duties of employers in relation to third parties)
- section 29 (Duties of people in control of workplaces)
- section 30 (Duties of employees)
- section 31 (Duties of self-employed people)
- section 32 (Duties of manufacturers in relation to plant and substances)
- section 33 (Duties of suppliers in relation to plant and substances)
- section 34 (Duties of people erecting or installing plant in workplace).

35C 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).

35D 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).

35E 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).

35F 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 the table of alternative verdicts, column 2, means an offence mentioned in table 35.F.1, column 3 for the offence.

Table 35F.1 Alternative verdicts

column 1 item	column 2 prosecuted offence	column 3 alternative offence
1	section 35D (which is about exposing people to substantial risk of serious harm)	section 35C (Failure to comply with safety duty—general offence)
2	section 35E (which is about causing serious harm to people)	section 35C section 35D

**15 Issue
Section 51 (8)**

substitute

- (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.

- (8A) 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.

- (8B) An offence against subsection (8) or (8A) is a strict liability offence.

16 New division 4.3A

insert

Division 4.3A Entry to workplaces by authorised representatives

57A Definitions for div 4.3A

In this division:

authorised representative means a person authorised under section 57B (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.

57B 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 57C (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.

57C 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.

57D 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.

57E 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.

57F 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 57A, def *authorised representative*).

57G Powers available to authorised representative on entry

- (1) This section applies if an authorised representative enters premises under section 57D (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 88).

- (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.

57H 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.

57I 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.

57J Authorised representative to tell occupier about findings

- (1) This section applies if an authorised representative enters premises under section 57D.
- (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.

57K 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.

57L 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).

17 Part 5

substitute

Part 5 Enforcement powers

Division 5.1 General

61 Definitions for pt 5

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 5.3 (Search warrants) that is in force.

Division 5.2 General powers of inspectors

62 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.

62A 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.

62B Consent to entry by inspectors

- (1) When seeking the consent of an occupier to enter premises under section 62 (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.

62C 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 5.5 (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).

62D General powers of inspectors for public places

- (1) An inspector may exercise 1 or more of the powers mentioned in section 62 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.

62E Contravention of requirement by inspector

A person must take all reasonable steps to comply with a requirement made of the person under section 62C (i) or (j) (including a requirement made in relation to something at a public place).

Maximum penalty: 50 penalty units.

62F 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 62 (General power of inspectors to enter premises).

62G Report about action under s 62F

As soon as practicable after taking action under section 62F, 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.

62H Recovery of Territory's costs for action under s 62F

- (1) This section applies if an inspector takes action under section 62F (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.

621 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 62 (General power of inspectors to enter premises).

62J 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.

62K 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 62J.
- (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 62L (1)—destroy or otherwise dispose of the thing under section 62L (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.

62L 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.

62M 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.

62N 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 5.3 Search warrants

63 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

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- (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 61.

63A 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.

63B 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.

63C 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.

63D 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.

63E 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.

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- (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.

63F 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.

63G 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

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- (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.

63H 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.

63I 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 63F (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 5.4 Return and forfeiture of things seized**64 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 62K (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 64C 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.

64A 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 62I (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 63F (Use of electronic equipment under search warrant); or

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- (c) a thing or information if possession of it by the person otherwise entitled to inspect it would be an offence.

64B 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 infringement notice 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 64F (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 62I (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.

64C 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 62J (4) (which is about the seizure of a thing that poses a risk to occupational health or safety).

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- (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.

64D 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 64C 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.

64E Adjourment pending hearing of other proceedings

- (1) This section applies to the hearing of an application under section 64C (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.

64F 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 62L (Power of inspectors to destroy unsafe things) or returned under section 64B (Return of things seized); and
 - (b) an application for disallowance of the seizure under section 64C (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.

64G Return of forfeited things

- (1) This section applies to something forfeited under section 62F 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.

64H 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 5.5 Taking and analysis of samples

65 Inspector may buy samples without complying with div 5.5

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.

65A 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.

65B 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.

65C 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.

65D 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 65E.

- (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 65A (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).

65E Exceptions to s 65D

- (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 65D.

65F 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 96B for the certificate, the form must be used.

Note 2 For the evidentiary status of a certificate under this section, see s 93H.

