



Australian Capital Territory

# Work Safety Act 2008

A2008-51

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Australian Capital Territory

# Work Safety Act 2008

**A2008-51**

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An Act to secure and promote work safety by the management of risk, and for other purposes

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

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Work Safety Act 2008*.

### 2 Commencement

- (1) This Act commences on—
- (a) 1 July 2009; or
  - (b) if, before 1 July 2009, the Minister fixes another day by written notice—the day fixed.

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

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

- (2) However, if this Act has not commenced within 18 months beginning on its notification day, it automatically commences on the first day after that period.
- (3) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to this Act.

### 3 Dictionary

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

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

For example, the signpost definition '*worker*—see section 9.' means that the term 'worker' is defined in that section.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### 4 Notes

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

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

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

Other legislation applies in relation to offences against this Act.

*Note 1* *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

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.

## **Part 2                    Operation of Act**

### **Division 2.1            Objects and important concepts**

#### **6                    Objects of Act**

- (1) The objects of this Act are to—
  - (a) secure and promote work safety of people at work; and
  - (b) eliminate, at their source, risks to work safety whether of people at work or others; and
  - (c) protect people from the risks to work safety resulting from the activities of people at work; and
  - (d) promote a safe and healthy work environment for people at work that—
    - (i) protects them from injury and illness; and
    - (ii) is adapted to provide for their physical and psychological needs; and
  - (e) foster cooperation and consultation between employers and workers, and organisations representing employers and workers; and
  - (f) provide a framework for continuous improvement and progressively higher standards of work safety, taking into account changes in technology and work practices.
- (2) The objects of this Act are to be implemented in a way that is consistent with the aspirations of the people of the ACT for the maintenance of, and improvement in, the protection of people from risks to work safety.

## **7 Meaning of *work safety***

In this Act:

*work safety*, of people, means the health, safety and wellbeing of people in relation to work.

## **8 Meaning of *risk***

In this Act:

*risk* means exposure to the chance of injury or loss.

### **Examples**

- 1 possible impact on wellbeing of workers from the failure to provide adequate facilities
- 2 possible broken arm because of a failure to provide adequate safety rails

*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).

## **9 Meaning of *worker***

In this Act:

*worker* means an individual who carries out work in relation to a business or undertaking, whether for reward or otherwise, under an arrangement with the person conducting the business or undertaking.

### **Examples—worker**

- 1 employee
- 2 independent contractor
- 3 outworker
- 4 person doing a work experience placement
- 5 volunteer

*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).

## 10            **Meaning of *employer***

In this Act:

***employer***, of a worker, includes a person who engages the worker to carry out work in the person's business or undertaking.

### **Examples—employer**

- 1    principal contractor is an employer of a subcontractor
- 2    host organisation is an employer of a labour hire worker

*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).

## 11            **Meaning of *business or undertaking***

In this Act:

***business or undertaking*** includes—

- (a) a not-for-profit business; and
- (b) an activity conducted by a local, state or territory government.

## 12            **Meaning of *workplace***

In this Act:

***workplace*** means a place where work is, has been, or is to be, carried out by or for someone conducting a business or undertaking.



### **13**      **Meaning of *person in control***

For this Act, a *person in control* is—

- (a) for premises—anyone who has control of the premises, including anyone with authority to make decisions about the management of the premises; or
- (b) for plant or a system—anyone who has control of the plant or system or the operation of the plant or system, including anyone with authority to make decisions about the plant or system or the operation of the plant or system; or
- (c) for the design, manufacture, import or supply of plant or a system—anyone who has control of the design, manufacture, import or supply of the plant or system, including anyone with authority to make decisions about the design, manufacture, import or supply; or
- (d) anyone else prescribed by regulation.

*Note*      More than 1 person may be a person in control for a duty under this Act (see s 16).

### **14**      **Meaning of *manages risk***

- (1) For this Act, a person *manages risk* in relation to a duty by—
  - (a) taking reasonably practicable steps—
    - (i) to identify any risk that might be associated with the duty; and
    - (ii) to eliminate any risk that might result if the duty is not exercised; and
    - (iii) if it is not reasonably practicable to eliminate each risk that might result if the duty is not exercised—to minimise each risk; and
  - (b) informing anyone else who has the duty about the possible risks.

- (2) For this section, if someone is required to minimise a risk, the person must do each of the following that is available, in the following order, until the risk is reduced as far as is reasonably practicable:
- (a) substitute the thing giving rise to the risk with something that gives rise to a lesser risk;
  - (b) isolate the thing giving rise to the risk from anyone otherwise put at risk;
  - (c) minimise the risk by engineering means;
  - (d) minimise the risk by administrative means;
  - (e) ensure personal protective and safety equipment is used.

**Examples—par (d)**

- 1 put in place safe working practices
- 2 provide training, instruction or information

*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).

**15                    Meaning of *reasonably practicable steps***

- (1) For this Act, each of the following must be considered in working out what are *reasonably practicable steps* to eliminate or minimise a risk:
- (a) the seriousness of the risk;
  - (b) the availability and suitability of ways to eliminate or minimise the risk;
  - (c) what the duty holder knows or ought reasonably to know about—
    - (i) the hazard giving rise to the risk and the risk itself; and
    - (ii) ways of eliminating or minimising the risk;

- (d) the cost of eliminating or minimising the risk;
- (e) anything else prescribed by regulation.
- (2) Also, a regulation may prescribe what are, or are not, reasonably practicable steps to eliminate or minimise a risk.
- (3) In this section:

*cost* includes burdens and disadvantages.

**Examples—cost**

- 1 time spent
- 2 inconvenience

*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).

## **Division 2.2 Complying with Act**

### **16 Person may have more than 1 duty under Act**

To remove any doubt, a person may be subject to more than 1 duty under this Act.

**Example**

A manufacturer must comply with the duty to ensure a safe workplace (see s 21) and with the manufacturer's duties (see s 25).

*Note 1* A reference to an Act includes a reference to statutory instruments made or in force under the Act, any regulation and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

*Note 2* 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).

**17                    Person not relieved of duty because someone else also has same duty**

- (1) This section applies if 2 or more people have the same duty under this Act.
- (2) To remove any doubt, each person must comply with the duty whether or not someone else may also be required to comply with the duty.
- (3) However, if this Act requires or allows 2 or more people to do something, it is sufficient if 1 of them does the thing.

**Example**

Both an employer and a building owner have a duty to provide a safe work environment for the workers in a particular building. If the air conditioning breaks down and is fixed by the building owner, the duty has been complied with. There is no requirement for the employer to take further action.

*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).

**18                    Codes of practice**

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

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

- (2) Before approving a proposed code of practice, the Minister must consult the council.

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

*Note* A statutory instrument may also apply, adopt or incorporate (with or without change) a law or instrument (or a provision of a law or instrument) as in force at a particular time (see Legislation Act, s 47 (1)).

- (4) An approved code of practice is a disallowable instrument.

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

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

*Note 3* For public notice of code approvals and inspection of codes, see s 215.

## **19 Approved code of practice may be considered**

In deciding whether a person has complied with a duty under this Act, a decision maker may consider whether a person has complied with an approved code of practice in relation to the duty.

## **20 Relationship of regulations to approved codes of practice**

- (1) An approved code of practice has no effect to the extent that it is inconsistent with a regulation.
- (2) However, an approved code of practice is taken to be consistent with a regulation to the extent that it can operate concurrently with the regulation.

*Note* For the approval of codes of practice, see s 18.

## Part 3 Work safety duties

### Division 3.1 Duties to manage risk

#### 21 Duty—safe conduct of business or undertaking

- (1) This section applies to a person conducting a business or undertaking.

**Examples—person conducting business or undertaking**

- 1 employer
- 2 self-employed person
- 3 municipal corporation
- 4 subcontractor
- 5 franchisor

*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 person has a duty to ensure work safety by managing risk.

*Note* **Managing risk**—see s 14.

- (3) Without limiting subsection (2), the person's duty includes—

- (a) providing and maintaining a safe workplace and safe systems of work; and
- (b) providing and maintaining plant that is safe and without risk to the health of the person and other people at the business or undertaking; and
- (c) ensuring that plant is operated only by people at the business or undertaking who are qualified to operate the plant; and
- (d) ensuring the safe use, handling, storage and transport of substances; and

- (e) providing adequate facilities for the work safety of the person and other people at the business or undertaking; and
- (f) monitoring the work safety of people at the business or undertaking, and the conditions of the workplace, to ensure that work-related illness and injury are prevented; and
- (g) keeping the information and records relating to work safety required under this Act, including incident reports and training records, in relation to the business or undertaking; and
- (h) providing appropriate information, instruction, training or supervision to people at the business or undertaking to allow them to carry out work safely; and
- (i) consulting people at the business or undertaking on matters that directly affect their work safety; and
- (j) any other duty prescribed by regulation.

## **22 Duty—person in control of premises**

- (1) This section applies to a person in control of premises.

*Note* **Person in control**—see s 13.

- (2) The person has a duty to ensure work safety in relation to the premises by managing risk.

*Note* **Managing risk**—see s 14.

- (3) Without limiting subsection (2), the person's duty includes—

- (a) maintaining the premises in a way that is consistent with work safety; and
- (b) providing safe entry to, and exit from, the premises.

**23 Duty—person in control of plant or system etc**

- (1) This section applies to a person in control of plant or a system or the operation of the plant or system.

*Note* **Person in control**—see s 13.

- (2) The person has a duty to ensure work safety in relation to the plant or system by managing risk.

*Note* **Managing risk**—see s 14.

- (3) Without limiting subsection (2), the person's duty includes maintaining the plant or system in a way that is consistent with work safety.

**24 Duty—person in control of design**

- (1) This section applies to a person in control of—

- (a) the design of plant or a structure that is used, is to be used or could reasonably be expected to be used, at work or at a workplace; or  
(b) the design of a structure that is, is to be or could reasonably be expected to be, a workplace.

*Note* **Person in control**—see s 13.

- (2) The person has a duty to ensure work safety in relation to the design of the plant or structure by managing risk.

*Note* **Managing risk**—see s 14.

**25 Duties—person in control of manufacture**

- (1) This section applies to a person in control of—

- (a) the manufacture of plant or a structure that is used, is to be used or could reasonably be expected to be used, at work or at a workplace; or



- (b) the manufacture of a structure that is, is to be or could reasonably be expected to be, a workplace.

*Note 1* **Person in control**—see s 13.

*Note 2* Additional duties in relation to dangerous substances apply under the *Dangerous Substances Act 2004*.

- (2) The person has a duty to ensure work safety in relation to the manufacture of the plant or structure by managing risk.

*Note* **Managing risk**—see s 14.

