



Australian Capital Territory

Work Health and Safety Act 2011

A2011-35

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Australian Capital Territory

Work Health and Safety Act 2011

A2011-35

An Act about work health and safety

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

Part 1 Preliminary

Division 1.1 Introduction

1 Name of Act

This Act is the *Work Health and Safety Act 2011*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

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)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

Division 1.2 Object

3 Object

- (1) The main object of this Act is to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by—
 - (a) protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work or from specified types of substances or plant; and
 - (b) providing for fair and effective workplace representation, consultation, cooperation and issue resolution in relation to work health and safety; and

- (c) encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment; and
- (d) promoting the provision of advice, information, education and training in relation to work health and safety; and
- (e) securing compliance with this Act through effective and appropriate compliance and enforcement measures; and
- (f) ensuring appropriate scrutiny and review of actions taken by persons exercising powers and performing functions under this Act; and
- (g) providing a framework for continuous improvement and progressively higher standards of work health and safety; and
- (h) maintaining and strengthening the national harmonisation of laws relating to work health and safety and to facilitate a consistent national approach to work health and safety in the ACT.

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

- (2) In furthering subsection (1) (a), regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work or from specified types of substances or plant as is reasonably practicable.

Division 1.3 Interpretation

Subdivision 1.3.1 Definitions

4 Definitions

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.

For example, the signpost definition '*employee record*, in relation to an employee—see the *Privacy Act 1988* (Cwlth), section 6 (1).' means that the term 'employee record' is defined in that section and the definition applies to this Act.

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)).

Subdivision 1.3.2 Other important terms

5 Meaning of *person conducting a business or undertaking*

- (1) For the purposes of this Act, a person *conducts a business or undertaking*—
 - (a) whether the person conducts the business or undertaking alone or with others; and
 - (b) whether or not the business or undertaking is conducted for profit or gain.
- (2) A business or undertaking conducted by a person includes a business or undertaking conducted by a partnership or an unincorporated association.

- (3) If a business or undertaking is conducted by a partnership (other than an incorporated partnership), a reference in this Act to a person conducting the business or undertaking is to be read as a reference to each partner in the partnership.
- (4) A person does not conduct a business or undertaking to the extent that the person is engaged solely as a worker in, or as an officer of, that business or undertaking.
- (5) A regulation may specify the circumstances in which a person may be taken not to be a person who conducts a business or undertaking for the purposes of this Act or any provision of this Act.
- (6) A volunteer association does not conduct a business or undertaking for the purposes of this Act.
- (7) In this section:

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

6 Meaning of *supply*

- (1) A *supply* of a thing includes a supply and a resupply of the thing by way of sale, exchange, lease, hire or hire-purchase, whether as principal or agent.
- (2) A *supply* of a thing occurs on the passing of possession of the thing to the person or an agent of the person to be supplied.
- (3) A *supply* of a thing does not include—
 - (a) the return of possession of a thing to the owner of the thing at the end of a lease or other agreement; or
 - (b) a prescribed supply.

- (4) A financier is taken not to supply plant, a substance or a structure for the purposes of this Act if—
- (a) the financier has, in the course of the financier's business as a financier, acquired ownership of, or another right in, the plant, substance or structure on behalf of a customer of the financier; and
 - (b) the action by the financier, that would be a supply but for this subsection, is taken by the financier for, or on behalf of, that customer.
- (5) If subsection (4) applies, the person (other than the financier) who had possession of the plant, substance or structure immediately before the financier's customer obtained possession of the plant, substance or structure is taken for the purposes of this Act to have supplied the plant, substance or structure to the financier's customer.

7 Meaning of *worker*

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

- (i) a person of a prescribed class.

Note Power to make a regulation includes power to make different provision for different classes (see Legislation Act, s 48).

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

8 **Meaning of *workplace***

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

9 **Examples and notes**

- (1) An example at the foot of a provision forms part of this Act.
Note The Legislation Act, s 126 and s 132, deals with examples.
- (2) A note at the foot of a provision forms part of this Act.
- (3) Subsection (1) displaces the *Legislation Act 2001*, section 127 (Material that is not part of Act or statutory instrument).

Division 1.4 Application of Act

10 Act binds the Crown

- (1) This Act binds the Crown in right of the Territory and, in so far as the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.
- (2) The Territory is liable for an offence against this Act.
- (3) Without limiting subsection (1), the Territory is liable for a contravention of a WHS civil penalty provision.

11 Extraterritorial application

The *Criminal Code 2002*, part 2.7 (Geographical application) extends the application of a territory law that creates an offence beyond the territorial limits of the ACT (and Australia) if the required geographical nexus exists for the offence.

12 Scope

- (1) The duties under this Act in relation to hazardous chemicals are in addition to duties in relation to them under any other law in force in the ACT.

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

- (2) A duty or power under another territory law in relation to a work health and safety matter has no effect to the extent that it is inconsistent with a duty under this Act in relation to the same matter.
- (3) However, a duty or power under another territory law in relation to a work health and safety matter must not be taken to be inconsistent with a duty under this Act to the extent that they can operate concurrently.

12A Offences are offences of strict liability

Strict liability applies to each physical element of each offence under this Act unless otherwise stated in the section containing the offence.

12B Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 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*).

Part 2 Health and safety duties

Division 2.1 Introductory

Subdivision 2.1.1 Principles that apply to duties

13 Principles that apply to duties

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

Note 1 The principles will apply to duties under this part and other parts of this Act such as duties relating to incident notification and consultation.

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

14 Duties not transferrable

A duty cannot be transferred to another person.

15 Person may have more than 1 duty

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

16 More than 1 person can have a duty

- (1) More than 1 person can concurrently have the same duty.
- (2) Each duty-holder must comply with that duty to the standard required by this Act even if another duty-holder has the same duty.

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

- (3) If more than 1 person has a duty for the same matter, each person—

- (a) retains responsibility for the person's duty in relation to the matter; and
- (b) must discharge the person's duty to the extent to which the person has the capacity to influence and control the matter or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

17 Management of risks

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

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

Subdivision 2.1.2 What is *reasonably practicable*

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

In this Act:

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

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

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

Division 2.2 Primary duty of care

19 Primary duty of care

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

- (d) the safe use, handling, storage and transport of plant, structures and substances; and
 - (e) the provision of adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking, including ensuring access to those facilities; and
 - (f) the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking; and
 - (g) that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking.
- (4) If:
- (a) a worker occupies accommodation that is owned by or under the management or control of the person conducting the business or undertaking; and
 - (b) the occupancy is necessary for the purposes of the worker's engagement because other accommodation is not reasonably available,
- the person conducting the business or undertaking must, so far as is reasonably practicable, maintain the premises so that the worker occupying the premises is not exposed to risks to health and safety.
- (5) A self-employed person must ensure, so far as is reasonably practicable, his or her own health and safety while at work.