Division 5.6 Other enforcement provisions

67 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.

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- (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.

67A 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 64C (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.

**18 Infringement notices for certain offences
Part 5A**

omit

19 Part 6

substitute

Part 6 Compliance measures

Division 6.1 Interpretation for pt 6

75 Meaning of *responsible person* for pt 6

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 6.2 Information and documents

75A 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 75E (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.

75B Compliance with notice to produce

- (1) This section applies if a person is required by a notice under section 75A 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.

75C 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 75A 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 75A 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.

75D Attendance before chief executive—offences

- (1) A person commits an offence if—
- (a) the person is required under section 75A 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 75A 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.

75E 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 75A; 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 75A 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 6.3 Compliance agreements

75F Meaning of *relevant responsible person* for div 6.3

In this division:

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

75G 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.

75H 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.

75I 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).

75J 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; and

- (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.

75K 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 6.4 Improvement notices

76 Meaning of *relevant responsible person* for div 6.4

In this division:

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

76A 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).

76B 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.

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- (3) The improvement notice may include any other information the inspector considers appropriate.

76C 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.

76D 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 76B (2) (c), and includes that period as extended under this section.

76E 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; and
 - (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.

76F 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.

76G 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.

76H 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 6.5 Prohibition notices**77 Definitions for div 6.5**

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 (see section 77A (a)); or
- (b) the risk to be prevented or minimised under the notice (see section 77A (b) (i)); or
- (c) the inspection, testing or monitoring to be allowed under the notice (see section 77A (b) (ii)); or
- (d) the accident or other incident to be investigated under the notice (see section 77A (b) (iii)).

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

77A Giving prohibition notices

An inspector may give a notice (a *prohibition notice*) to a responsible person for a workplace if the inspector believes, on reasonable grounds—

- (a) that someone at the workplace has contravened, is contravening, or is likely to contravene, this Act; or
- (b) that giving the notice is necessary—
 - (i) to prevent or minimise risk of serious harm to the health or safety of people from a hazard at the workplace; or
 - (ii) to allow the inspection, testing or monitoring of anything at the workplace; or
 - (iii) to allow the investigation of an accident or other incident (including a dangerous occurrence) at the workplace.

Example for par (b) (ii)

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

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).

Note 3 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).

77B 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;

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- (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 77A (a) or (b) (i) (which are about notices given in relation to contravention of this Act or to prevent or minimise risk of serious harm)—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 77A (b) (ii) or (iii) (which are 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.

77C 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.

77D Extension of time for inspection etc

- (1) This section applies if a prohibition notice is given under section 77A (b) (ii) or (iii).
- (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 77B (2) (c), and includes that period as extended under this section.

77E 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.

77F 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.

77G Ending of prohibition notices for contravention of Act etc

- (1) This section applies to a prohibition notice if the notice was given under section 77A (a) or (b) (i) (which are about notices given in relation to contravention of this Act or to prevent or minimise risk of serious harm).
- (2) The prohibition notice ends when the notice is revoked under section 77I.

77H Request for reinspection

- (1) This section applies to a prohibition notice given under section 77A (a) or (b) (i).
- (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.

77I Revocation on reinspection

- (1) This section applies if a request has been made under section 77H.
- (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.

77J Ending of prohibition notices given for inspection etc

- (1) This section applies to a prohibition notice if the notice was given under section 77A (b) (ii) or (iii) (which are 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 77B (2) (c) (Contents of prohibition notices) or, if the period is extended under section 77D, the end of the extended period.

77K 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.

77L 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.

77M Compensation for prohibition notice

- (1) This section applies if a person applies under section 77L 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 6.6 Enforceable undertakings

78 Definitions for div 6.6

In this division:

alleged contravention—see section 78A (3) (b).

enforceable undertaking means a safety undertaking that has been accepted under section 78B.

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

safety undertaking—see section 78A (2).

78A 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

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- (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).

78B 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.

78C 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.

78D 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.

78E 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.

78F 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).

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- (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 6.7 Injunctions

79 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 an offence against the Criminal Code, pt 2.4 (Extensions of criminal responsibility) or the *Crimes Act 1900*, s 181 (Accessory after the fact) that relates to the Territory law (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.

79A 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.