- (3) Without limiting subsection (2), the person's duty in relation to the manufacture of the plant or structure includes—

- (a) manufacturing the thing to be safe and without risk to health when used in the way it is intended to be used; and
- (b) carrying out research, testing and examination about the thing to identify and eliminate, or minimise, any risk to work safety by the use of the thing; and
- (c) giving the following information to each person to whom the manufacturer provides the thing:
  - (i) the intended use of the thing;
  - (ii) the results of research, testing and examination mentioned in paragraph (b);
  - (iii) the conditions necessary for the thing to be used safely; and
- (d) on request, giving the information mentioned in paragraph (c) to a person who uses, or is to use, the plant or structure.

## 26 Duties—person in control of import and supply

- (1) This section applies to a person in control of—
- (a) the import or supply of plant, or a structure, that is used, is to be used or could reasonably be expected to be used, at work or at a workplace; or
  - (b) the import or supply of a structure that is, is to be or could reasonably be expected to be, a workplace.

*Note* **Person in control**—see s 13.

- (2) The person has a duty to ensure work safety in relation to the plant or structure by managing risk.

*Note* **Managing risk**—see s 14.

- (3) Without limiting subsection (2), the person's duty includes—
- (a) supplying the thing safely and without risk to health when used in the way it is intended to be used; and
  - (b) if the person imports the thing—before supplying the thing to someone else, ensuring that—
    - (i) the person in control of the design of the thing has complied with section 24; and
    - (ii) the person in control of the manufacture of the thing has complied with section 25; and
  - (c) giving the following to a person intending to use the thing, or whose work safety may be affected by the use of the thing:
    - (i) information about the intended use of the thing;
    - (ii) the conditions necessary for the thing to be used safely;
    - (iii) information about how to maintain the thing to ensure the thing remains safe to use.

- (4) For this section, a person is not in control of the supply of a thing if the person—
- (a) carries on the business of financing the buying or use of things by other people; and
  - (b) has, in the business, acquired an interest in the thing only to finance its acquisition by someone else from another person or its provision to someone else by another person; and
  - (c) has not taken possession of the thing, or has taken possession of the thing only to pass possession to the other person; and
  - (d) supplies the thing to the other person.
- (5) In this section, a person also *supplies* a structure if the person owns the structure or is in control of the structure.

## **27 Duties—worker**

- (1) A worker has a duty not to expose the worker, and other people who may be affected by the worker's work, to work safety risks because of the worker's work.
- (2) Without limiting subsection (1), the worker's duty includes—
- (a) cooperating with a person conducting the business or undertaking for which the worker works, or a person in control of the worker's workplace, to allow the person to comply with the person's duties under this Act; and
  - (b) complying with instructions given by a person conducting the business or undertaking for which the worker works, or a person in control of the worker's workplace, in relation to work safety; and
  - (c) properly using equipment supplied for work safety at the workplace; and
  - (d) reporting any risk, illness and injury, connected with work, that the worker is aware of.

**28 Duty—at workplace**

A person at a workplace has a duty not to expose others at the workplace to work safety risks because of the person's conduct.

**Division 3.2 Work safety risks—failure to comply with duties**

**29 Meaning of *safety duty*—div 3.2**

In this division:

*safety duty* means a duty under division 3.1 (Duties to manage risk).

**30 Failure to comply with safety duty—general**

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

Maximum penalty: 100 penalty units.

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

*Note* For public sector workplace compliance measures, see div 6.8.

**31 Failure to comply with safety duty—negligent exposure to substantial risk of serious harm**

- (1) A person commits an offence if—
  - (a) the person has a safety duty; and
  - (b) the person fails to comply with the duty; and
  - (c) the failure exposes someone to a substantial risk of serious harm; and

- (d) the person is negligent about whether the failure exposes anyone to a substantial risk of serious harm.

Maximum penalty: 1 000 penalty units, imprisonment for 2 years or both.

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

*Note* For public sector workplace compliance measures, see div 6.8.

**32 Failure to comply with safety duty—reckless exposure to substantial risk of serious harm**

- (1) A person commits an offence if—
- (a) the person has a safety duty; and
  - (b) the person fails to comply with the duty; and
  - (c) the failure exposes someone to a substantial risk of serious harm; and
  - (d) the person is reckless about whether the failure exposes anyone to a substantial risk of serious harm.

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

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

*Note* For public sector workplace compliance measures, see div 6.8.

**33 Failure to comply with safety duty—negligently cause serious harm**

- (1) A person commits an offence if—
- (a) the person has a safety duty; and
  - (b) the person fails to comply with the duty; and
  - (c) the failure causes serious harm to someone; and
  - (d) the person is negligent about whether the failure causes serious harm to anyone.

Maximum penalty: 1 500 penalty units, imprisonment for 3 years or both.

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

*Note* For public sector workplace compliance measures, see div 6.8.

**34 Failure to comply with safety duty—recklessly cause serious harm**

- (1) A person commits an offence if—
- (a) the person has a safety duty; and
  - (b) the person fails to comply with the duty; and
  - (c) the failure causes serious harm to someone; and
  - (d) the person is reckless about whether the failure causes serious harm to anyone.

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

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

*Note* For public sector workplace compliance measures, see div 6.8.

### 35 Alternative verdicts for failure to comply with safety duty

- (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 against a provision mentioned in an item in table 33, column 2, means an offence against a provision mentioned in the item, column 3.

**Table 33 Alternative verdicts**

column 1 item	column 2 prosecuted offence	column 3 alternative offence
1	s 31 (Failure to comply with safety duty—negligent exposure to substantial risk of serious harm)	s 30 (Failure to comply with safety duty—general)
2	s 32 (Failure to comply with safety duty—reckless exposure to substantial risk of serious harm)	s 30 s 31
3	s 33 (Failure to comply with safety duty—negligently cause serious harm)	s 30 s 31 s 32
4	s 34 (Failure to comply with safety duty—recklessly cause serious harm)	s 30 s 31 s 32 s 33

## Division 3.3 Work safety risks—serious events

### 36 Meaning of *serious event*—div 3.3

For this division, each of the following is a *serious event* if it is attributable to a business or undertaking:

- (a) the death of a worker or another person;
- (b) an injury to a worker which results in incapacity for work for a period prescribed by regulation;
- (c) a serious injury to a person other than a worker;
- (d) a dangerous occurrence.

#### Examples—serious injury

- 1 injury resulting in amputation
- 2 extensive burns
- 3 injury resulting in injured person being placed on life support
- 4 loss of consciousness because of exposure to dangerous substance or electric shock
- 5 injury requiring immediate medical treatment

*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).

### 37 Meaning of *dangerous occurrence*

In this Act:

*dangerous occurrence* means 1 or more of the following:

- (a) an occurrence involving imminent risk of the death of, or serious injury to, anyone;
- (b) an occurrence that endangers or is likely to endanger the work safety of people at a workplace, including—
  - (i) damage to a boiler, pressure vessel, plant, equipment or other thing;



- (ii) damage to, or failure of, a load-bearing member or control device of a crane, hoist, conveyor, lift, escalator, moving walkway, plant, scaffolding, gear, amusement device or public stand;
  - (iii) an uncontrolled fire, uncontrolled explosion or escape of gas, a dangerous substance or steam;
- (c) anything else prescribed by regulation.

**Examples—par (a)**

- 1 major damage to plant, equipment, building or structure
- 2 imminent risk of uncontrolled explosion or uncontrolled fire
- 3 imminent risk of escape of gas, a dangerous substance or steam
- 4 entrapment of person in confined space
- 5 collapse of excavation

*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).and dangerous occurrence reporting and records

### **38 Notice of serious events**

- (1) A person in control of a business or undertaking must give notice to the chief executive of a serious event at or near a workplace of the business or undertaking.

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

- (2) A regulation may prescribe the requirements for a notice under subsection (1), including—
- (a) the time for giving the notice; and
  - (b) the method for giving the notice.

*Note* If a form is approved under s 229 for this provision, the form must be used.

### **39 Records of serious events**

- (1) A person in control of a business or undertaking must keep a record of each serious event for which notice is required to be given under section 38 for 5 years after the day the notice is given.

Maximum penalty: 10 penalty units.

- (2) An offence under subsection (1) is a strict liability offence.

### **40 Reporting under other legislation**

- (1) This section applies if a serious event for which notice is required to be given under section 38 is reported under the *Dangerous Substances Act 2004*.
- (2) The reporting under the *Dangerous Substances Act 2004* is taken to be adequate notice of the event for this Act.

### **41 Person in control to protect site of occurrence of serious event**

- (1) This section applies if a person in control of a business or undertaking is required to give the chief executive notice of a serious event under section 38.
- (2) The person must ensure that the site where the serious event happened is not entered or disturbed—
  - (a) for 72 hours; or
  - (b) until an inspector directs otherwise.

Maximum penalty: 10 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) This section does not apply to the disturbance of a site to—
  - (a) protect the work safety of a person; or
  - (b) help an injured person; or

- (c) take essential action to make the site safe or prevent a further dangerous event happening.

## **Division 3.4 Work safety risks—other matters**

### **42 Workers' right to refuse**

- (1) A worker has the right to refuse to do work if—
  - (a) an emergency procedure has been activated because of a significant risk to work safety; or
  - (b) the worker has a reasonable belief that the work involves a significant risk to work safety.
- (2) If a worker refuses to do work under subsection (1), a person in control of a workplace may require the worker to do alternative work.

### **43 Person in control not to discriminate**

- (1) A person commits an offence if—
  - (a) the person is in control of a workplace; and
  - (b) a worker has—
    - (i) complained or proposes to complain about a work safety matter at the workplace; or
    - (ii) assisted or proposes to assist the conduct of an investigation or inspection of the workplace by an inspector; or
    - (iii) stopped doing work, or proposes to stop doing work, under section 42; and

- (c) because of a matter mentioned in paragraph (b), the person—
- (i) prejudicially alters the worker's conditions of employment or engagement (whether by the deduction or withholding of remuneration or by any other means); or
  - (ii) if the worker is an employee—dismisses the worker or injures the worker's employment; or
  - (iii) threatens to take action mentioned in subparagraphs (i) or (ii) in relation to the worker.

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

- (2) In a proceeding for an offence against this section, if the elements of the offence in subsections (1) (a) and (b), and an element of the offence in subsection (1) (c) are proved, it is presumed, unless the contrary is established, that the worker's conduct mentioned in subsection (1) (b) is the reason for the person's conduct mentioned in subsection (1) (c).

#### **44 Interfering with safety equipment**

- (1) A person commits an offence if the person interferes with safety equipment provided at or near a workplace.