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

Division 2.3 Further duties of persons conducting businesses or undertakings

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

- (1) In this section:

person with management or control of a workplace means a person conducting a business or undertaking to the extent that the business or undertaking involves the management or control, in whole or in part, of the workplace but does not include—

- (a) the occupier of a residence, unless the residence is occupied for the purposes of, or as part of, the conduct of a business or undertaking; or
- (b) a prescribed person.
- (2) The person with management or control of a workplace must ensure, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace and anything arising from the workplace are without risks to the health and safety of any person.

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

- (1) In this section:

person with management or control of fixtures, fittings or plant at a workplace means a person conducting a business or undertaking to the extent that the business or undertaking involves the management or control of fixtures, fittings or plant, in whole or in part, at a workplace, but does not include—

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

- (b) a prescribed person.
- (2) The person with management or control of fixtures, fittings or plant at a workplace must ensure, so far as is reasonably practicable, that the fixtures, fittings and plant are without risks to the health and safety of any person.

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

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

- (ii) the manufacture or use of the substance for a purpose for which it was designed or the proper handling, storage or disposal of the substance; or
- (iii) the manufacture, assembly or use of the structure for a purpose for which it was designed or the proper demolition or disposal of the structure; or
- (f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance or structure at the workplace or whose health or safety may be affected by a use or activity referred to in paragraph (a), (b), (c), (d) or (e).

Example—par (e)

inspection, operation, cleaning, maintenance or repair of 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).

- (3) The designer must carry out, or arrange the carrying out of, any calculations, analysis, testing or examination that may be necessary for the performance of the duty imposed by subsection (2).
- (4) The designer must give adequate information to each person who is provided with the design for the purpose of giving effect to it concerning—
 - (a) each purpose for which the plant, substance or structure was designed; and
 - (b) the results of any calculations, analysis, testing or examination referred to in subsection (3), including, in relation to a substance, any hazardous properties of the substance identified by testing; and
 - (c) any conditions necessary to ensure that the plant, substance or structure is without risks to health and safety when used for a purpose for which it was designed or when carrying out any activity referred to in subsection (2) (a) to (e).

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

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

- (1) This section applies to a person (the *manufacturer*) who conducts a business or undertaking that manufactures—
- (a) plant that is to be used, or could reasonably be expected to be used, as, or at, a workplace; or
 - (b) a substance that is to be used, or could reasonably be expected to be used, at a workplace; or
 - (c) a structure that is to be used, or could reasonably be expected to be used, as, or at, a workplace.
- (2) The manufacturer must ensure, so far as is reasonably practicable, that the plant, substance or structure is manufactured to be without risks to the health and safety of persons—
- (a) who, at a workplace, use the plant, substance or structure for a purpose for which it was designed or manufactured; or
 - (b) who handle the substance at a workplace; or
 - (c) who store the plant or substance at a workplace; or
 - (d) who construct the structure at a workplace; or
 - (e) who carry out any reasonably foreseeable activity at a workplace in relation to—
 - (i) the assembly or use of the plant for a purpose for which it was designed or manufactured or the proper storage, decommissioning, dismantling or disposal of the plant; or

- (ii) the use of the substance for a purpose for which it was designed or manufactured or the proper handling, storage or disposal of the substance; or
- (iii) the assembly or use of the structure for a purpose for which it was designed or manufactured or the proper demolition or disposal of the structure; or
- (f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance or structure at the workplace or whose health or safety may be affected by a use or activity referred to in paragraph (a), (b), (c), (d) or (e).

Example—par (e)

inspection, operation, cleaning, maintenance or repair of 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).

- (3) The manufacturer must carry out, or arrange the carrying out of, any calculations, analysis, testing or examination that may be necessary for the performance of the duty imposed by subsection (2).
- (4) The manufacturer must give adequate information to each person to whom the manufacturer provides the plant, substance or structure concerning—
 - (a) each purpose for which the plant, substance or structure was designed or manufactured; and
 - (b) the results of any calculations, analysis, testing or examination referred to in subsection (3), including, in relation to a substance, any hazardous properties of the substance identified by testing; and
 - (c) any conditions necessary to ensure that the plant, substance or structure is without risks to health and safety when used for a purpose for which it was designed or manufactured or when carrying out any activity referred to in subsection (2) (a) to (e).

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

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

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

- (ii) the use of the substance for a purpose for which it was designed or manufactured or the proper handling, storage or disposal of the substance; or
- (iii) the assembly or use of the structure for a purpose for which it was designed or manufactured or the proper demolition or disposal of the structure; or
- (f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance or structure at the workplace or whose health or safety may be affected by a use or activity referred to in paragraph (a), (b), (c), (d) or (e).

Example—par (e)

inspection, operation, cleaning, maintenance or repair of 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).

- (3) The importer must—
 - (a) carry out, or arrange the carrying out of, any calculations, analysis, testing or examination that may be necessary for the performance of the duty imposed by subsection (2); or
 - (b) ensure that the calculations, analysis, testing or examination have been carried out.
- (4) The importer must give adequate information to each person to whom the importer provides the plant, substance or structure concerning—
 - (a) each purpose for which the plant, substance or structure was designed or manufactured; and
 - (b) the results of any calculations, analysis, testing or examination referred to in subsection (3), including, in relation to a substance, any hazardous properties of the substance identified by testing; and

- (c) any conditions necessary to ensure that the plant, substance or structure is without risks to health and safety when used for a purpose for which it was designed or manufactured or when carrying out any activity referred to in subsection (2) (a) to (e).
- (5) The importer, on request, must, so far as is reasonably practicable, give current relevant information on the matters referred to in subsection (4) to a person who carries out, or is to carry out, any of the activities referred to in subsection (2) (a) to (e).

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

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

- (e) who carry out any reasonably foreseeable activity at a workplace in relation to—
 - (i) the assembly or use of the plant for a purpose for which it was designed or manufactured or the proper storage, decommissioning, dismantling or disposal of the plant; or
 - (ii) the use of the substance for a purpose for which it was designed or manufactured or the proper handling, storage or disposal of the substance; or
 - (iii) the assembly or use of the structure for a purpose for which it was designed or manufactured or the proper demolition or disposal of the structure; or
- (f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance or structure at the workplace or whose health or safety may be affected by a use or activity referred to in paragraph (a), (b), (c), (d) or (e).

Example—par (e)

inspection, operation, cleaning, maintenance or repair of 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).

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

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

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

- (1) This section applies to a person who conducts a business or undertaking that installs, constructs or commissions plant or a structure that is to be used, or could reasonably be expected to be used, as, or at, a workplace.
- (2) The person must ensure, so far as is reasonably practicable, that the way in which the plant or structure is installed, constructed or commissioned ensures that the plant or structure is without risks to the health and safety of persons—
- (a) who install or construct the plant or structure at a workplace; or
 - (b) who use the plant or structure at a workplace for a purpose for which it was installed, constructed or commissioned; or

- (c) who carry out any reasonably foreseeable activity at a workplace in relation to the proper use, decommissioning or dismantling of the plant or demolition or disposal of the structure; or
- (d) who are at or in the vicinity of a workplace and whose health or safety may be affected by a use or activity referred to in paragraph (a), (b) or (c).