79B 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.

79C 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.

79D 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.

20 Sections 80C to 82

substitute

81 Meaning of *inspector* in div 7.2

In this division:

inspector does not include the commissioner.

82 Internally reviewable decisions, reviewable decisions and eligible people

For this part—

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

21 Section 83

substitute

83 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.

83A Internal review

- (1) This section applies if an application for internal review of a decision has been made under section 83.
- (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).

22 New part 7A

insert

Part 7A Administration**84R 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).

84S Identity cards

- (1) This section applies only to an inspector appointed under section 84R (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.

84T 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.

**23 Interfering with workplace notices
Section 90**

omit

24 New sections 93A to 93J

insert

93A 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*.

93B 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.

93C 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.

93D 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.

93E 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.

93F 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.

93G 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.

93H 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.

93I 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 65D (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 93F (Court may order costs and expenses), the cost of an analysis under this section is payable by the Territory.

93J 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).

25 New section 97A

in part 8, insert

97A Review of Act

- (1) The Minister must arrange for a person (the *reviewer*) to 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 regulations (see Legislation Act, s 104).

- (2) The review must include an assessment of—
 - (a) the operation and effectiveness of the amendments made to this Act by the *Occupational Health and Safety Amendment Act 2004*; and
 - (b) in particular, the operation and effectiveness of division 4.3A (Entry to workplaces by authorised representatives).

- (3) In conducting the review, the reviewer, must consult employee organisations and employer organisations.
- (4) The reviewer must not be a public employee employed in an administrative unit that is responsible for the administration of this Act or the *Dangerous Substances Act 2004*.
- (5) The reviewer is not subject to direction by the Minister or the chief executive in carrying out the review.
- (6) The reviewer must give the Minister a written report of the review before 15 January 2008.
- (7) The Minister must present a copy of the report to the Legislative Assembly before the end of the Assembly's 3rd sitting day in 2008.
- (8) 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 57A.
- (9) This section expires on 30 June 2008.

26 **Part 9**

substitute

Part 9 **Transitional**

98 **Definitions for pt 9**

In this part:

amending Act means the *Occupational Health and Safety Amendment Act 2004*.

original Act means the *Occupational Health and Safety Act 1989*, as in force immediately before the commencement of the amending Act.

99 Improvement notices

- (1) An improvement notice issued under the original Act that was in force immediately before the commencement of the amending Act continues in force as if the original Act had not been amended by the amending Act.
- (2) However, if the improvement notice has not ended before this part expires, the notice ends when this part expires.

100 Prohibition notices

- (1) A prohibition notice issued under the original Act that was in force immediately before the commencement of the amending Act continues to operate as if the original Act had not been amended by the amending Act.
- (2) However, if the prohibition notice has not ended before this part expires, the notice ends when this part expires.

101 Modification of pt 9's operation

The regulations may modify the operation of this part to make provision in relation to any matter that, in the Executive's opinion, is not, or is not adequately, dealt with in this part.

102 Expiry of pt 9

This part expires 6 months after the day it commences.

27 Schedule 1

substitute

Schedule 1 Appeal rights

(see s 82)

Part 1.1 Internally reviewable decisions

column 1 item	column 2 decisions	column 3 eligible person
1	revoking a provisional improvement notice under section 55 (4)	(a) the health and safety representative who gave the notice; or (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 55 (4)	(a) the person to whom the notice was given; or (b) an employer whose undertaking is adversely affected by the refusal
3	deciding to seize plant, a substance or thing under section 62J	(a) the owner of, or a person with a property interest in, the plant, substance or thing; or (b) an employer whose undertaking is adversely affected by the seizure
4	revoking, or refusing to revoke, a compliance agreement under section 75H (3)	(a) a responsible person for contravention to which the compliance agreement relates; or (b) an employer whose undertaking is adversely affected by the agreement

column 1 item	column 2 decisions	column 3 eligible person
5	giving an improvement notice under section 76A	<ul style="list-style-type: none"> (a) a responsible person for the contravention to which the improvement notice relates; or (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 76D	<ul style="list-style-type: none"> (a) the relevant responsible person for the compliance notice; or (b) an employer whose undertaking is adversely affected by the notice
7	revoking an improvement notice under section 76G	<ul style="list-style-type: none"> (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 (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 (c) an involved union in relation to an employee whose work is affected by the notice