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

- (2) In this section:

*interfere*, with equipment, means inhibit or prevent the effective operation of the equipment.

*safety equipment*, in relation to a person, means equipment that the person knows, or ought reasonably to know, is provided to help protect the work safety of people at work.

**45 Person not to levy employees**

A person commits an offence if the person imposes a levy or charge on an employee for anything done, or provided, to ensure work safety.

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

## Part 4 Workplace arrangements

### Division 4.1 Duty of employer to consult

#### 46 Meaning of *worker consultation unit*

In this Act:

*worker consultation unit*, for an employer, means—

- (a) the group of all of the employer's workers; or
- (b) if a worker consultation unit is established under section 48—  
that unit.

#### 47 Duty to consult

- (1) An employer has a duty to consult, if reasonably practicable, with the employer's workers to allow the workers to contribute to matters directly affecting their work safety.
- (2) Without limiting subsection (1), the employer's duty to consult includes the following matters:
  - (a) identifying or assessing risks to work safety at the employer's workplace or in relation to conducting the employer's business or undertaking;
  - (b) the measures to be taken to manage risks to work safety at the employer's workplace or in relation to conducting the employer's business or undertaking;
  - (c) the adequacy of facilities;
  - (d) proposing changes that may directly affect work safety;
  - (e) any other issues in relation to work safety;
  - (f) anything else prescribed by regulation.

- (3) For subsection (1), consultation with workers in a worker consultation unit must be in accordance with any decision under section 54 (Duty to consult—deciding how workers to be consulted).
- (4) An employer commits an offence if—
  - (a) the employer has a duty to consult under subsection (1); and
  - (b) the employer fails to comply with the duty.Maximum penalty: 100 penalty units.
- (5) An offence against this section is a strict liability offence.

**48 Duty to consult—employer to establish worker consultation units**

- (1) This section applies if—
  - (a) it is not reasonably practicable for consultation to occur with the group of all the employer’s workers; or
  - (b) a worker of the employer asks the employer to establish 2 or more worker consultation units in the interests of work safety.
- (2) For section 47 (Duty to consult), the employer must establish 2 or more worker consultation units in relation to the employer’s workers.
- (3) A worker consultation unit established under this section may consist of—
  - (a) workers of an employer at 1 or more workplaces; or
  - (b) workers of 1 or more employers at 1 or more workplaces.

- (4) An employer commits an offence if—
- (a) the employer has a duty to establish a worker consultation unit under subsection (2); and
  - (b) the employer fails to establish the unit in accordance with section 49.

Maximum penalty: 50 penalty units.

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

#### **49 Worker consultation unit—how unit established**

- (1) For section 48, a worker consultation unit must be established in a way that best and most conveniently allows the work safety interests of the workers in the unit to be represented and safeguarded.
- (2) The employer must consult the employer's workers in establishing the worker consultation unit.
- (3) The employer and the employer's workers may, either separately or together, ask someone else to assist in the establishment of the worker consultation unit.
- (4) In deciding the way that the worker consultation unit is established, the employer must consider the following in relation to the employer's workers:
  - (a) the number and grouping of workers;
  - (b) workers' working hours, including the representation of workers on shift work;
  - (c) the pattern of work of workers, including the representation of part-time, casual, seasonal or short-term workers;
  - (d) the geographic location of workplaces, including any dispersed locations, home-based work or transport work;
  - (e) the nature of different kinds of work carried out by workers, work arrangements and the levels of responsibility;



- (f) workers' characteristics, including gender, ethnicity, age and special needs;
- (g) the hazards or risks to work safety at the workplace;
- (h) the interaction of workers with the workers of other employers.

**50 Worker consultation unit—election**

A regulation may prescribe—

- (a) the eligibility requirements for a person to be elected as—
  - (i) a member of the health and safety committee for a worker consultation unit; and
  - (ii) a health and safety representative for a worker consultation unit; and
- (b) anything else in relation to an election.

**51 Worker consultation unit—changes**

- (1) This section applies if—
  - (a) an employer wants to change a worker consultation unit in the interests of work safety; or
  - (b) a worker of the employer gives the employer notice that the worker wants a change to a worker consultation unit in the interests of work safety.
- (2) The employer must consult the workers about changing the worker consultation unit.
- (3) The employer and the employer's workers may, either separately or together, ask someone else to assist in the negotiations to change the worker consultation unit.
- (4) The employer must make a change to the worker consultation unit if the change is necessary in the interests of work safety.

**52 Worker consultation unit—review**

- (1) An employer must review a worker consultation unit to consider the effectiveness of the unit.
- (2) The review must be undertaken in consultation with the employer's workers—
  - (a) every 2 years; or
  - (b) if a review is reasonably necessary because of workplace changes; or
  - (c) if a worker in the unit, a health and safety representative or a health and safety committee asks for a review.
- (3) The employer must make a change to the worker consultation unit if a review shows that the change is necessary in the interests of work safety.

**53 Worker consultation unit—employer to keep records**

- (1) An employer must keep records of the following in relation to each worker consultation unit:
  - (a) if the unit is established by the employer under section 48—the unit's establishment;
  - (b) the unit's activities;
  - (c) any change to the unit;
  - (d) each review of the unit.

Maximum penalty: 30 penalty units.

- (2) The employer must make the records available on request to—
  - (a) each worker in the worker consultation unit; and
  - (b) any representative of a worker in the unit; and
  - (c) an inspector.

Maximum penalty: 30 penalty units.

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

#### **54 Duty to consult—deciding how workers to be consulted**

- (1) The employer and each worker consultation unit must decide how the employer must consult the employer's workers in the unit under this part.
- (2) The employer and worker consultation unit may decide that the employer will consult the workers in the unit using—
  - (a) a health and safety representative elected by the workers in the unit; or
  - (b) a health and safety committee elected by the workers in the unit; or
  - (c) another stated method of consultation.
- (3) However, if more than half the workers in the worker consultation unit ask that a health and safety representative, or a health and safety committee, be elected, the employer must arrange for the representative or committee to be elected by the workers in the unit.

**55 Duty to consult—chief executive may direct election of health and safety committee**

- (1) The chief executive may direct an employer to arrange for a health and safety committee to be elected by the workers in a worker consultation unit if satisfied on reasonable grounds that—
  - (a) the work done by the workers is hazardous; and
  - (b) the establishment of the committee will improve work safety.
- (2) If the chief executive gives a direction under subsection (1), the employer must arrange for a health and safety committee to be elected.
- (3) An employer commits an offence if—
  - (a) the chief executive gives a direction to an employer under subsection (1); and
  - (b) the employer fails to comply with the direction.

Maximum penalty: 100 penalty units.
- (4) An offence against this section is a strict liability offence.

**56 Duty to consult—consulting workers**

- (1) An employer must consult the employer's workers about a matter by—
  - (a) sharing with the workers information about the matter; and
  - (b) giving the workers a reasonable opportunity to—
    - (i) contribute information about the matter; and
    - (ii) express their views about the matter; and
  - (c) considering the workers' views.

- (2) The employer consults the workers by—
- (a) if the workers are represented by a health and safety representative—consulting the representative, whether with or without the direct involvement of the workers; or
  - (b) if the workers are represented by a health and safety committee—consulting the committee, whether with or without the direct involvement of the workers; or
  - (c) if the employer and the workers in a worker consultation unit have agreed to a consultation procedure—consulting in accordance with the procedure; or
  - (d) if the workers are not represented by a health and safety representative or health and safety committee—consulting the workers directly.
- (3) An employer commits an offence if—
- (a) a worker consultation unit of the employer’s workers elect a health and safety representative or health and safety committee; and
  - (b) the employer fails to consult the health and safety representative or health and safety committee about a matter directly affecting the work safety of the employer’s workers.

Maximum penalty: 50 penalty units.

## **57 Dispute resolution—mechanism**

- (1) This section applies if a dispute arises between an employer and a worker of the employer in relation to—
- (a) the establishment of a worker consultation unit under section 48; or
  - (b) a change to a worker consultation unit under section 51 (Worker consultation unit—changes) or section 52 (Worker consultation unit—review); or

- (c) the election of a health and safety representative; or
  - (d) the operation of a health and safety committee.
- (2) The employer, a worker in the worker consultation unit or the worker consultation unit may refer the dispute to the chief executive for arbitration.
  - (3) The chief executive must arbitrate a referred dispute.
  - (4) The system of arbitration may be prescribed by regulation.

## **Division 4.2 Health and safety representative**

### **58 Health and safety representative—functions**

- (1) The functions of a health and safety representative for a worker consultation unit are—
  - (a) to represent the worker consultation unit in relation to work safety; and
  - (b) to tell the workers' employer about potential risks and dangerous occurrences at any workplace where represented workers work; and
  - (c) to tell the employer about work safety matters directly affecting the represented workers.
- (2) A regulation may prescribe other functions for the health and safety representative.
- (3) In exercising a function, the health and safety representative may, in accordance with a regulation, do 1 or more of the following:
  - (a) inspect all or part of a workplace where a represented worker works;
  - (b) issue a provisional improvement notice for a place where a represented worker works;
  - (c) exercise emergency powers.

- (4) However, a health and safety representative must take all reasonable steps to consult the employer to try to resolve a work safety matter before the representative—
- (a) issues a provisional improvement notice; or
  - (b) exercises an emergency power.

**59 Health and safety representative—protection from liability**

A health and safety representative does not incur civil or criminal liability for an act or omission done honestly and without recklessness in the exercise of a function for this Act.

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

**Division 4.3 Health and safety committee**

**60 Health and safety committee—functions**

- (1) The functions of a health and safety committee are—
- (a) to facilitate cooperation between an employer and the employer's workers in relation to work safety; and
  - (b) to assist the employer to consult workers on proposing and developing changes to work or other policies, practices or procedures that may directly affect work safety; and
  - (c) to assist the employer to resolve work safety matters; and
  - (d) to establish, review and publish procedures in relation to work safety.
- (2) A regulation may prescribe other functions for a health and safety committee.

## Division 4.4 Authorised representatives—entry to workplace

### 61 Definitions—div 4.4

In this division:

*authorised representative* means a person authorised under section 62 (1).

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

### 62 Authorised representative

- (1) A registered organisation may, in writing, authorise a person for this division.
- (2) However, the person may be authorised only if—
  - (a) the person—
    - (i) is an employee of the registered organisation; or
    - (ii) holds an office in the organisation; and
  - (b) the person has completed the training prescribed by regulation; and
  - (c) the person satisfies any condition of office prescribed by regulation.
- (3) An authorisation under this section ends if—
  - (a) the authorised person stops being an employee of, and does not hold an office in, the registered organisation that authorised the person; or
  - (b) the authorised person stops holding an office in, and is not an employee of, the registered organisation that authorised the person.