Division 2.4 Duty of officers, workers and other persons

27 Duty of officers

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

Note 1 **Officer**—see the dictionary.

Note 2 **Person** includes a corporation, an unincorporated association and a partnership (see dictionary and Legislation Act, s 160).

Note 3 A reference to an Act includes a reference to statutory instruments made or in force under the Act, including a regulation and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

- (2) Subject to subsection (3), the maximum penalty applicable under division 2.5 (Offences and penalties) for an offence relating to the duty of an officer under this section is the maximum penalty fixed for an officer of a person conducting a business or undertaking for that offence.

- (3) Despite anything to the contrary in section 33 (Failure to comply with health and safety duty—category 3), if the duty or obligation of a person conducting a business or undertaking was imposed under a provision other than a provision of division 2.2 (Primary duty of care), division 2.3 (Further duties of persons conducting businesses or undertakings) or this division, the maximum penalty under section 33 for an offence by an officer under section 33 in relation to the duty or obligation is the maximum penalty fixed under the provision creating the duty or obligation for an individual who fails to comply with the duty or obligation.
- (4) An officer of a person conducting a business or undertaking may be convicted or found guilty of an offence under this Act relating to a duty under this section whether or not the person conducting the business or undertaking has been convicted or found guilty of an offence under this Act relating to the duty or obligation.
- (5) In this section:
- due diligence* includes taking reasonable steps—
- (a) to acquire and keep up-to-date knowledge of work health and safety matters; and
 - (b) to gain an understanding of the nature of the operations of the business or undertaking of the person conducting the business or undertaking and generally of the hazards and risks associated with those operations; and
 - (c) to ensure that the person conducting the business or undertaking has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking; and
 - (d) to ensure that the person conducting the business or undertaking has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information; and

- (e) to ensure that the person conducting the business or undertaking has, and implements, processes for complying with any duty or obligation of the person conducting the business or undertaking under this Act; and
- (f) to verify the provision and use of the resources and processes referred to in paragraphs (c) to (e).

Examples—par (e)

The duties or obligations under this Act of a person conducting a business or undertaking may include:

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

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).

28 Duties of workers

While at work, a worker must—

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

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

- (d) cooperate with any reasonable policy or procedure of the person conducting the business or undertaking relating to health or safety at the workplace that has been notified to workers.

29 Duties of other persons at the workplace

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

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

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

Division 2.5 Offences and penalties

30 Health and safety duty

In this division:

health and safety duty means a duty imposed under—

- (a) division 2.2 (Primary duty of care); or
- (b) division 2.3 (Further duties of persons conducting businesses or undertakings); or
- (c) division 2.4 (Duty of officers, workers and other persons).

31 Reckless conduct—category 1

- (1) A person commits a category 1 offence if—
- (a) the person has a health and safety duty; and
 - (b) the person, without reasonable excuse, engages in conduct that exposes an individual to whom that duty is owed to a risk of death or serious injury or illness; and
 - (c) the person is reckless as to the risk to an individual of death or serious injury or illness.

Maximum penalty:

- (a) in the case of an offence committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$300 000, imprisonment for 5 years or both; or
- (b) in the case of an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$600 000, imprisonment for 5 years or both; or
- (c) in the case of an offence committed by a body corporate—\$3 000 000.

Note Strict liability applies to s (1) (a) (see s 12A).

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

32 Failure to comply with health and safety duty—category 2

A person commits a category 2 offence if—

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

- (c) the failure exposes an individual to a risk of death or serious injury or illness.

Maximum penalty:

- (a) in the case of an offence committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$150 000; or
- (b) in the case of an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$300 000; or
- (c) in the case of an offence committed by a body corporate—\$1 500 000.

Note Strict liability applies to each physical element of this offence (see s 12A).

33 Failure to comply with health and safety duty—category 3

A person commits a category 3 offence if—

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

Maximum penalty:

- (a) in the case of an offence committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$50 000; or
- (b) in the case of an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$100 000; or
- (c) in the case of an offence committed by a body corporate—\$500 000.

Note Strict liability applies to each physical element of this offence (see s 12A).

34 Exceptions

- (1) A volunteer does not commit an offence under this division for a failure to comply with a health and safety duty, except a duty under section 28 (Duties of workers) or section 29 (Duties of other persons at the workplace).
- (2) An unincorporated association does not commit an offence under this Act, and is not liable for a civil penalty under this Act, for a failure to comply with a duty or obligation imposed on the unincorporated association under this Act.

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).

- (3) However—
 - (a) an officer of an unincorporated association (other than a volunteer) may be liable for a failure to comply with a duty under section 27 (Duties of officers); and
 - (b) a member of an unincorporated association may be liable for failure to comply with a duty under section 28 or 29.

Part 3 Incident notification

35 What is a *notifiable incident*

In this Act:

notifiable incident means—

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

36 What is a *serious injury or illness*—pt 3

In this part:

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

- (a) immediate treatment as an in-patient in a hospital; or
 - (b) immediate treatment for—
 - (i) the amputation of any part of his or her body; or
 - (ii) a serious head injury; or
 - (iii) a serious eye injury; or
 - (iv) a serious burn; or
 - (v) the separation of his or her skin from an underlying tissue (such as degloving or scalping); or
- 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).
- (vi) a spinal injury; or
 - (vii) the loss of a bodily function; or

- (viii) serious lacerations; or
- (c) medical treatment within 48 hours of exposure to a substance, and includes any other injury or illness prescribed by regulation but does not include an illness or injury of a prescribed kind.

Note Power to make a regulation includes power to make different provision for different classes (see Legislation Act, s 48).

37 What is a *dangerous incident*—pt 3

In this part:

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

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

(k) the interruption of the main system of ventilation in an underground excavation or tunnel; or

(l) any other event prescribed by regulation,

but does not include an incident of a prescribed kind.

Note Power to make a regulation includes power to make different provision for different classes (see Legislation Act, s 48).

38 Duty to notify of notifiable incidents

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

Maximum penalty:

- (a) in the case of an individual—\$10 000; or
(b) in the case of a body corporate—\$50 000.

Note Strict liability applies to each physical element of this offence (see s 12A).

- (2) The notice must be given in accordance with this section and by the fastest possible means.
- (3) The notice must be given—
- (a) by telephone; or
(b) in writing.

Note The written notice can be given by facsimile or email, see the Legislation Act, pt 19.5.

- (4) A person giving notice by telephone must—
- (a) give the details of the incident requested by the regulator; and
(b) if required by the regulator, give a written notice of the incident within 48 hours of that requirement being made.

- (5) A written notice must be in a form, or contain the details, approved by the regulator.

Note If a form is approved under s 277 for a written notice, the form must be used.

- (6) If the regulator receives a notice by telephone and a written notice is not required, the regulator must give the person conducting the business or undertaking—

- (a) details of the information received; or
- (b) an acknowledgement of receiving the notice.