column 1 item	column 2 decisions	column 3 eligible person
8	refusing to revoke an improvement notice under section 76G	(a) the relevant responsible person for the improvement notice; or (b) an employer whose undertaking is adversely affected by the notice
9	giving a prohibition notice under section 77A	(a) the relevant responsible person for the prohibition notice; or (b) an employer whose undertaking is adversely affected by the notice
10	extending the relevant period for a prohibition notice under section 77D	(a) the relevant responsible person for the prohibition notice; or (b) an employer whose undertaking is adversely affected by the notice
11	refusing under section 77H (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 (b) an employer whose undertaking is adversely affected by the refusal

column 1 item	column 2 decisions	column 3 eligible person
12	revoking a prohibition notice under section 77I	<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 77I	<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

column 1 item	column 2 decisions	column 3 eligible person
1	establishing a designated work group under section 38 (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>

Section 27

column 1 item	column 2 decisions	column 3 eligible person
2	varying a designated work group under section 38 (3)	(a) an involved union in relation to the designated work group; or (b) an employer whose employee is in the designated work group
3	refusing to declare that section 39 applies to a site	the applicant for the declaration
4	disqualifying a health and safety representative under section 48 (1)	the person disqualified
5	revoking a provisional improvement notice under section 55 (4)	(a) the health and safety representative who gave the notice; or (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 55 (4)	(a) the person to whom the notice was given; or (b) an employer whose undertaking is adversely affected by the refusal
7	deciding to seize plant, a substance or thing under section 62J	(a) the owner of, or a person with a property interest in, the plant, substance or thing; or (b) an employer whose undertaking is adversely affected by the seizure

column 1 item	column 2 decisions	column 3 eligible person
8	revoking, or refusing to revoke, a compliance agreement under section 75H (3)	(a) a responsible person for the contravention to which the compliance agreement relates; or (b) an employer whose undertaking is adversely affected by the agreement
9	giving an improvement notice under section 76A	(a) a responsible person for the contravention to which the improvement notice relates; or (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 76D	(a) the relevant responsible person for the compliance notice; or (b) an employer whose undertaking is adversely affected by the notice

column 1 item	column 2 decisions	column 3 eligible person
11	revoking an improvement notice under section 76G	<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>
12	refusing to revoke an improvement notice under section 76G	<p>(a) the relevant responsible person for the improvement notice; or</p> <p>(b) an employer whose undertaking is adversely affected by the notice</p>
13	giving a prohibition notice under section 77A	<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>
14	extending the relevant period for a prohibition notice under section 77D	<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>
15	refusing to reinspect a situation or circumstances under section 77H	the relevant responsible person for the prohibition notice

column 1 item	column 2 decisions	column 3 eligible person
16	refusing under section 77H (3) to agree to inspect a vehicle or equipment at a place other than where it was originally inspected	<ul style="list-style-type: none"> (a) the owner of, or a person with a property interest in, the vehicle; or (b) an employer whose undertaking is adversely affected by the refusal
17	revoking a prohibition notice under section 77I	<ul style="list-style-type: none"> (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 (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 (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 77I	<ul style="list-style-type: none"> (a) the relevant responsible person for the prohibition notice; or (b) an employer whose undertaking is adversely affected by the notice

column 1 item	column 2 decisions	column 3 eligible person
19	refusing to allow a longer period to make an application under section 83 for review of a decision	an eligible person for the decision
20	a decision on reconsideration under section 83A (2)	the applicant for reconsideration

Part 1.3 Reviewable decisions of chief executive

column 1 item	column 2 decisions	column 3 eligible person
1	disqualifying a person under section 57C (1)	the person disqualified
2	refusing to revoke a disqualification under section 57C (5)	the person disqualified
3	refusing to accept a safety undertaking under section 78B	the person who gave the undertaking

column 1 item	column 2 decisions	column 3 eligible person
4	refusing to agree to the relevant person for an enforceable undertaking withdrawing from, or amending, the undertaking under section 78C	the relevant person for the undertaking
5	ending, or refusing to end, an enforceable undertaking under section 78D	the relevant person for the undertaking

28 New dictionary

insert

Dictionary

(see s 4)

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 6.6 (Enforceable undertakings)—see section 78A (3) (b) (Making of safety undertakings).