**63 Authorised representative—entry to workplace**

- (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 usually carried on, at the premises by the members or people.
- (4) This section does not authorise entry into a part of premises that is being used only for residential purposes.

**64 Authorised representative—notice of entry**

- (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.

**65 Authorised representative—production of 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 62).

**66 Authorised representative—powers available on entry**

- (1) This section applies if an authorised representative enters premises under section 63 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) inspecting or viewing work, materials, plant or systems at the premises;
  - (b) interviewing members of the registered organisation (or people who are eligible to be members of the organisation) with their consent;
  - (c) taking measurements and making sketches, drawings or any other kind of record (including photographs, films, or audio, video or other recordings) at the premises;
  - (d) requiring the production for inspection of documents relating to work safety at the premises;

- (e) examining and copying, or taking extracts from, any document produced 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 211).

- (f) requiring the occupier or a worker to give the representative any assistance reasonably needed to exercise a function under this division at the premises.

- (3) If an authorised representative requires a person to produce documents for inspection under subsection (2) (d) the representative must—

- (a) show the person the representative's authorisation; and,
- (b) give the person 14 days written notice to produce the documents.

- (4) If an authorised representative requires the assistance of a person under subsection (2) (f) the representative must show the person the representative's authorisation.

## **67 Authorised representative—damage etc to be minimised**

- (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.

**68 Authorised representative—compensation for exercise of function**

- (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 division 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 satisfied that it is just to make the order in the circumstances of the particular case.
- (4) A regulation 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.

**69 Authorised representative—occupier to be told about findings**

- (1) This section applies if an authorised representative enters premises under section 63.
- (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.

## **Division 4.5 Authorised representative—offences**

### **70 Authorised representative—offences by registered organisations**

- (1) A registered organisation commits an offence if—
- (a) the organisation authorises a person under section 62; and
  - (b) either—
    - (i) the person is not an employee of, and does not hold an office in, the organisation; or
    - (ii) the person has not completed the prescribed training.

Maximum penalty: 10 penalty units.

- (2) A registered organisation commits an offence if—
- (a) the organisation authorises a person under section 62; and
  - (b) the organisation does not give the chief executive written notice of the authorisation as soon as practicable (but not later than 7 days) after the day the person is authorised.

Maximum penalty: 5 penalty units.

- (3) A registered organisation commits an offence if—
- (a) the organisation authorises a person under section 62; 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 (but not later than 7 days) after the day the authorisation ends.

Maximum penalty: 5 penalty units.

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

**71 Authorised representative—pretending**

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

Maximum penalty: 100 penalty units.

**72 Authorised representative—obstructing etc**

- (1) A person commits an offence if the person—
- (a) obstructs, hinders, intimidates or resists a person who is an authorised representative in the exercise of the representative's functions; and
  - (b) knows that the other person is an authorised representative.

Maximum penalty: 50 penalty units.

- (2) Strict liability applies to the circumstance that the other person is exercising functions as an authorised representative.

## **Part 5**                      **Enforcement powers**

### **Division 5.1**              **General**

#### **73**              **Definitions—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.

***occupier***, of premises, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

***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

### 74 Power to enter premises

- (1) For this Act, an inspector may—
- (a) at any reasonable time, enter premises that the inspector believes on reasonable grounds is 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 an amount); 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) or (b) does not authorise entry into a part of premises that is being used only for residential purposes.
- (3) An inspector may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.
- (4) To remove any doubt, an inspector may enter premises under subsection (1) without payment of an entry fee or other charge.
- (5) For subsection (1) (e), the inspector may enter the premises with any necessary assistance and force.



(6) 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 an amount.

## **75 Premises that are vehicles**

- (1) For section 74, 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 a work safety duty.
- (2) For subsection (1), 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.

## 76 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.

## 77 Consent to entry by inspectors

- (1) When seeking the consent of an occupier of premises to enter premises under section 74 (1) (c) (Power to enter premises), an inspector must—
  - (a) produce the inspector's 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.

## **78 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 work 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 (whether the information, document or other thing is at the premises or elsewhere), 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 help to exercise a function under this division.

**Example—par (i)**

An inspector is conducting an inspection at a construction site. The inspector forms the view that relevant documents are held at the head office of the company operating the construction site. A person at the premises may be required to produce the documents that are held at the head office.

*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).

*Note 5* 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).

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

- (1) An inspector may exercise 1 or more of the powers mentioned in section 78 at a public place if the inspector believes 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 division; 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.

**80 Offence—contravention of requirement by inspector**

A person must take reasonable steps to comply with a requirement made of the person under section 78 (i) or (j).

Maximum penalty: 50 penalty units.

**81 Power to take action to prevent 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.

**Examples—action inspector may take**

- 1 entering the premises with any necessary assistance and force
- 2 asking someone the inspector believes on reasonable grounds has appropriate knowledge and experience to help the inspector prevent or minimise the risk

*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).

- (4) The power to enter premises under this section is additional to the powers under section 74.
- (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) If an inspector asks someone to help under subsection (3), 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.

**82 Report about action to prevent imminent risk**

As soon as practicable after taking action under section 81 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 person in control of the premises and the chief executive.

**83 Recovery of Territory's costs for action to prevent imminent risk**

- (1) This section applies if an inspector takes action under section 81 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 relates;
  - (b) each owner and lessee of the premises to which the action relates;
  - (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.

**84 Power of entry etc in relation to serious event**

- (1) This section applies if an inspector believes on reasonable grounds that a serious event has happened, is happening or is about to happen at premises.
- (2) The inspector may enter the premises to investigate the serious event, ensure the premises are safe and prevent the concealment, loss or destruction of anything reasonably relevant to the investigation of the event.
- (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 74.



**85 Power 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 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 work safety.
- (5) The powers of an inspector under subsections (3) and (4) are additional to the powers of the inspector under subsections (1) and (2) and any other territory law.

## 86 Action in relation to seized thing

- (1) This section applies if an inspector has seized a thing at premises (the *place of seizure*) under section 85.
- (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.

### **Example—how access may be restricted**

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 1* The inspector may also destroy or otherwise dispose of the thing under s 87 if that section applies to the thing.

*Note 2* 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.

**87 Power to destroy unsafe things**

- (1) This section applies to anything inspected or seized under this part by an inspector if the inspector believes on reasonable grounds that the thing poses a risk to work safety.
- (2) The inspector may—
  - (a) require the occupier of the premises where the thing is to destroy or otherwise dispose of the thing; or
  - (b) if the thing has been seized—destroy or otherwise dispose of the thing.
- (3) A requirement under subsection (2) (a) 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) (a).

Maximum penalty: 100 penalty units.
- (5) Costs incurred by the Territory in relation to the disposal of a thing under subsection (2) (b) are a debt owing to the Territory by, and are recoverable together and separately from, the following people:
  - (a) each person in control of a business or undertaking in relation to the thing seized or, if there is no such person, each person in relation to work performed at the premises from which the thing was seized;
  - (b) the person who owned the thing.

## 88 Power to require name and address

- (1) An inspector may require a person to state the person's name and home address if the inspector believes 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) The inspector must tell the person the reason for the requirement and, as soon as practicable, record the reason.
- (3) The person may ask the inspector to produce the inspector's identity card for inspection by the person.
- (4) A person must comply with a requirement made of the person under subsection (1) if the inspector—
- (a) tells the person the reason for the requirement; and
  - (b) complies with any request made by the person under subsection (3).

Maximum penalty: 10 penalty units.

- (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.

## 89 Power to require production of authorisation

- (1) This section applies if—
- (a) an inspector believes 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) The inspector must tell the person the reason for the requirement and, as soon as practicable, record the reason.
- (4) The person may ask the inspector to produce the inspector's identity card for inspection by the person.
- (5) A person must comply with a requirement made of the person under subsection (2) if the inspector—
- (a) tells the person the reason for the requirement; and
  - (b) complies with any request made by the person under subsection (4).

Maximum penalty: 10 penalty units.

- (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

### 90            Warrants generally

- (1) An inspector may apply to a magistrate for a warrant to enter premises.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.
- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity connected with an offence against this Act; and
  - (b) the thing or activity is, or is being engaged in, at the premises, or may be, or may be engaged in, at the premises within the next 14 days.

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

**91 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) If the magistrate issues 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 tell the inspector—
    - (i) the terms of the warrant; and
    - (ii) 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 the warrant.

- (7) The inspector must, at the first reasonable opportunity, send 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.

**92 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 is present at the premises—identify himself or herself to the occupier.



- (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 anyone assisting); or
  - (b) that the effective execution of the warrant is not frustrated.

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

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

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

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

- (1) If the occupier of premises is present at the premises while a search warrant is being executed, the occupier is entitled to observe the search being conducted.
- (2) However, the occupier is not entitled to observe the search if—
  - (a) to do so would impede the search; or
  - (b) the occupier is under arrest, and allowing the occupier 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.

**95                    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 move the thing 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 not longer than 3 business days.
- (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 3 business days.
- (4) The inspector must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.
- (5) If a thing is moved to another place under this section, the inspector must, if practicable—
  - (a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and
  - (b) allow the occupier or the occupier's representative to be present during the examination or processing.

- (6) The provisions of this division relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

## **96 Use of electronic equipment at premises**

- (1) An inspector or 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.

**97 Person with knowledge of computer to assist access etc**

- (1) An inspector may apply to a magistrate for an order requiring a stated person to provide any information or assistance that is reasonably necessary to allow the inspector or a person assisting to do 1 or more of the following:
- (a) access data held in or accessible from a computer that is at the premises;
  - (b) copy the data to a data storage device;
  - (c) convert the data into documentary form.
- (2) The magistrate may make an order if satisfied that—
- (a) there are reasonable grounds for suspecting that something to which the warrant relates is accessible from the computer; and
  - (b) the stated person is—
    - (i) reasonably suspected of possessing, or having under the person's control, something to which the warrant relates; or
    - (ii) the owner or lessee of the computer; or
    - (iii) an employee or agent of the owner or lessee of the computer; and

- (c) the stated person has knowledge of—
  - (i) the computer or a computer network of which the computer forms a part; or
  - (ii) measures applied to protect data held in or accessible from the computer.
- (3) A person commits an offence if the person contravenes an order under this section.  
Maximum penalty: 50 penalty units, imprisonment for 6 months or both.
- (4) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the making of an order under this section.

## **98 Securing electronic equipment**

- (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 inspector's or person's intention to secure 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.

## **99 Copies of seized things to be provided**

- (1) This section applies if—
  - (a) the occupier of premises 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 occupier may ask the inspector to give the occupier a copy of the thing or information.
- (3) The inspector must give the occupier 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 96 (Use of electronic equipment at premises); or
  - (b) possession of the thing or information by the occupier would be an offence.