- (7) A person conducting a business or undertaking must keep a record of each notifiable incident for at least 5 years from the day that notice of the incident is given to the regulator under this section.

Maximum penalty:

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

Note Strict liability applies to each physical element of this offence (see s 12A).

- (8) Despite anything else in this section, if a notifiable incident for which notice is required to be given is reported in accordance with the *Dangerous Substances Act 2004*, the reporting under that Act is taken to be adequate notice of the incident for the purposes of this Act.

39 Duty to preserve incident sites

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

Maximum penalty:

- (a) in the case of an individual—\$10 000; or
(b) in the case of a body corporate—\$50 000.

Note Strict liability applies to each physical element of this offence (see s 12A).

- (2) In subsection (1) a reference to a site includes any plant, substance, structure or thing associated with the notifiable incident.
- (3) Subsection (1) does not prevent any action—
- (a) to assist an injured person; or
(b) to remove a deceased person; or
(c) that is essential to make the site safe or to minimise the risk of a further notifiable incident; or
(d) that is associated with a police investigation; or
(e) for which an inspector or the regulator has given permission.

Part 4 Authorisations

40 Meaning of *authorised*—pt 4

In this part:

authorised means authorised by a licence, permit, registration or other authority (however described) as required by regulation.

41 Requirements for authorisation of workplaces

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

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

Maximum penalty:

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

Note Strict liability applies to each physical element of this offence (see s 12A).

42 Requirements for authorisation of plant or substance

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

Maximum penalty:

- (a) in the case of an individual—\$20 000; or

(b) in the case of a body corporate—\$100 000.

Note Strict liability applies to each physical element of this offence (see s 12A).

- (2) A person who conducts a business or undertaking must not direct or allow a worker to use the plant or substance at a workplace if—
- (a) a regulation requires the plant or substance or its design to be authorised; and
 - (b) the plant or substance or its design is not authorised in accordance with the regulation.

Maximum penalty:

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

Note Strict liability applies to each physical element of this offence (see s 12A).

43 Requirements for authorisation of work

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

Maximum penalty:

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

Note Strict liability applies to each physical element of this offence (see s 12A).

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

Maximum penalty:

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

Note Strict liability applies to each physical element of this offence (see s 12A).

44 Requirements for prescribed qualifications or experience

- (1) A person must not carry out work at a workplace if—
- (a) a regulation requires the work, or class of work, to be carried out by, or under the supervision of, a person who has prescribed qualifications or experience; and
 - (b) the person does not have the prescribed qualifications or experience or the work is not carried out under the supervision of a person who has the prescribed qualifications or experience.

Maximum penalty:

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

Note Strict liability applies to each physical element of this offence (see s 12A).

- (2) A person who conducts a business or undertaking must not direct or allow a worker to carry out work at a workplace if—
- (a) a regulation requires the work, or class of work, to be carried out by, or under the supervision of, a person who has prescribed qualifications or experience; and
 - (b) the worker does not have the prescribed qualifications or experience or the work is not carried out under the supervision of a person who has the prescribed qualifications or experience.

Maximum penalty:

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

Note Strict liability applies to each physical element of this offence (see s 12A).

45 Requirement to comply with conditions of authorisation

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

Maximum penalty:

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

Note Strict liability applies to each physical element of this offence (see s 12A).

Part 5 Consultation, representation and participation

Division 5.1 Consultation, cooperation and coordination between duty-holders

46 Duty to consult with other duty-holders

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

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

Maximum penalty:

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

Note Strict liability applies to each physical element of this offence (see s 12A).

Division 5.2 Consultation with workers

47 Duty to consult workers

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

Maximum penalty:

- (a) in the case of an individual—\$20 000; or

(b) in the case of a body corporate—\$100 000.

Note Strict liability applies to each physical element of this offence (see s 12A).

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

48 Nature of consultation

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

49 When consultation is required

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

- (a) when identifying hazards and assessing risks to health and safety arising from the work carried out or to be carried out by the business or undertaking;
- (b) when making decisions about ways to eliminate or minimise those risks;
- (c) when making decisions about the adequacy of facilities for the welfare of workers;
- (d) when proposing changes that may affect the health or safety of workers;
- (e) when making decisions about the procedures for—
 - (i) consulting with workers; or
 - (ii) resolving work health or safety issues at the workplace; or
 - (iii) monitoring the health of workers; or
 - (iv) monitoring the conditions at any workplace under the management or control of the person conducting the business or undertaking; or
 - (v) providing information and training for workers;
- (f) when carrying out any other activity prescribed by regulation for the purposes of this section.

Division 5.3 Health and safety representatives

Subdivision 5.3.1 Request for election of health and safety representatives

50 Request for election of health and safety representative

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

Subdivision 5.3.2 Determination of work groups

51 Determination of work groups

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

52 Negotiations for agreement for work group

- (1) A work group is to be determined by negotiation and agreement between—
 - (a) the person conducting the business or undertaking; and
 - (b) the workers who will form the work group or their representatives.

- (2) The person conducting the business or undertaking must take all reasonable steps to commence negotiations with the workers within 14 days after a request is made under section 50.
- (3) The purpose of the negotiations is to determine—
 - (a) the number and composition of work groups to be represented by health and safety representatives; and
 - (b) the number of health and safety representatives and deputy health and safety representatives (if any) to be elected; and
 - (c) the workplace or workplaces to which the work groups will apply; and
 - (d) the businesses or undertakings to which the work groups will apply.
- (4) The parties to an agreement concerning the determination of a work group or groups may, at any time, negotiate a variation of the agreement.
- (5) The person conducting the business or undertaking must, if asked by a worker, negotiate with the worker's representative in negotiations under this section (including negotiations for a variation of an agreement) and must not exclude the representative from those negotiations.

Maximum penalty:

- (a) in the case of an individual—\$10 000; or
- (b) in the case of a body corporate—\$50 000.

Note Strict liability applies to each physical element of this offence (see s 12A).

- (6) A regulation may prescribe the matters that must be taken into account in negotiations for, and determination of, work groups and variations of agreements concerning work groups.

53 Notice to workers

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

Maximum penalty:

- (a) in the case of an individual—\$2 000; or
- (b) in the case of a body corporate—\$10 000.

Note Strict liability applies to each physical element of this offence (see s 12A).

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

Maximum penalty:

- (a) in the case of an individual—\$2 000; or
- (b) in the case of a body corporate—\$10 000.

Note Strict liability applies to each physical element of this offence (see s 12A).