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

at premises includes in or on the premises.

authorised analyst means a person appointed as an authorised analyst under section 93J.

authorised representative, for division 4.3A (Entry to workplaces by authorised representatives)—see section 57A.

basis, for giving a prohibition notice, for division 6.5 (Prohibition notices)—see section 77.

compliance agreement—see section 75G (2).

connected, for part 5 (Enforcement powers)—see section 61.

data, for part 5 (Enforcement powers)—see section 61.

data storage device, for part 5 (Enforcement powers)—see section 61.

eligible person, for part 7 (Review of decisions)—

(a) for an internally reviewable decision—see section 82 (b);

(b) for a reviewable decision—see section 82 (d).

enforceable undertaking, for division 6.6 (Enforceable undertakings)—see section 78.

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.

improvement notice—see section 76A.

inspector—

(a) means an inspector under section 84R; and

(b) for division 7.2 (Reconsideration and review of decisions)—see section 81.

internally reviewable decision, for part 7 (Review of decisions)—see section 82 (a).

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;
- (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 5 (Enforcement powers)—see section 61.

office, in a registered organisation, for division 4.3A (Entry to workplaces by authorised representatives)—see section 57A.

person assisting, in relation to a search warrant, for part 5 (Enforcement powers)—see section 61.

plant includes—

- (a) machinery, equipment or a tool; and
- (b) a component of, or accessory to machinery, equipment or a tool.

prohibition notice—see section 77A.

registered organisation, for division 4.3A (Entry to workplaces by authorised representatives)—see section 57A.

relevant person, for an enforceable undertaking, for division 6.6—see section 78.

relevant responsible person—

- (a) for division 6.3 (Compliance agreements)—see section 75F;
- (b) for division 6.4 (Improvement notices)—see section 76;

(c) for division 6.5 (Prohibition notices)—see section 77.

responsible person, for a contravention of a provision of this Act, for part 6 (Compliance measures)—see section 75.

reviewable decision, for part 7 (Review of decisions)—see section 82 (c).

risk means the likelihood of death or harm to a person from a hazard.

safety duty, for division 3.2 (Failure to comply with safety duties)—see section 35B.

safety undertaking, for division 6.6 (Enforceable undertakings)—see section 78A (2).

search warrant, for part 5 (Enforcement powers)—see section 61.

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.

Schedule 1 Technical amendments

(see s 3)

[1.1] Section 1

substitute

1 Name of Act

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

Explanatory note

This amendment brings the naming provision of the Act into line with current drafting practice.

[1.2] New sections 4 to 4B

insert

4 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 75G (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)).

4A 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.

4B 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 35C
- s 35D
- s 35E
- s 51
- s 57B
- s 57K
- s 57L
- pt 5
- pt 6
- pt 7A

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.

Explanatory note

This amendment adds standard dictionary and notes provisions. The amendment also adds a standard provision about other legislation applying to offences against this Act.

[1.3] Section 5 (1), definitions of *administering authority*, *authorised person*, *commencement date*, *Crimes Act*, *date of service*

omit

Explanatory note

This amendment omits certain definitions from section 5 (1).

The definitions of *administering authority*, *authorised person* and *date of service* are omitted consequentially on the omission of part 5A by an amendment in the body of the bill.

The definition of *commencement date* is made redundant by amendments in this section.

The definition of *Crimes Act* is no longer needed, because the term is no longer used in the Act.

[1.4] Section 5 (1), definition of *designated work group*, paragraph (a)

omit

37 (1) or (2)

substitute

37 (2)

Explanatory note

This amendment is consequential on the omission of section 37 (1) by another amendment.

[1.5] Section 5 (1), definitions of *infringement notice*, *infringement notice offence*, *infringement notice penalty*, *inspector*, *occupier*, *plant*, *prohibition notice* and *reminder notice*

omit

Explanatory note

This amendment omits certain definitions from section 5 (1).

The definitions of *infringement notice*, *infringement notice offence*, *infringement notice penalty* and *reminder notice* are omitted consequentially on the omission of part 5A by an amendment in the body of the bill.