## **Division 5.4            Return and forfeiture of things seized**

### **100            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 86 (Action 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 103 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.

## **101 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, take extracts from or make copies of the document; and
  - (b) for anything else—to inspect the thing.
- (3) This section does not apply to—
  - (a) a thing seized under section 85 (4) (which is about the seizure of a thing that poses a risk to work safety); or
  - (b) a thing seized under section 96 (Use of electronic equipment at premises); or
  - (c) a thing or information if possession of it by the person otherwise entitled to inspect it would be an offence.

## **102 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, unless—
  - (a) a prosecution for an offence against a territory law in connection with the thing is begun within 1 year after the day the seizure is made and the thing is required to be produced in evidence in the prosecution; or
  - (b) an application for the forfeiture of the seized thing is made to a court under the *Confiscation of Criminal Assets Act 2003* or another territory law within 1 year after the day the seizure is made; or



- (c) all proceedings in relation to the offence with which the seizure was connected have ended and the court has not made an order about the thing.
- (2) However, this section does not apply to a thing—
- (a) seized under section 85 (4) (which is about the seizure of a thing that poses a risk to work safety); or
  - (b) 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) if possession of it by its owner would be an offence.

### **103 Application for order disallowing seizure**

- (1) A person claiming to be entitled to a thing seized under this part may apply to the Magistrates Court within 1 year after the day the seizure is made for an order disallowing the seizure.
- (2) The application may be heard only if the applicant has served a copy of the application on the chief executive.
- (3) The chief executive is entitled to appear as respondent at the hearing of the application.

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

- (1) This section applies if a person claiming to be entitled to a thing seized under this part applies to the Magistrates Court under section 103 for an order disallowing the seizure.
- (2) The Magistrates Court must make an order disallowing the seizure if satisfied that—
  - (a) the applicant would, apart from the seizure, be entitled to the return of the seized thing; and
  - (b) 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.

#### **105 Adjourment pending hearing of other proceedings**

- (1) This section applies to the hearing of an application under section 103 (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 the proceeding.

#### **106 Forfeiture of seized things**

- (1) This section applies if—
  - (a) a thing seized under this part has not been destroyed or otherwise disposed of under section 87 or returned under section 102; and

- (b) an application for disallowance of the seizure under section 103—
  - (i) has not been made within 1 year after the day the seizure is made; or
  - (ii) has been made within 1 year after the day the seizure is made, but the application has been refused or withdrawn before a decision in relation to the application has been made.
- (2) If this section applies to the seized thing—
  - (a) the thing is forfeited to the Territory; and
  - (b) the thing may be sold, destroyed or otherwise disposed of as the chief executive directs.

### **107 Return of forfeited things**

- (1) This section applies to a thing forfeited under section 106 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 is 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 interest in the thing that existed immediately before its forfeiture is restored.

### **108 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 is connected with an offence against this Act; and

- (c) the person was the owner of the thing immediately before its forfeiture.

*Note* **Found guilty**—see the Legislation Act, dictionary, 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 analysing samples**

### **109 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.

### **110 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.

**111 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, the person from whom the sample is taken—
  - (a) the amount (if any) prescribed by regulation as the amount payable for the sample; or
  - (b) if no amount is prescribed—the current market value of the sample.

**112 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.

**113 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 114.
- (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 110 (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) if the inspector takes a number of the objects, must—
    - (i) 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
    - (ii) deal with the sample under subsection (2) (b) to (d).

#### **114 Exceptions to s 113**

- (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 by regulation 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 113.

## **115 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* For the evidentiary status of a certificate under this section, see s 213.

*Note 2* If a form is approved under s 229 for the certificate, the form must be used.

## **Division 5.6 Other enforcement provisions**

### **116 Damage etc to be minimised**

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

**117 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 an inspector.
- (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 103 (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 satisfied that it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.



## **Part 6 Compliance measures**

### **Division 6.1 Interpretation—pt 6**

#### **118 Meaning of *responsible person*—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**

#### **119 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 1* Section 123 sets out how evidence obtained under this section may be used, particularly in relation to privileges against selfincrimination and exposure to the imposition of a civil penalty.

*Note 2* For how the notice may be served, see the 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 123 (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.

**120 Compliance with notice to produce**

- (1) This section applies if a person is required by a notice under section 119 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.

**121 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 119 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 119 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.

*Note* For public sector workplace compliance measures see div 6.8.

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

- (1) A person commits an offence if—
- (a) the person is required under section 119 to attend and answer questions before the chief executive; and
  - (b) the person attends before the chief executive; and
  - (c) the chief executive asks 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 119 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.

*Note* For public sector workplace compliance measures see div 6.8.

## **123 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 119; 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 119 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—
- (a) section 121; or
  - (b) section 122; or
  - (c) the Criminal Code, part 3.4 (False or misleading statements, information and documents).

### **Division 6.3 Compliance agreements**

#### **124 Meaning of *relevant responsible person*—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.

#### **125 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 a worker 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—measures**

- 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 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).

- (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.

**126 Term of compliance agreement**

- (1) A compliance agreement commences when the agreement is signed by the inspector and relevant responsible person or, if the agreement states a later date for commencement, the later date.
- (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.

**127 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 relevant 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).

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

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

Maximum penalty: 20 penalty units.



- (3) The relevant responsible 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.

*Note* For public sector workplace compliance measures see div 6.8.

## **129 Compliance agreement not to be removed etc**

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.

*Note* For public sector workplace compliance measures see div 6.8.

## **Division 6.4 Improvement notices**

### **130 Meaning of *relevant responsible person*—div 6.4**

In this division:

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

## 131 Giving improvement notices

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

### Example

There is dangerous plant at a workplace. The person in control of the workplace is contravening the duty to ensure work safety in relation to plant. An improvement notice may be issued.

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

*Note 2* A reference to an Act includes a reference to 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 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).

## 132 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;
  - (c) do anything else to ensure that this Act is complied with.

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

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

### **133 Scope of improvement notices**

- (1) An improvement notice issued in relation to a workplace may relate to 1 or more of the following:
  - (a) premises;
  - (b) plant or a system;
  - (c) an activity;
  - (d) a circumstance;
  - (e) anything that poses a risk to work safety.

*Note 1* **Premises** includes any land, structure or vehicle and any part of an area of land, a structure or vehicle (see dict).

*Note 2* **Workplace**—see s 12.

*Note 3* **Work safety**—see s 7.

- (2) This section does not limit what an improvement notice for a workplace may relate to.

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

- (1) This section applies if a responsible person has been given an improvement notice.
- (2) An inspector may, by written notice given to the relevant responsible person, extend the compliance period for the improvement notice on the inspector's own initiative or if asked by the 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 132 (2) (c), and includes that period as extended under this section.

**135 Notification and display of improvement notices**

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

Maximum penalty: 20 penalty units.

- (3) The relevant responsible 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.

*Note* For public sector workplace compliance measures see div 6.8.

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

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.

*Note* For public sector workplace compliance measures see div 6.8.

### **137 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.

### **138 Contravention of improvement notices**

- (1) The relevant responsible person for an improvement notice commits an offence if the person fails to take 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.

*Note* For public sector workplace compliance measures see div 6.8.

## Division 6.5 Prohibition notices

### 139 Definitions—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 and the risk to be prevented or minimised under the notice (see section 140 (1)); or
- (b) the inspection, testing or monitoring to be allowed under the notice (see section 140 (2) (a)); or
- (c) the accident or other incident to be investigated under the notice (see section 140 (2) (b)).

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

### 140 Giving prohibition notices

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

- (2) An inspector may also give a notice (also a *prohibition notice*) to a responsible person for a workplace, or for a work safety duty, if the inspector believes on reasonable grounds that giving the notice is necessary to allow—
- (a) the inspection, testing or monitoring of anything at the workplace or elsewhere; or
  - (b) the investigation of an accident or other incident (including a dangerous occurrence) at the workplace or elsewhere.

**Example—s (2) (a)**

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

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

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

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

## **141 Contents of prohibition notices**

- (1) A prohibition notice for a workplace, or for a work safety duty, may require the relevant responsible person not to do 1 or more of the following until the notice ends:
- (a) use stated premises, plant, systems, substances or things;
  - (b) disturb stated premises, plant, systems, substances or things;
  - (c) something else at or in relation to the workplace, or elsewhere.
- (2) Also, the prohibition notice must—
- (a) state the following:
    - (i) that it is a prohibition notice under this Act;

- (ii) the workplace, or other place, to which the notice relates;
  - (iii) the basis for giving the notice; and
- (b) if the notice is given under section 140 (1) (which is about a notice given to prevent or minimise risk of serious harm from contravention of this Act)—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 140 (2) (which is about notices given to allow inspection, testing, monitoring and investigation)—state the reasonable period that the inspector considers necessary to carry out the inspection, testing, monitoring or investigation to which the notice relates.

## 142 Scope of prohibition notices

- (1) A prohibition notice in relation to a workplace may relate to 1 or more of the following:
- (a) premises;
  - (b) plant or a system;
  - (c) an activity;
  - (d) a circumstance;
  - (e) anything that poses a risk to work safety.

*Note 1* **Premises** includes any land, structure or vehicle and any part of an area of land, a structure or vehicle (see dict).

*Note 2* **Workplace**—see s 12.

*Note 3* **Work safety**—see s 7.

- (2) This section does not limit what an improvement notice for a workplace may relate to.



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

- (1) This section applies if a prohibition notice is given under section 140 (2).
- (2) An inspector may, by written notice given to the relevant responsible person for the prohibition notice, extend the stated 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 stated period only if the period has not ended.
- (4) In this section:

*stated period* means the period stated in the prohibition notice under section 141 (2) (c), and includes that period as extended under this section.

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

- (1) This section applies to the relevant responsible person for a prohibition notice.
- (2) The relevant responsible 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 relevant responsible 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.

*Note* For public sector workplace compliance measures see div 6.8.

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

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.

*Note* For public sector workplace compliance measures see div 6.8.

#### **146 Ending of prohibition notices for contravention of Act etc**

- (1) This section applies to a prohibition notice if the notice is given under section 140 (1) (which is about a notice given to prevent or minimise risk of serious harm from contravention of this Act).
- (2) The prohibition notice ends when the notice is revoked under section 148.

#### **147 Request for reinspection**

- (1) This section applies to a prohibition notice given under section 140 (1).
- (2) The relevant responsible person for the prohibition notice may ask the chief executive, in writing, to reinspect 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.