54 Failure of negotiations

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

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

Subdivision 5.3.3 Multiple-business work groups

55 Determination of work groups of multiple businesses

- (1) Work groups may be determined for workers carrying out work for 2 or more persons conducting businesses or undertakings at 1 or more workplaces.
- (2) The particulars of the work groups are to be determined by negotiation and agreement, in accordance with section 56, between each of the persons conducting the businesses or undertakings and the workers.
- (3) The parties to an agreement concerning the determination of a work group or groups may, at any time, negotiate a variation of the agreement.
- (4) The determination of 1 or more work groups under this subdivision does not—
 - (a) prevent the determination under this subdivision or subdivision 5.3.2 (Determination of work groups) of any other work group of the workers concerned; or
 - (b) affect any work groups of those workers that have already been determined under this subdivision or subdivision 5.3.2.

56 Negotiation of agreement for work groups of multiple businesses

- (1) Negotiations concerning work groups under this subdivision must be directed only at the following:
 - (a) the number and composition of work groups to be represented by health and safety representatives;
 - (b) the number of health and safety representatives and deputy health and safety representatives (if any) for each work group;

- (c) the workplace or workplaces to which the work groups will apply;
 - (d) the businesses or undertakings to which the work groups will apply.
- (2) A person conducting a business or undertaking must, if asked by a worker, negotiate with the worker's representative in negotiations under this section (including negotiations for a variation of an agreement) and must not exclude the representative from those negotiations.

Maximum penalty:

- (a) in the case of an individual—\$10 000; or
- (b) in the case of a body corporate—\$50 000.

Note Strict liability applies to each physical element of this offence (see s 12A).

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

57 Notice to workers

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

Maximum penalty:

- (a) in the case of an individual—\$2 000; or
(b) in the case of a body corporate—\$10 000.

Note Strict liability applies to each physical element of this offence (see s 12A).

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

Maximum penalty:

- (a) in the case of an individual—\$2 000; or
(b) in the case of a body corporate—\$10 000.

Note Strict liability applies to each physical element of this offence (see s 12A).

58 Withdrawal from negotiations or agreement involving multiple businesses

- (1) A party to a negotiation for an agreement, or to an agreement, concerning a work group under this subdivision may withdraw from the negotiation or agreement at any time by giving reasonable notice (in writing) to the other parties.

- (2) If a party withdraws from an agreement concerning a work group under this subdivision—
- (a) the other parties must negotiate a variation to the agreement in accordance with section 56 (Negotiation of agreement for work groups of multiple businesses); and
 - (b) the withdrawal does not affect the validity of the agreement between the other parties in the meantime.

59 Effect of subdivision on other arrangements

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

Subdivision 5.3.4 Election of health and safety representatives

60 Eligibility to be elected

A worker is—

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

61 Procedure for election of health and safety representatives

- (1) The workers in a work group may determine how an election of a health and safety representative for the work group is to be conducted.
- (2) However, an election must comply with the procedures (if any) prescribed by regulation.
- (3) If a majority of the workers in a work group so determine, the election may be conducted with the assistance of a union or other person or organisation.
- (4) The person conducting the business or undertaking to which the work group relates must provide any resources, facilities and assistance that are reasonably necessary or are prescribed by regulation to enable elections to be conducted.

Maximum penalty:

- (a) in the case of an individual—\$10 000; or
- (b) in the case of a body corporate—\$50 000.

Note Strict liability applies to each physical element of this offence (see s 12A).

62 Eligibility to vote

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

63 When election not required

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

64 Term of office of health and safety representative

- (1) A health and safety representative for a work group holds office for 3 years.
- (2) However, a person ceases to hold office as a health and safety representative for a work group if—
 - (a) the person resigns as a health and safety representative for the work group by written notice given to the person conducting the relevant business or undertaking; or
 - (b) the person ceases to be a worker in the work group for which he or she was elected as a health and safety representative; or
 - (c) the person is disqualified under section 65 (Disqualification of health and safety representatives) from acting as a health and safety representative; or
 - (d) the person is removed from that position by a majority of the members of the work group in accordance with the regulation.
- (3) A health and safety representative is eligible for re-election.

65 Disqualification of health and safety representatives

- (1) An application may be made to the Magistrates Court to disqualify a health and safety representative on the ground that the representative has—
 - (a) exercised a power or performed a function as a health and safety representative for an improper purpose; or

- (b) used or disclosed any information he or she acquired as a health and safety representative for a purpose other than in connection with the role of health and safety representative.
- (2) The following persons may make an application under this section:
 - (a) any person adversely affected by—
 - (i) the exercise of a power or the performance of a function referred to in subsection (1) (a); or
 - (ii) the use or disclosure of information referred to in subsection (1) (b);
 - (b) the regulator.
- (3) If the court is satisfied that a ground in subsection (1) is made out, the court may disqualify the health and safety representative for a specified period or indefinitely.

66 Immunity of health and safety representatives

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

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

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

67 Deputy health and safety representatives

- (1) Each deputy health and safety representative for a work group is to be elected in the same way as a health and safety representative for the work group.
- (2) If the health and safety representative for a work group ceases to hold office or is unable (because of absence or any other reason) to exercise the powers or perform the functions of a health and safety representative under this Act—
 - (a) the powers and functions may be exercised or performed by a deputy health and safety representative for the work group; and
 - (b) this Act applies in relation to the deputy health and safety representative as if he or she were the health and safety representative.

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

- (3) Section 64 (Term of office of health and safety representative), section 65 (Disqualification of health and safety representatives), section 66 (Immunity of health and safety representatives) and section 72 (Obligation to train health and safety representatives) apply to deputy health and safety representatives in the same way as they apply to health and safety representatives.

Subdivision 5.3.5 Powers and functions of health and safety representatives

68 Powers and functions of health and safety representatives

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

Note A provision of a law that gives a person a function also gives the person powers necessary and convenient to exercise the function (see Legislation Act, s 196).

- (2) In exercising a power or performing a function, the health and safety representative may—
 - (a) inspect the workplace or any part of the workplace at which a worker in the work group works—
 - (i) at any time after giving reasonable notice to the person conducting the business or undertaking at that workplace; and

- (ii) at any time, without notice, in the event of an incident, or any situation involving a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard; and
- (b) accompany an inspector during an inspection of the workplace, or part of the workplace, at which a worker in the work group works; and
- (c) with the consent of a worker that the health and safety representative represents, be present at an interview concerning work health and safety between the worker and—
 - (i) an inspector; or
 - (ii) the person conducting the business or undertaking at that workplace or the person's representative; and
- (d) with the consent of 1 or more workers that the health and safety representative represents, be present at an interview concerning work health and safety between a group of workers, which includes the workers who gave the consent, and—
 - (i) an inspector; or
 - (ii) the person conducting the business or undertaking at that workplace or the person's representative; and
- (e) request the establishment of a health and safety committee; and
- (f) receive information concerning the work health and safety of workers in the work group; and
- (g) whenever necessary, request the assistance of any person.

Note A health and safety representative also has power under div 5.6 to direct work to cease in certain circumstances and under div 5.7 to issue provisional improvement notices.