The definitions of *inspector*, *occupier*, *plant* and *prohibition notice* are replaced by definitions included in the dictionary inserted into the Act by an amendment in the body of the bill.

[1.6] Section 5 (1), definitions (as amended)

relocate to dictionary

Explanatory note

This amendment relocates the remaining definitions in section 5 (1) to the dictionary inserted into the Act by an amendment in the body of the bill.

[1.7] Section 5

substitute

5 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).

5A 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.

Explanatory note

This amendment omits the remainder of section 5 (1) and remakes section 5 (2) and (3) as separate clauses. The amendment also omits section 5 (4) consequentially on amendments in the body of the bill.

[1.8] Section 29 heading

substitute

29 Duties of people in control of workplaces

Explanatory note

This amendment brings the heading more closely into line with current drafting practice.

[1.9] Section 30 (3) and (4)

omit

commencement date

substitute

9 April 1990

Explanatory note

This amendment substitutes the actual commencement date for the section.

[1.10] Section 31 heading

substitute

31 Duties of self-employed people**Explanatory note**

This amendment brings the heading more closely into line with current drafting practice.

[1.11] Section 34 heading

substitute

34 Duties of people erecting or installing plant in workplace**Explanatory note**

This amendment brings the heading more closely into line with current drafting practice.

[1.12] Section 37 (1)

omit

Explanatory note

This amendment omits a redundant transitional provision.

[1.13] Section 37 (2)

omit

, after the commencement date,

Explanatory note

This amendment is consequential on the omission of section 37 (1) by another amendment.

[1.14] Section 37 (3) and (10)

omit

(1) or

Explanatory note

This amendment is consequential on the omission of section 37 (1) by another amendment.

[1.15] Section 38 (1)

omit

(1) or

Explanatory note

This amendment is consequential on the omission of section 37 (1) by another amendment.

[1.16] Act—renumbering

renumber provisions when Act next republished under Legislation Act

Explanatory note

This amendment provides for the renumbering of the Act to take account of the amendments made by the bill.

Schedule 2 Occupational Health and Safety Regulations 1991

(see s 3)

[2.1] Regulation 2A

omit everything before paragraph (a), substitute

2A Matters that are a dangerous occurrence

For the Act, dictionary, definition of *dangerous occurrence*, each of the following is declared to be a dangerous occurrence:

[2.2] New regulation 3A

insert

3A Training for authorisation as authorised representative— Act, s 57B

A training program approved under regulation 3 is required for authorisation of a person under the Act, section 57B (1).

[2.3] Part 3A

omit

[2.4] New part 4

insert

Part 5 Miscellaneous

11 Time for decision on internal review—Act, s 83A (2)

- (1) The time for making a decision on an application for internal review of an inspector's decision is—

- (a) 10 business days after the day the application is made under the Act, section 83; or
 - (b) if the commissioner tells the applicant in writing within the 10 business days that the commissioner is satisfied that a longer period than the 10 business days is necessary to adequately review the decision—20 business days after the day the application for internal review is made under the Act, section 83; or
 - (c) if the commissioner asks the applicant in writing for further information in relation to the application—10 business days after the day the commissioner receives the further information.
- (2) The commissioner must tell the applicant in writing if the information given in response to a request mentioned in subregulation (1) (c) is not the further information asked for, or not all the further information asked for.

[2.5] Schedule 1

omit

Schedule 3 Public Sector Management Act 1994

(see s 3)

[3.1] Section 249

substitute

249 Occupational health and safety

The provisions of the *Occupational Health and Safety Act 1989* (including the regulations under that Act) apply in relation to public employees—

- (a) with the modifications in schedule 3; and
- (b) as if—
 - (i) a reference in that Act as modified by schedule 3 to an employee included a reference to a public employee; and
 - (ii) a reference in that Act as modified by schedule 3 to an employer included a reference to the Territory and each Territory instrumentality.