### **148 Revocation on reinspection**

- (1) This section applies if a request has been made under section 147.
- (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.
- (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 chief executive 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* **Business day**—see the Legislation Act, dictionary, 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.

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

- (1) This section applies to a prohibition notice if the notice is given under section 140 (2) (which is about notices given to allow inspection, testing, monitoring and investigation).
- (2) The prohibition notice ends at the end of the period stated in the notice under section 141 (Contents of prohibition notices) or, if the period is extended under section 143, the end of the extended period.

## **150 Contravention of prohibition notices**

- (1) The relevant responsible person for a prohibition notice commits an offence if the person fails to take 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.

*Note* For public sector workplace compliance measures see div 6.8.

## **151 Request for compensation for prohibition notice**

- (1) This section applies if—
  - (a) a prohibition notice is given in relation to a workplace, or for a work safety duty; 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.

## **152 Compensation for prohibition notice**

- (1) This section applies if a person applies under section 151 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 applicant the reasonable compensation decided by the Minister.

- (3) However, compensation is not payable to the applicant—
  - (a) in relation to any loss or expense suffered by the applicant because of an act or omission of the applicant; or
  - (b) if the applicant caused or contributed to the situation or circumstances that caused the prohibition notice to be given.
- (4) The Minister must give the applicant 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**

### **153                      Definitions—div 6.6**

In this division:

*alleged contravention*—see section 154 (3) (b).

*enforceable undertaking* means a safety undertaking that has been accepted under section 155.

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

*safety undertaking*—see section 154 (2).

### **154                      Making of safety undertakings**

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

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

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

**Examples—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 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).

**155 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.

**156      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.

**157      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.

**158      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.

## 159 Contravention of enforceable undertakings

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

*Note* For public sector workplace compliance measures see div 6.8.



## **Division 6.7                      Injunctions**

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

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

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

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

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

**161 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.

**162 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.

**163 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.

**164 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.

## **Division 6.8            Public sector workplace compliance measures**

### **165            Meaning of *public sector workplace*—div 6.8**

In this division:

*public sector workplace* means a workplace under the control of the Territory or a territory instrumentality (other than a territory-owned corporation).

*Note 1    The Territory*—see the Legislation Act, dictionary, pt 1.

*Note 2    Territory instrumentality*—see the *Public Sector Management Act 1994*, dictionary.

### **166            Reporting certain failures to comply in public sector workplaces**

- (1) This section applies if the chief executive is satisfied on reasonable grounds that a person in control of a public sector workplace has failed to comply with 1 or more of the following:
  - (a) a compliance agreement;
  - (b) an enforceable undertaking;
  - (c) an improvement notice;
  - (d) a prohibition notice.
- (2) The chief executive must give the Minister a report about the failure.
- (3) The Minister must present the report to the Legislative Assembly within 5 sitting days after the day the Minister receives the report.

**167 Notice of failure to comply with safety duty in public sector workplace**

- (1) This section applies if the chief executive (the *notifying chief executive*) believes on reasonable grounds that there has been a failure to comply with a safety duty at a public sector workplace.

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

- (2) The notifying chief executive must—
- (a) prepare a report (the *proposed report*) setting out the grounds for the belief that there has been a failure to comply with the safety duty at the public sector workplace; and
  - (b) give the chief executive (the *responsible chief executive*) responsible for the workplace—
    - (i) a copy of the proposed report; and
    - (ii) written notice that the responsible chief executive may, within 10 working days after the day the responsible chief executive receives the notice, give the notifying chief executive written comments on the proposed report.

**168 Notice of failure to comply—no failure found**

- (1) This section applies if—
- (a) the chief executive (the *notifying chief executive*) gives the chief executive (the *responsible chief executive*) responsible for a public sector workplace a proposed report and notice under section 167; and
  - (b) after considering any comments given in accordance with the notice, the notifying chief executive is satisfied on reasonable grounds that—there was no failure to comply with a safety duty in relation to the workplace as set out in the proposed report.

- (2) The notifying chief executive must—
- (a) give the responsible chief executive written notice of—
    - (i) the matter of which the notifying chief executive is satisfied; and
    - (ii) that the notifying chief executive proposes to take no further action in relation to the matter that gave rise to the proposed report; and
  - (b) take no further action in relation to the matter that gave rise to the proposed report.

**169 Notice of failure to comply—failure addressed**

- (1) This section applies if—
- (a) the chief executive (the *notifying chief executive*) gives the chief executive (the *responsible chief executive*) responsible for a public sector workplace a proposed report and notice under section 167; and
  - (b) after considering any comments given in accordance with the notice, the notifying chief executive is satisfied on reasonable grounds that—
    - (i) there was a failure to comply with a safety duty in relation to the workplace; and
    - (ii) appropriate steps have been taken to address the failure to comply.
- (2) The notifying chief executive must—
- (a) give the responsible chief executive written notice of—
    - (i) the failure to comply with the safety duty; and
    - (ii) the appropriate steps that the notifying chief executive is satisfied have been taken to address the failure; and

- (iii) if the notifying chief executive is satisfied that the failure to comply is sufficiently serious to require a copy of the report to be given to the Minister—the intention to give a copy of the report to the Minister; and
  - (b) give a copy of the report to the Minister.
- (3) If the Minister is given a report under this section the Minister must present the report to the Legislative Assembly within 5 sitting days after the day the Minister receives the report.

#### **170 Notice of failure to comply—failure not addressed**

- (1) This section applies if—
  - (a) the chief executive (the *notifying chief executive*) gives the chief executive (the *responsible chief executive*) responsible for a public sector workplace a proposed report and notice under section 167; and
  - (b) after considering any comments given in accordance with the notice, the notifying chief executive is satisfied on reasonable grounds that—
    - (i) there was a failure to comply with a safety duty in relation to the workplace as set out in the proposed report; and
    - (ii) appropriate steps have not been taken to address the failure to comply.
- (2) The notifying chief executive must—
  - (a) if after considering any comments given in accordance with the notice and being satisfied that it is appropriate to revise the report—revise the proposed report; and
  - (b) give a copy of the report (whether revised or not) to the Minister.

- (3) If the Minister is given a report under subsection (2) the Minister must present the report to the Legislative Assembly within 5 sitting days after the day the Minister receives the report.

### **171 Notice of noncompliance—annual report**

- (1) This section applies if—
- (a) a person in control of a public sector workplace commits an offence against this Act; and
  - (b) the offence is an infringement notice offence.
- (2) An authorised person for the infringement notice offence may give a notice of noncompliance to the chief executive (the *responsible chief executive*) responsible for the public sector workplace.

*Note* For how documents may be served, see the 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 given to the chief executive and a brief description of the 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.

**172 Annual report—additional compliance information**

- (1) A chief executive (the *responsible chief executive*) responsible for a public sector workplace must include in the responsible chief executive's annual report information on any of the following that happened at or in relation to the workplace:
  - (a) a report under section 166;
  - (b) the issuing of an improvement notice or a prohibition notice;
  - (c) a notice under section 167;
  - (d) a notice under section 170.
- (2) In this section:

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



## Part 7                      Administrative review of decisions

### 173            Definitions—pt 7

In this part:

*decision-maker*—see section 175 (1).

*internally reviewable decision*—see section 176 (1).

*internal reviewer*—see section 176 (3).

*reviewable decision*—see section 174.

### 174            Application—pt 7

This part applies to a decision (a *reviewable decision*)—

- (a) made by the Minister, chief executive or an inspector under this Act; and
- (b) prescribed by regulation.

### 175            Notice of reviewable decisions

- (1) If the Minister, chief executive or inspector (the *decision-maker*) makes a reviewable decision, the decision-maker must give written notice of the decision to each person prescribed by regulation for the decision.
- (2) In particular, the notice must tell the person—
  - (a) whether the person has the right to apply for internal review of the decision or the right to apply to the ACAT for review of the decision, and how the application must be made; and

- (b) if the person has the right to apply for internal review of the decision—that person has the right to apply to the ACAT for the review of the decision on the internal review if the person is dissatisfied with that decision; and
- (c) about the options available under other ACT laws to have the decision reviewed by a court or the ombudsman.

### **176 Internal review of certain decisions**

- (1) This section applies if a regulation declares that a reviewable decision is a decision that is subject to internal review (an *internally reviewable decision*).
- (2) A person whose interests are affected by an internally reviewable decision may apply in writing to the chief executive for internal review of the decision.
- (3) The chief executive must arrange for someone else (the *internal reviewer*) to review the decision.
- (4) However, this section does not apply to a reviewable decision made personally by the Minister or the chief executive.

*Note* Section 179 (b) provides for review of decisions exempt from internal review by the ACAT.

### **177 Applications for internal review**

- (1) An application for internal review of an internally reviewable decision must be made within—
  - (a) 28 days after the day when the applicant is told about the decision by the decision-maker; or
  - (b) any longer period allowed by the internal reviewer, whether before or after the end of the 28-day period.
- (2) The application must set out the grounds on which internal review of the decision is sought.

- (3) The making of the application for internal review of the decision does not affect the operation of the decision.

### **178 Internal review**

- (1) The internal reviewer must review the internally reviewable decision, and confirm, vary or revoke the decision, within 5 business days after the decision-maker receives the application for internal review of the decision.

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

- (2) If the decision is not varied or revoked within the 5-day period, the decision is taken to have been confirmed by the internal reviewer.
- (3) As soon as practicable after reviewing the decision, the internal reviewer must give written notice of the decision on the internal review to the applicant.

### **179 Review of decisions by ACAT**

A person may apply to the ACAT for review of—

- (a) a decision made by an internal reviewer; or
- (b) a reviewable decision, other than an internally reviewable decision.

## Part 8 Administration

### 180 Inspectors

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 the Legislation Act, pt 19.3.

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

### 181 Identity cards

- (1) 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 by regulation.
- (2) 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: 10 penalty units.

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

**182 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.

**183 Ministerial directions to chief executive**

- (1) The Minister may, in writing, give directions to the chief executive in relation to the exercise of the chief executive's functions, either generally or in relation to a particular matter.
- (2) The chief executive must comply with a direction given under subsection (1).
- (3) The Minister must present a copy of any direction under subsection (1) to the Legislative Assembly within 6 sitting days after the day it is given to the chief executive.

## **Part 9 Work safety council**

### **Division 9.1 Establishment, functions and powers**

#### **184 Establishment**

The Work Safety Council is established.

#### **185 Functions**

- (1) The council has the following functions:
- (a) to advise the Minister on matters relating to—
    - (i) work safety; or
    - (ii) workers compensation; or
  - (b) to inquire into and report to the Minister on matters referred to the council by the Minister in relation to—
    - (i) work safety; or
    - (ii) workers compensation; or
  - (c) any other function prescribed by regulation.