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

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

69 Powers and functions generally limited to the particular work group

- (1) A health and safety representative for a work group may exercise powers and perform functions under this Act only in relation to matters that affect, or may affect, workers in that group.
- (2) Subsection (1) does not apply if—
- (a) there is a serious risk to health or safety emanating from an immediate or imminent exposure to a hazard that affects or may affect a member of another work group; or
 - (b) a member of another work group asks for the representative's assistance,

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

(3) In this section:

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

Subdivision 5.3.6 Obligations of person conducting business or undertaking to health and safety representatives

70 General obligations of person conducting business or undertaking

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

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

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

- (g) allow a person assisting a health and safety representative for the work group to have access to the workplace if that is necessary to enable the assistance to be provided; and
- (h) permit a health and safety representative for the work group to accompany an inspector during an inspection of any part of the workplace where a worker in the work group works; and
- (i) provide any other assistance to the health and safety representative for the work group that may be required by regulation.

Maximum penalty:

- (a) in the case of an individual—\$10 000; or

(b) in the case of a body corporate—\$50 000.

Note Strict liability applies to each physical element of this offence (see s 12A).

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

Maximum penalty:

- (a) in the case of an individual—\$10 000; or
(b) in the case of a body corporate—\$50 000.

Note Strict liability applies to each physical element of this offence (see s 12A).

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

71 Exceptions from obligations under s 70 (1)

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

Maximum penalty:

- (a) in the case of an individual—\$10 000; or

(b) in the case of a body corporate—\$50 000.

Note Strict liability applies to each physical element of this offence (see s 12A).

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

72 Obligation to train health and safety representatives

- (1) The person conducting a business or undertaking must, if requested by a health and safety representative for a work group for that business or undertaking, allow the health and safety representative to attend a course of training in work health and safety that is—
 - (a) approved by the regulator; and

- (b) a course that the health and safety representative is entitled under the regulation to attend; and
 - (c) subject to subsection (5), chosen by the health and safety representative, in consultation with the person conducting the business or undertaking.
- (2) The person conducting the business or undertaking must—
 - (a) as soon as practicable within the period of 3 months after the request is made, allow the health and safety representative time off work to attend the course of training; and
 - (b) pay the course fees and any other reasonable costs associated with the health and safety representative's attendance at the course of training.
- (3) If—
 - (a) a health and safety representative represents a work group of the workers of more than 1 business or undertaking; and
 - (b) the person conducting any of those businesses or undertakings has complied with this section in relation to the representative,each of the persons conducting those businesses or undertakings is to be taken to have complied with this section in relation to the representative.
- (4) Any time that a health and safety representative is given off work to attend the course of training must be with the pay that he or she would otherwise be entitled to receive for performing his or her normal duties during that period.
- (5) If agreement cannot be reached between the person conducting the business or undertaking and the health and safety representative within the time required by subsection (2) as to the matters set out in subsections (1) (c) and (2), either party may ask the regulator to appoint an inspector to decide the matter.
- (6) The inspector may decide the matter in accordance with this section.

- (7) A person conducting a business or undertaking must allow a health and safety representative to attend a course decided by the inspector and pay the costs decided by the inspector under subsection (6).

Maximum penalty:

- (a) in the case of an individual—\$10 000; or
(b) in the case of a body corporate—\$50 000.

Note Strict liability applies to each physical element of this offence (see s 12A).

73 Obligation to share costs if multiple businesses or undertakings

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

74 List of health and safety representatives

- (1) A person conducting a business or undertaking must ensure that—
- (a) a list of each health and safety representative and deputy health and safety representative (if any) for each work group of workers carrying out work for the business or undertaking is prepared and kept up to date; and

- (b) a copy of the up-to-date list is displayed—
 - (i) at the principal place of business of the business or undertaking; and
 - (ii) at any other workplace that is appropriate taking into account the constitution of the relevant work group or work groups,in a manner that is readily accessible to workers in the relevant work group or work groups.

Maximum penalty:

- (a) in the case of an individual—\$2 000; or
- (b) in the case of a body corporate—\$10 000.

Note Strict liability applies to each physical element of this offence (see s 12A).

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

Division 5.4 Health and safety committees

75 Health and safety committees

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

- (b) if required by regulation to do so, within the time prescribed by regulation.

Maximum penalty:

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

Note Strict liability applies to each physical element of this offence (see s 12A).

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

Note If a health and safety committee is not required to be established, other consultation procedures can be established for a workplace—see div 5.2.

76 Constitution of committee

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

- (6) An inspector appointed on a request under subsection (5) may decide the constitution of the health and safety committee or that the committee should not be established.
- (7) A decision of an inspector under this section is taken to be an agreement under this section between the parties.

77 Functions of committee

The functions of a health and safety committee are—

- (a) to facilitate cooperation between the person conducting a business or undertaking and workers in instigating, developing and carrying out measures designed to ensure the workers' health and safety at work; and
- (b) to assist in developing standards, rules and procedures relating to health and safety that are to be followed or complied with at the workplace; and
- (c) any other functions prescribed by regulation or agreed between the person conducting the business or undertaking and the committee.

78 Meetings of committee

A health and safety committee must meet—

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

79 Duties of person conducting business or undertaking

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

Maximum penalty:

- (a) in the case of an individual—\$10 000; or
(b) in the case of a body corporate—\$50 000.

Note Strict liability applies to each physical element of this offence (see s 12A).

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

- (3) A person conducting a business or undertaking must allow the health and safety committee for a workplace to have access to information that the person has relating to—

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

Maximum penalty:

- (a) in the case of an individual—\$10 000; or
(b) in the case of a body corporate—\$50 000.

Note Strict liability applies to each physical element of this offence (see s 12A).

- (4) Despite subsection (3), a person conducting a business or undertaking must not allow the health and safety committee to have access to any personal or medical information concerning a worker without the worker's consent unless the information is in a form that—

- (a) does not identify the worker; and

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

Maximum penalty:

- (a) in the case of an individual—\$10 000; or
- (b) in the case of a body corporate—\$50 000.

Note Strict liability applies to each physical element of this offence (see s 12A).

Division 5.5 Issue resolution

80 Parties to an issue

- (1) In this division:

parties, in relation to an issue, means the following:

- (a) the person conducting the business or undertaking or the person's representative;
 - (b) if the issue involves more than 1 business or undertaking—the person conducting each business or undertaking or the person's representative;
 - (c) if the worker or workers affected by the issue are in a work group—the health and safety representative for that work group or his or her representative;
 - (d) if the worker or workers affected by the issue are not in a work group—the worker or workers or their representative.
- (2) A person conducting a business or undertaking must ensure that the person's representative (if any) for the purposes of this division—
 - (a) is not a health and safety representative; and
 - (b) has an appropriate level of seniority, and is sufficiently competent, to act as the person's representative.

81 Resolution of health and safety issues

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

82 Referral of issue to regulator for resolution by inspector

- (1) This section applies if an issue has not been resolved after reasonable efforts have been made to achieve an effective resolution of the issue.
- (2) A party to the issue may ask the regulator to appoint an inspector to attend the workplace to assist in resolving the issue.
- (3) A request to the regulator under this section does not prevent—
 - (a) a worker from exercising the right under division 5.6 to cease work; or
 - (b) a health and safety representative from issuing a provisional improvement notice or a direction under division 5.6 to cease work.
- (4) On attending a workplace under this section, an inspector may exercise any of the inspector's compliance powers under this Act in relation to the workplace.