[3.2] Schedule 3 heading

substitute

Schedule 3 Modifications of Occupational Health and Safety Act 1989

[3.3] Schedule 3, modifications 3.1–3.3

omit

[3.4] Schedule 3, modification 3.7

substitute

**[3.7] Work groups designated by employers
Section 37 (2)–(4)**

substitute

- (2) A request to an employer to enter into consultations to establish designated work groups in relation to employees of the employer, or to vary designated work groups that have already been established by the employer, may be made by—
 - (a) if there are involved unions in relation to employees of the employer—any involved union; or
 - (b) if there is no involved union in relation to any employee of the employer—any employee of the employer.
- (3) The employer may, at any time, and must, within 14 days after the day the employer receives a request, enter into consultations with—
 - (a) if there are any involved unions in relation to employees of the employer—each involved union; or
 - (b) if there is no involved union in relation to any employee of the employer—the employee who made the request.
- (4) If an employer believes that designated work groups should be varied, the employer may, at any time, enter into consultations about the variation of the designated work groups with—
 - (a) if there are involved unions in relation to employees of the employer—each involved union; or
 - (b) if there is no involved union in relation to any employee of the employer—the health and safety representative of each designated work group proposed to be varied.

- (4A) If in the course of consultations under subsection (3) or (4), there is disagreement between any of the parties to the consultation about establishing or varying a designated work group, any party may, for the purposes of facilitating the consultation, refer the issue of disagreement to the review authority for resolution as it considers appropriate.
- (4B) If an issue is referred to the review authority, the parties to the disagreement must finish the consultation in accordance with the resolution of the issue by the authority.
- (4C) Within 14 days after the day consultation about the establishment of the designated work groups is finished, the employer must, by notice in accordance with subsection (10), establish the designated work groups in accordance with the outcome of the consultations.
- (4D) Within 14 days after the day consultation about the variation of designated work groups that have already been established is finished, the employer must, if it has been decided that the variation of some or all of the designated work groups is justified, by notice in accordance with subsection (10), vary the designated work groups in accordance with the outcome of the consultations.

[3.5] Schedule 3, modification 3.10

substitute

[3.10] Section 37 (10)

omit

subsection (1)

substitute

subsection (4C)

[3.6] Schedule 3, modification 3.11

substitute

[3.11] Section 37 (10)

omit

subsection (4B)

substitute

subsection (4D)

[3.7] Schedule 3, modification 3.19

omit everything before subsection (1), substitute

[3.19] New section 58A

in division 4.4, insert

58A Health and safety committees

[3.8] Schedule 3, modification 3.20

omit everything before section 60B, substitute

[3.20] New part 4A

insert

Part 4A Inquiries and reports in relation to matters affecting public employees

60A Application of pt 4A

This part does not apply to a Territory owned corporation.

[3.9] Schedule 3, modification 3.20, section 60C (4) (b)

substitute

- (b) if an improvement or prohibition notice has been given by an inspector in relation to work being performed for the employer—any action taken, or proposed to be taken, in relation to the notice;

[3.10] Schedule 3, modification 3.20, section 60Q (1)

omit

in respect of a notice issued under section 76 or 77

substitute

in relation to an improvement or prohibition notice

[3.11] Schedule 3, modification 3.20, section 60R

substitute

60R Report to be given to Minister of failures to comply with certain notices

- (1) If the council forms the opinion that an employer has failed to comply with an improvement or prohibition notice, the council may give the Minister a report about the failure.
- (2) The Minister must present a copy of the report to the Legislative Assembly within 5 sitting days after the day the report is given to the Minister.

[3.12] Schedule 3, modification 3.21

substitute

**[3.21] General powers of inspectors for premises
New section 62C (2) and (3)**

insert

- (2) An inspector is entitled, in the exercise of his or her powers, to be assisted by a consultant and the consultant may accompany an inspector during any inspection of a workplace by the inspector.
- (3) The exercise by an inspector of powers under this section in relation to anything affecting a public employee is taken, for part 4A (Inquiries and reports in relation to matters affecting public employees), to be an investigation by the inspector.

[3.13] Schedule 3, modification 3.22

substitute

[3.22] New section 62CA

insert

62CA Request for investigation

An involved union may ask an inspector for an investigation at a workplace where an employee who is a member of the union performs work for an employer.

[3.14] Schedule 3, modification 3.23

substitute

[3.23] New section 84RA

insert

84RA Arrangements with Commonwealth or States for services of officers

If the commissioner considers that it is in the public interest to do so, arrangements may be made in accordance with the *Public Sector Management Act 1994*, section 120 for officers or employees of the public service of the Commonwealth, a State or another Territory to exercise the functions of inspectors in relation to the investigation of matters affecting public employees.