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

- (2) Without limiting subsection (1) (a), the matters on which the council may advise the Minister include the following matters:
- (a) the operation of this Act and the associated laws;
  - (b) the approval of codes of practice, and the variation of codes of practice, under section 18;
  - (c) the provision of education and training in relation to work safety;
  - (d) the promotion of work safety;
  - (e) the operation of the *Workers Compensation Act 1951*;
  - (f) the approval of a protocol or an amendment to a protocol under the *Workers Compensation Act 1951*;
  - (g) the provision of education and training in relation to workers' compensation;
  - (h) the operation of the *Dangerous Substances Act 2004*.

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

## **Division 9.2                      Constitution and meetings**

### **186                      Membership**

The council consists of—

- (a) 4 members appointed by the Minister after consultation with the people or bodies that the Minister considers represent the interests of employees; and
- (b) 4 members appointed by the Minister after consultation with the people or bodies that the Minister considers represent the interests of employers; and

- (c) 4 other members appointed by the Minister; and
- (d) the commissioner.

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

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

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

## **187 Terms of appointment**

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

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

## **188 Appointment of chair and deputy chair**

The Minister must appoint a member of the council appointed under section 186 (c) or (d) as chair of the council and another member as deputy chair of the council.

## **189 Leave**

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



## **190 Disclosure of interest**

- (1) If a member of the council has a material interest in an issue being considered, or about to be considered, by the council, the member must disclose the nature of the interest at a council meeting as soon as practicable after the relevant facts come to the member's knowledge.

*Note* **Material interest** is defined in s (4). The definition of **indirect interest** in s (4) applies to the definition of **material interest**.

- (2) A disclosure must be recorded in the council's minutes and, unless the council otherwise decides, the member must not—
- (a) be present when the council considers the issue; or
  - (b) take part in a decision of the council on the issue.
- (3) Any other council member who also has a material interest in the issue must not be present when the council is considering its decision under subsection (2).
- (4) In this section:

**associate**, of a person, means—

- (a) the person's business partner; or
- (b) a close friend of the person; or
- (c) a family member of the person.

**executive officer**, of a corporation, means a person (however described) who is concerned with, or takes part in, the corporation's management, whether or not the person is a director of the corporation.

***indirect interest***—without limiting the kinds of indirect interests a person may have, a person has an ***indirect interest*** in an issue if any of the following has an interest in the issue:

- (a) an associate of the person;
- (b) a corporation if the corporation has not more than 100 members and the person, or an associate of the person, is a member of the corporation;
- (c) a subsidiary of a corporation mentioned in paragraph (b);
- (d) a corporation if the person, or an associate of the person, is an executive officer of the corporation;
- (e) the trustee of a trust if the person, or an associate of the person, is a beneficiary of the trust;
- (f) a member of a firm or partnership if the person, or an associate of the person, is a member of the firm or partnership;
- (g) someone else carrying on a business if the person, or an associate of the person, has a direct or indirect right to participate in the profits of the business.

***material interest***—a council member has a ***material interest*** in an issue if the member has—

- (a) a direct or indirect financial interest in the issue; or
- (b) a direct or indirect interest of any other kind if the interest could conflict with the proper exercise of the member's functions in relation to the council's consideration of the issue.

## **191 Reporting of disclosed council interests to Minister**

- (1) Within 3 months after the day a material interest is disclosed under section 190 the chair must report to the Minister in writing about—
  - (a) the disclosure; and
  - (b) the nature of the interest disclosed; and
  - (c) any decision by the council under section 190.
- (2) The chair must also give the Minister, not later than 31 days after the end of each financial year, a statement that sets out the information given to the Minister in reports under subsection (1) that relate to disclosures made during the previous financial year.
- (3) The Minister must give a copy of the statement to the relevant committee of the Legislative Assembly within 31 days after the day the Minister receives the statement.
- (4) In this section:  
*relevant committee* means—
  - (a) a standing committee of the Legislative Assembly nominated by the Speaker for subsection (3); or
  - (b) if no nomination under paragraph (a) is in effect—the standing committee of the Legislative Assembly responsible for public accounts.

## **192 Ending appointment of council member**

- (1) This section applies to a member of the council other than the commissioner.
- (2) The Minister must end the appointment of a member of the council if the Minister becomes aware that the member—
  - (a) has become bankrupt, executed a personal insolvency agreement or otherwise applied to take the benefit of a law for the relief of bankrupt or insolvent debtors; or

- (b) has failed to comply with section 190 (Disclosure of interest) without reasonable excuse; or
  - (c) has at any time been convicted, in Australia, of an offence punishable by imprisonment for 1 year or longer; or
  - (d) has at any time been convicted, outside Australia, of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for 1 year or longer.
- (3) However, before ending the appointment of the member under subsection (2) (c) or (d) the Minister must be satisfied that the conviction affects the member's suitability as a member of the council.
- (4) The Minister may end the appointment of a member of the council—
- (a) if the member was appointed under section 186 (a) and the Minister is satisfied that the member no longer represents the interests of employees; or
  - (b) if the member was appointed under section 186 (b) and the Minister is satisfied that the member no longer represents the interests of employers; or
  - (c) if the member is absent from 3 consecutive meetings of the council, otherwise than on leave approved under section 189; or
  - (d) if the member contravenes a territory law; or
  - (e) for misbehaviour; or
  - (f) for physical or mental incapacity, if the incapacity substantially affects the exercise of the member's functions.

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

### **193 Calling meetings**

- (1) The chair—
  - (a) may call the meetings of the council that the chair considers necessary for the efficient exercise of its functions; and
  - (b) must, on receiving a written request signed by not less than 4 other members of the council, call a meeting of the council.
- (2) If the chair proposes to call a meeting of the council, the chair must, not later than 5 days before the date of the proposed meeting, give each member of the council a written notice stating—
  - (a) the date, time and place of the meeting; and
  - (b) the matters to be considered at the meeting.
- (3) The Minister may call a meeting of the council by written notice given to each of the members.

### **194 Presiding member at council meetings**

- (1) The chair presides at all meetings of the council at which the chair is present.
- (2) If the chair is absent, the deputy chair presides.
- (3) If the chair and the deputy chair are absent, the member chosen by the members present presides.

### **195 Quorum at council meetings**

Business may be carried on at a meeting of the council only if the meeting is constituted by 7 members including—

- (a) 2 members, at least 1 of whom is not an acting member, mentioned in section 186 (a); and
- (b) 2 members, at least 1 of whom is not an acting member, mentioned in section 186 (b); and

- (c) 2 members, at least 1 of whom is not an acting member, mentioned in section 186 (c).

### **196 Voting at council meetings**

- (1) At a meeting of the council each member (other than the chair) has a vote on each question to be decided.
- (2) A question is decided by a majority of the votes of the members present and voting but, if the votes are equal, the member presiding has the deciding vote.

### **197 Conduct of council meetings etc**

- (1) The council may conduct its proceedings (including its meetings) as it considers appropriate.
- (2) A meeting may be held using a method of communication, or a combination of methods of communication, that allows a council member taking part to hear what each other member taking part says without the members being in each other's presence.

#### **Examples**

a phone link, a satellite link

*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 council member who takes part in a meeting conducted under subsection (2) is taken, for all purposes, to be present at the meeting.
- (4) A resolution is a valid resolution of the council, even if it is not passed at a meeting of the council, if all members agree to the proposed resolution in writing or by electronic communication.

#### **Example—electronic communication**

email

- (5) The council must keep minutes of its meetings.

**198 Protection of council members from liability**

- (1) A council member is not civilly liable for anything done or omitted to be done honestly and without recklessness—
  - (a) in the exercise of a function under a territory law; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a function under a territory law.
- (2) Any liability that would, apart from this section, attach to a council member attaches instead to the Territory.

**Division 9.3 Advisory committees**

**199 Establishment**

- (1) The council may establish the advisory committees that it considers necessary to assist in the exercise of its functions.
- (2) The council must, if asked to do so by the Minister, constitute an advisory committee to assist it in the exercise of its functions in relation to any matter stated by the Minister about work safety.
- (3) Subject to any direction by the council, an advisory committee may decide how it is to exercise its functions.

## Part 10 Work safety commissioner

### 200 Appointment of commissioner

- (1) The Executive must appoint a person to be the Work Safety Commissioner.

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

- (2) The commissioner must be appointed for not longer than 7 years.

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

*Note 2* A person's appointment also ends if the person resigns (see Legislation Act, s 210).

### 201 Functions

- (1) In addition to any other functions given to the commissioner under this Act, the commissioner has the following functions:

- (a) to promote an understanding and acceptance of, and compliance with, this Act and other laws relating to work safety;
- (b) to undertake research, and develop educational and other programs, for the purpose of promoting work safety;
- (c) to advise the Minister on any matter relevant to the operation of this Act and other laws relating to work safety;
- (d) the functions (if any) that are given to the commissioner under any other territory law.

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



- (2) In exercising a function mentioned in subsection (1) (a) to (c), neither the commissioner nor a member of the staff assisting the commissioner is subject to direction by the chief executive.

## **202 Retirement**

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

## **203 Removal of commissioner**

- (1) The Executive may remove the commissioner from office if—
- (a) an address praying for his or her removal on the ground of misbehaviour or physical or mental incapacity has been presented to the Executive by the Legislative Assembly; or
  - (b) the commissioner is absent from duty, except on leave granted by the Minister, for 14 consecutive days or for 28 days in any 12 months.
- (2) The Executive must remove the commissioner from office if the commissioner becomes bankrupt, executes a personal insolvency agreement or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors.
- (3) The commissioner must not be removed from office except as provided by this section or section 204.

## **204 Suspension and removal of commissioner**

- (1) The Executive may suspend the commissioner from office on the ground of misbehaviour or physical or mental incapacity.
- (2) If the Executive suspends the commissioner from office, the Minister must present a statement of the grounds of the suspension to the Legislative Assembly within 7 sitting days after the suspension.

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

## **205 Ministerial directions to commissioner**

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

## **206 Staff**

The staff assisting the commissioner are to be employed under the *Public Sector Management Act 1994*.

**207 Delegation by commissioner**

The commissioner may delegate the commissioner's functions under a territory law to a member of the staff assisting the commissioner.

*Note* For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

## Part 11 Chief executive and commissioner reports

### 208 Chief executive's annual report

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

- (a) a copy of any direction given under section 183 (Ministerial directions to chief executive) during the year; and
- (b) a statement about action taken during the year to give effect to any direction given (whether before or during the year) under that section.