Division 5.6 Right to cease or direct cessation of unsafe work

83 Definition of *cease work under this division*

In this division:

cease work under this division means—

- (a) to cease, or refuse, to carry out work under section 84; or
- (b) to cease work on a direction under section 85 (Health and safety representative may direct that unsafe work cease).

84 Right of worker to cease unsafe work

A worker may cease, or refuse to carry out, work if the worker has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard.

85 Health and safety representative may direct that unsafe work cease

- (1) A health and safety representative may direct a worker who is in a work group represented by the representative to cease work if the representative has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard.
- (2) However, the health and safety representative must not give a worker a direction to cease work unless the matter is not resolved after—
 - (a) consulting about the matter with the person conducting the business or undertaking for whom the workers are carrying out work; and

- (b) attempting to resolve the matter as an issue under division 5.5 (Issue resolution).
- (3) The health and safety representative may direct the worker to cease work without carrying out that consultation or attempting to resolve the matter as an issue under division 5.5 if the risk is so serious and immediate or imminent that it is not reasonable to consult before giving the direction.
- (4) The health and safety representative must carry out the consultation as soon as practicable after giving a direction under subsection (3).
- (5) The health and safety representative must inform the person conducting the business or undertaking of any direction given by the health and safety representative to workers under this section.
- (6) A health and safety representative cannot give a direction under this section unless the representative has—
 - (a) completed initial training prescribed by regulation referred to in section 72 (1) (b) (Obligation to train health and safety representatives); or
 - (b) previously completed that training when acting as a health and safety representative for another work group; or
 - (c) completed training equivalent to that training under a corresponding WHS law.

86 Worker to notify if ceases work

A worker who ceases work under this division must—

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

87 Alternative work

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

88 Continuity of engagement of worker

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

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

89 Request to regulator to appoint inspector to assist

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

Note The issue resolution procedures in div 5.5 can also be used to resolve an issue arising in relation to the cessation of work.

Division 5.7 **Provisional improvement notices**

90 **Provisional improvement notices**

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

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

- (2) The health and safety representative may issue a provisional improvement notice requiring the person to—
 - (a) remedy the contravention; or
 - (b) prevent a likely contravention from occurring; or
 - (c) remedy the things or operations causing the contravention or likely contravention.
- (3) However, the health and safety representative must not issue a provisional improvement notice to a person unless he or she has first consulted the person.
- (4) A health and safety representative cannot issue a provisional improvement notice unless the representative has—
 - (a) completed initial training prescribed by regulation referred to in section 72 (1) (b) (Obligation to train health and safety representatives); or
 - (b) previously completed that training when acting as a health and safety representative for another work group; or

- (c) completed training equivalent to that training under a corresponding WHS law.
- (5) A health and safety representative cannot issue a provisional improvement notice in relation to a matter if an inspector has already issued (or decided not to issue) an improvement notice or prohibition notice in relation to the same matter.

91 Provisional improvement notice to be in writing

A provisional improvement notice must be in writing.

92 Contents of provisional improvement notice

A provisional improvement notice must state—

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

93 Provisional improvement notice may give directions to remedy contravention

- (1) A provisional improvement notice may include directions concerning the measures to be taken to remedy the contravention or prevent the likely contravention or the matters or activities causing the contravention or likely contravention to which the notice relates.
- (2) A direction included in a provisional improvement notice may—
 - (a) refer to a code of practice; and
 - (b) offer the person to whom it is issued a choice of ways in which to remedy the contravention.

94 Minor changes to provisional improvement notice

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

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

95 Issue of provisional improvement notice

A provisional improvement notice may be issued to a person in accordance with section 209 (Issue and giving of notice).

96 Health and safety representative may cancel notice

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

97 Display of provisional improvement notice

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

Maximum penalty:

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

Note Strict liability applies to each physical element of this offence (see s 12A).

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

Maximum penalty:

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

98 Formal irregularities or defects in notice

A provisional improvement notice is not invalid only because of—

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

99 Offence to contravene a provisional improvement notice

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

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

Maximum penalty:

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

Note Strict liability applies to each physical element of this offence (see s 12A).

100 Request for review of provisional improvement notice

- (1) Within 7 days after a provisional improvement notice is issued to a person—
- (a) the person to whom it was issued; or
- (b) if the person is a worker—the person conducting the business or undertaking at the workplace at which the worker carries out work,
- may ask the regulator to appoint an inspector to review the notice.
- (2) If a request is made under subsection (1), the operation of the provisional improvement notice is stayed until the inspector makes a decision on the review.

101 Regulator to appoint inspector to review notice

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

102 Decision of inspector on review of provisional improvement notice

- (1) After reviewing the provisional improvement notice, the inspector must—
 - (a) confirm the provisional improvement notice; or
 - (b) confirm the provisional improvement notice with changes; or
 - (c) cancel the provisional improvement notice.
- (2) The inspector must give a copy of his or her decision to—
 - (a) the applicant for the review of the provisional improvement notice; and
 - (b) the health and safety representative who issued the notice.
- (3) A provisional improvement notice that is confirmed (with or without changes) by an inspector is taken to be an improvement notice issued by the inspector under this Act.

Division 5.8 Part not to apply to prisoners

103 Part does not apply to prisoners

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

Note Work health and safety of detainees in correctional centres and elsewhere is dealt with in the *Corrections Management Act 2007*, s 219.

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

Division 6.1 **Prohibition of discriminatory, coercive or misleading conduct**

104 **Prohibition of discriminatory conduct**

- (1) A person must not engage in discriminatory conduct for a prohibited reason.

Maximum penalty:

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

- (2) A person commits an offence under subsection (1) only if the reason referred to in section 106 (What is a *prohibited reason*) was the dominant reason for the discriminatory conduct.

Note A civil proceeding may be brought under div 6.3 in relation to discriminatory conduct engaged in for a prohibited reason.

- (3) For the purposes of the application of the *Criminal Code 2002* in relation to an offence under subsection (1), intention is the fault element for the physical element of engaging in conduct.