[3.15] Schedule 3, modification 3.25, section 91A (d) (ii) and (iii)

substitute

- (ii) improvement notices, prohibition notices and notices of noncompliance given to the relevant employer; and
- (iii) compliance agreements and enforceable undertakings involving the relevant employer;

[3.16] Schedule 3, modifications 3.26–3.33

substitute

[3.26] Schedule 1, part 1.1, item 2, column 3, new paragraph (aa)

insert

- (aa) an involved union in relation to an employee whose work is affected by the notice; or

[3.27] Schedule 1, part 1.1, item 3, column 3, new paragraph (aa)

insert

- (aa) an involved union in relation to an employee whose work is affected by the seizure; or

[3.27A] Schedule 1, part 1.1, item 4, column 3, new paragraph (aa)

insert

- (aa) an involved union in relation to an employee whose work is affected by the agreement; or

[3.28] Schedule 1, part 1.1, item 5, column 3, new paragraph (aa)

insert

- (aa) an involved union in relation to an employee whose work is affected by the notice; or

[3.29] Schedule 1, part 1.1, item 8, column 3, new paragraph (aa)

insert

(aa) an involved union in relation to an employee whose work is affected by the refusal; or

[3.29A] Schedule 1, part 1.1, item 9, column 3, new paragraph (aa)

insert

(aa) an involved union in relation to an employee whose work is affected by the notice; or

[3.29B] Schedule 1, part 1.1, item 10, column 3, new paragraph (aa)

insert

(aa) an involved union in relation to an employee whose work is affected by the notice; or

[3.29C] Schedule 1, part 1.1, item 13, column 3, new paragraph (aa)

insert

(aa) an involved union in relation to an employee whose work is affected by the refusal; or

[3.30] Schedule 1, part 1.2, item 6, column 3, new paragraph (aa)

insert

(aa) an involved union in relation to an employee whose work is affected by the refusal; or

[3.31] Schedule 1, part 1.2, item 7, column 3, new paragraph (aa)

insert

(aa) an involved union in relation to an employee whose work is affected by the seizure; or

[3.31A] Schedule 1, part 1.2, item 8, column 3, new paragraph (aa)*insert*

(aa) an involved union in relation to an employee whose work is affected by the agreement or refusal; or

[3.32] Schedule 1, part 1.2, item 9, column 3, new paragraph (aa)*insert*

(aa) an involved union in relation to an employee whose work is affected by the notice; or

[3.33] Schedule 1, part 1.2, item 12, column 3, new paragraph (aa)*insert*

(aa) an involved union in relation to an employee whose work is affected by the refusal; or

[3.33A] Schedule 1, part 1.2, item 13, column 3, new paragraph (aa)*insert*

(aa) an involved union in relation to an employee whose work is affected by the notice; or

[3.33B] Schedule 1, part 1.2, item 14, column 3, new paragraph (aa)*insert*

(aa) an involved union in relation to an employee whose work is affected by the notice; or

[3.33C] Schedule 1, part 1.2, item 18, column 3, new paragraph (aa)

insert

(aa) an involved union in relation to an employee whose work is affected by the refusal; or

[3.17] Schedule 3, new modifications

insert

[3.34] Dictionary, new definition of *annual report*

insert

annual report means the annual report (if any) of an administrative unit or Territory instrumentality under the *Annual Reports (Government Agencies) Act 2004*.

[3.35] Dictionary, definition of *designated work group*

substitute

designated work group means—

- (a) a group of employees established as a designated work group by an employer under section 37 (4C); and
- (b) such a group as varied by an employer under section 37 (4D);

and, in relation to an employer, means such a group that consists entirely of employees of the employer.

[3.18] Schedule 3—renumbering

renumber modifications when Act next republished under Legislation Act

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 12 February 2004.

2 Notification

Notified under the Legislation Act on 8 July 2004.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Occupational Health and Safety Amendment Bill 2004, which was passed by the Legislative Assembly on 23 June 2004 a.m.

Acting Clerk of the Legislative Assembly

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