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

### 209 Additional reports by chief executive

- (1) In March of each year, the chief executive must prepare and give to the Minister a report on the operation of occupational work safety matters for which the chief executive is responsible under this Act during the period of 6 months commencing on the previous 1 July.
- (2) The Minister must present the report to the Legislative Assembly within 6 sitting days after the day the Minister receives the report.

**210 Commissioner's half-yearly reports**

- (1) The commissioner must, as soon as practicable after the end of each half-year, prepare and give to the Minister a report on the commissioner's operations during that half-year.
- (2) A report prepared under subsection (1) must include—
  - (a) a copy of any ministerial direction under section 205 (Ministerial directions to commissioner) during the half-year; and
  - (b) a statement about action taken during the half-year to give effect to any direction given (whether before or during the half-year) under that section.
- (3) The Minister must present the report prepared under subsection (1) to the Legislative Assembly within 6 sitting days after the day the Minister receives the report.
- (4) In this section:

*half-year* means a period of 6 months commencing on 1 July or 1 January in a year.

## Part 12 Information and evidence

### 211 Use of protected information

- (1) This section applies if—
  - (a) a person is exercising any function under this Act; and
  - (b) the person obtains protected information about the affairs of another person.
- (2) A person who obtains protected information under subsection (1) may use the information for the exercise of a function under—
  - (a) this Act; and
  - (b) another Act prescribed by regulation.
- (3) A person who obtains protected information under subsection (1) must not disclose protected information to any other person, unless the disclosure is—
  - (a) necessary for the exercise of a function under this Act; or
  - (b) necessary for the exercise of a function under another Act prescribed by regulation; or
  - (c) made with the written consent of the person to whom the information relates; or
  - (d) required by any court, tribunal, authority or person having lawful authority to require the production of documents or the answering of questions.

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

(4) In this section:

*protected information* means—

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

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

## **212 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.

## **213 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.

**214 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 under section 113 (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 223 (Court may order costs and expenses), the cost of an analysis under this section is payable by the Territory.



**215 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 Legislation Act, s 207).

**216 Notice of code approvals**

- (1) The chief executive must publish in a newspaper circulating in the ACT a notice of each approval of a code under section 18 (1) that—
  - (a) states the date when the approval takes effect; and
  - (b) states the place where copies of the code to which the approval relates may be purchased; and
  - (c) contains a statement to the effect that an up-to-date copy of each approved code, and any document the provisions of which are applied, adopted or incorporated in an approved code, may be inspected by members of the public during normal business hours at the office of the chief executive.
- (2) The chief executive must, at all times, ensure that an up-to-date copy of each approved code of practice, and any document the provisions of which are applied, adopted or incorporated in an approved code are available for inspection by members of the public during normal business hours at the office of the chief executive.

## Part 13 Proceedings and liability

### 217 Acts and omissions of representatives

- (1) In this section:

*person* means an individual.

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

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

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

- (a) the person's knowledge, intention, opinion, belief or purpose; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.

- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

## **218 Private prosecution of offences**

- (1) This section applies to—
  - (a) an offence under division 3.2 (Work safety risks—failure to comply with duties); and
  - (b) any other offence prescribed by regulation.
- (2) A prosecution for an offence may be begun by—
  - (a) the secretary of a registered organisation established to represent the interests of workers; or
  - (b) the chief executive of a registered organisation established to represent the interests of employers.
- (3) The following provisions of the *Director of Public Prosecutions Act 1990* apply to a prosecution begun under this section as if the prosecution were a general proceeding:
  - (a) section 8 (Taking over the conduct of general proceedings);
  - (b) section 13 (Provision of information to director);
  - (c) section 15 (Obligation to inform court).
- (4) This section does not affect the right of a person to begin a proceeding for the prosecution of an offence under this Act or another law in force in the ACT.

**219 Criminal liability of corporation officers**

- (1) This section applies to the following provisions:
  - (a) a provision of division 3.1 (Duties to manage risks);
  - (b) section 138 (Contravention of improvement notices);
  - (c) section 150 (Contravention of prohibition notices);
  - (d) section 159 (Contravention of enforceable undertakings).
- (2) An officer of a corporation commits an offence if—
  - (a) the corporation contravenes a provision to which this section applies; and
  - (b) the contravention is an offence against this Act (the *relevant offence*); and
  - (c) the officer was reckless about whether the contravention would happen; and
  - (d) the officer was in a position to influence the conduct of the corporation in relation to the contravention; and
  - (e) the officer failed to take reasonable steps to prevent the contravention.

Maximum penalty: The maximum penalty that may be imposed for the commission of the relevant offence by an individual.
- (3) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.

- (4) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must have regard to the following:
- (a) any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
    - (i) that the corporation arranged regular professional assessments of the corporation's compliance with the contravened provision;
    - (ii) that the corporation implemented any appropriate recommendation arising from such an assessment;
    - (iii) that the corporation's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the contravened provision;
  - (b) any action the officer took when the officer became aware that the contravention was, or might be, about to happen.
- (5) Subsection (4) does not limit the matters to which the court may have regard.
- (6) This section does not apply if the corporation would have a defence to a prosecution for the relevant offence.

## **220 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 the 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—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.

## **221 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 the Legislation Act, dict, pt 1.

## **222 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 the Legislation Act, dict, pt 1.

- (2) The court may order the person to take any step that it considers necessary and appropriate to rectify the state of affairs and that is 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.

**223 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.

**224 Court may order forfeiture**

A court that convicts a person, or finds a person guilty, of an offence against this Act may order the forfeiture to the Territory of anything that was used in the commission of the offence.

**225 Civil liability not affected**

Nothing in this Act is to be taken—

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



## Part 14                      Miscellaneous

### 226            **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.

### 227            **Contracting out prohibited**

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

### 228            **Determination of fees**

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

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

- (2) A determination is a disallowable instrument.

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

**229 Approved forms**

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

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

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

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

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

**230 Regulation-making power**

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

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

- (2) A regulation may make provision on any subject matter affecting, or likely to affect, the work safety of a worker or other people at a workplace including—

- (a) provisional improvement notices; and
- (b) the eligibility requirements for a person to be elected as a health and safety representative for a worker consultation unit; and
- (c) how the election of a health and safety representative is to take place; and
- (d) the conditions of office for a health and safety representative.

- (3) A regulation may prescribe—

- (a) offences for contraventions of a regulation; and
- (b) maximum penalties of not more than 20 penalty units for offences against a regulation.

- (4) Before making regulations the Executive must—
- (a) consult with the council on the subject matter of the regulation;  
and
  - (b) have regard to the recommendations (if any) made to the Executive by the council.

## Dictionary

(see s 3)

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

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

- AAT
- ACAT
- by
- chief executive (see s 163)
- function
- Minister (see s 162)
- person
- the Territory
- under.

***alleged contravention***, for division 6.6 (Enforceable undertakings)—see section 154 (3) (b).

***approved code of practice***—see section 18.

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

***authorised analyst*** means an analyst authorised under section 215.

***authorised representative***, for division 4.4 (Authorised representative—entry to workplace)—see section 61.

***basis***, for giving a prohibition notice, for division 6.5 (Prohibition notices)—see section 139.

***building*** includes part of a building.

***business or undertaking***—see section 11.

***commissioner*** means the Work Safety Commissioner appointed under section 200.

***connected***, for part 5 (Enforcement powers)—see section 73.

***council***, means the Work Safety Council established under section 184.

***dangerous occurrence***—see section 37.

***data***, for part 5 (Enforcement powers)—see section 73.

***data storage device***, for part 5 (Enforcement powers)—see section 73.

***decision-maker***—for part 7 (Administrative review of decisions)—see section 175 (1).

***employer***, of a worker—see section 10.

***enforceable undertaking***, for division 6.6 (Enforceable undertakings)—see section 153.

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

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

***health and safety committee***, for a worker consultation unit, means the health and safety committee elected for the unit under division 4.1.

***health and safety representative***, for a worker consultation unit, means a person elected as the health and safety representative for the unit under division 4.1.

***improvement notice***—see section 131.

***inspector*** means an inspector under section 180.

***internally reviewable decision***—for part 7 (Administrative review of decisions)—see section 176 (1).

***internal reviewer***—for part 7 (Administrative review of decisions)—see section 176 (3).

***manages risk***—see section 14.

**occupier**, of premises, for part 5 (Enforcement powers)—see section 73.

**offence**, for part 5 (Enforcement powers)—see section 73.

**office**, in an organisation, for division 4.4 (Authorised representatives—entry to workplace)—see section 61.

**person assisting**, in relation to a search warrant, for part 5 (Enforcement powers)—see section 73.

**person in control**—see section 13.

**plant** includes—

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

**premises** includes—

- (a) a structure, building, aircraft, vehicle or vessel; and
- (b) a place (whether enclosed or built on or not); and
- (c) a part of premises (including premises of a kind mentioned in paragraph (a) or (b)).

**prohibition notice** means a prohibition notice given under section 140.

**provisional improvement notice** means a provisional improvement notice as prescribed by regulation.

**public sector workplace**, for division 6.8 (Public sector workplace compliance measures)—see section 165.

**reasonably practicable steps**—see section 15.

**registered organisation** means an organisation registered under the *Workplace Relations Act 1996* (Cwlth), schedule 1 (Registration and Accountability of Organisations).

**relevant person**, for an enforceable undertaking, for division 6.6 (Enforceable undertakings)—see section 153.

**relevant responsible person**—

- (a) for a compliance agreement, for division 6.3 (Compliance agreements)—see section 124; and
- (b) for an improvement notice, for division 6.4 (Improvement notices)—see section 130; and
- (c) for a prohibition notice, for division 6.5 (Prohibition notices)—see section 139.

**responsible person**, for a contravention of a provision of this Act, for part 6 (Compliance measures)—see section 118.

**reviewable decision**—for part 7 (Administrative review of decisions)—see section 174.

**risk**—see section 8.

**safety duty**, for division 3.2 (Work safety risks—failure to comply with duties)—see section 29.

**safety undertaking**—see section 154.

**search warrant**, for part 5 (Enforcement powers)—see section 73.

**serious event**, for division 3.3 (Work safety risks—serious events)—see section 36.

**structure** includes—

- (a) a building, whether permanent or temporary; and
- (b) part of a structure.

**substance** includes a matter, material or thing, whether solid, liquid or gas or in a mixture.

**supply** includes supply, or resupply, by sale, exchange, lease, hire or hire-purchase, whether as principal or agent.

*worker*—see section 9.

*worker consultation unit*, for an employer—see section 46.

*workplace*—see section 12.

*work safety*—see section 7.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 19 August 2008.

**2 Notification**

Notified under the Legislation Act on 16 September 2008.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Work Safety Bill 2008, which was passed by the Legislative Assembly on 28 August 2008.

Clerk of the Legislative Assembly

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