105 **What is *discriminatory conduct***

- (1) For the purposes of this part, a person engages in *discriminatory conduct* if—
- (a) the person—
- (i) dismisses a worker; or
- (ii) terminates a contract for services with a worker; or
- (iii) puts a worker to his or her detriment in the engagement of the worker; or

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

106 What is a **prohibited reason**

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

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

- (d) exercises, has exercised or proposes to exercise a power under this Act or exercises, has exercised or proposes to exercise a power under this Act in a particular way; or
- (e) performs, has performed or proposes to perform a function under this Act or performs, has performed or proposes to perform a function under this Act in a particular way; or
- (f) refrains from, has refrained from or proposes to refrain from exercising a power or performing a function under this Act or refrains from, has refrained from or proposes to refrain from exercising a power or performing a function under this Act in a particular way; or
- (g) assists or has assisted or proposes to assist, or gives or has given or proposes to give any information to any person exercising a power or performing a function under this Act; or
- (h) raises or has raised or proposes to raise an issue or concern about work health and safety with—
 - (i) the person conducting a business or undertaking; or
 - (ii) an inspector; or
 - (iii) a WHS entry permit-holder; or
 - (iv) a health and safety representative; or
 - (v) a member of a health and safety committee; or
 - (vi) another worker; or
 - (vii) any other person who has a duty under this Act in relation to the matter; or
 - (viii) any other person exercising a power or performing a function under this Act; or
- (i) is involved in, has been involved in or proposes to be involved in resolving a work health and safety issue under this Act; or

- (j) is taking action, has taken action or proposes to take action to seek compliance by any person with any duty or obligation under this Act.

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

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

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

Maximum penalty:

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

Note A civil proceeding may be brought under div 6.3 if a person requested, instructed, induced, encouraged, authorised or assisted another person to engage in discriminatory conduct for a prohibited reason.

- (2) For the purposes of the application of the *Criminal Code 2002* in relation to an offence under subsection (1), intention is the fault element for the physical element of requesting, instructing, inducing, encouraging, authorising or assisting another person to engage in conduct.

108 Prohibition of coercion or inducement

- (1) A person must not organise or take, or threaten to organise or take, any action against another person with intent to coerce or induce the other person, or a third person—
- (a) to exercise or not to exercise a power, or to propose to exercise or not to exercise a power, under this Act; or

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

Maximum penalty:

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

Note A civil proceeding may be brought under div 6.3 in relation to a contravention of this section.

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

emergency services worker means—

- (a) a police officer; or
- (b) a member of an emergency service.

Note An *emergency service* means the ambulance service, the fire brigade, the rural fire service or the SES (see Legislation Act, dict, pt 1).

109 Misrepresentation

- (1) A person must not knowingly or recklessly make a false or misleading representation to another person about that other person's—

- (a) rights or obligations under this Act; or
- (b) ability to initiate, or participate in, a process or proceeding under this Act; or
- (c) ability to make a complaint or inquiry to a person or body empowered under this Act to seek compliance with this Act.

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

Maximum penalty:

- (a) in the case of an individual—\$100 000; or
 - (b) in the case of a body corporate—\$500 000.
- (2) Subsection (1) does not apply if the person to whom the representation is made would not be expected to rely on it.

Division 6.2 Criminal proceedings in relation to discriminatory conduct

110 Proof of discriminatory conduct

- (1) This section applies if, in a proceeding for an offence against section 104 (Prohibition of discriminatory conduct) or section 107 (Prohibition of requesting, instructing, inducing, encouraging, authorising or assisting discriminatory conduct), the prosecution—
- (a) proves that the discriminatory conduct was engaged in; and
 - (b) proves that a circumstance referred to in section 106 (a) to (j) (What is a *prohibited reason*) existed at the time the discriminatory conduct was engaged in; and
 - (c) adduces evidence that the discriminatory conduct was engaged in for a prohibited reason.
- (2) The reason alleged for the discriminatory conduct is presumed to be the dominant reason for that conduct unless the accused proves, on

the balance of probabilities, that the reason was not the dominant reason for the conduct.

- (3) To avoid doubt, the burden of proof on the accused under subsection (2) is a legal burden of proof.

111 Order for compensation or reinstatement

If a person is convicted or found guilty of an offence against section 104 (Prohibition of discriminatory conduct) or section 107 (Prohibition of requesting, instructing, inducing, encouraging, authorising or assisting discriminatory conduct), the court may (in addition to imposing a penalty) make either or both of the following orders:

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

Division 6.3 Civil proceedings in relation to discriminatory or coercive conduct

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

- (1) An eligible person may apply to—
- (a) the Supreme Court for an order under subsection (3) (a); or

- (b) a court of competent jurisdiction for an order under subsection (3) (b) to (d).
- (2) The court may make 1 or more of the orders set out in subsection (3) in relation to a person who has—
 - (a) engaged in discriminatory conduct for a prohibited reason; or
 - (b) requested, instructed, induced, encouraged, authorised or assisted another person to engage in discriminatory conduct for a prohibited reason; or
 - (c) contravened section 108 (Prohibition of coercion or inducement).
- (3) For the purposes of subsection (2), the orders that the court may make are—
 - (a) an injunction; or
 - (b) for conduct referred to in subsection (2) (a) or (b)—an order that the person pay (within a specified period) the compensation to the person who was the subject of the discriminatory conduct that the court considers appropriate; or
 - (c) for conduct referred to in subsection (2) (a) in relation to a worker who was or is an employee or prospective employee—
 - (i) the worker be reinstated or re-employed in his or her former position or, if that position is not available, in a similar position; or
 - (ii) the prospective worker be employed in the position for which he or she had applied or a similar position; or
 - (d) any other order that the court considers appropriate.
- (4) For the purposes of this section, a person may be found to have engaged in discriminatory conduct for a prohibited reason only if a

reason referred to in section 106 (What is a *prohibited reason*) was a substantial reason for the conduct.

- (5) Nothing in this section is to be construed as limiting any other power of the court.
- (6) For the purposes of this section, each of the following is an *eligible person*:
 - (a) a person affected by the contravention;
 - (b) a person authorised as a representative by a person referred to in paragraph (a).

113 Procedure for civil actions for discriminatory conduct

- (1) A proceeding brought under section 112 must be commenced not more than 1 year after the date on which the applicant knew or ought to have known that the cause of action accrued.
- (2) In a proceeding under section 112 in relation to conduct referred to in section 112 (2) (a) or (b), if a prohibited reason is alleged for discriminatory conduct, that reason is presumed to be a substantial reason for that conduct unless the defendant proves, on the balance of probabilities, that the reason was not a substantial reason for the conduct.
- (3) It is a defence to a proceeding under section 112 in relation to conduct referred to in section 112 (2) (a) or (b) if the defendant proves that—
 - (a) the conduct was reasonable in the circumstances; and
 - (b) a substantial reason for the conduct was to comply with the requirements of this Act or a corresponding WHS law.

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

- (4) To avoid doubt, the burden of proof on the defendant under subsections (2) and (3) is a legal burden of proof.

Division 6.4 General

114 General provisions relating to orders

- (1) The making of an order in a proceeding under section 112 (Civil proceedings in relation to engaging in or inducing discriminatory or coercive conduct) in relation to conduct referred to in section 112 (2) (a) or (b) does not prevent the bringing of a proceeding for an offence under section 104 (Prohibition of discriminatory conduct) or section 107 (Prohibition of requesting, instructing, inducing, encouraging, authorising or assisting discriminatory conduct) in relation to the same conduct.
- (2) If the court makes an order under section 112 in a proceeding in relation to conduct referred to in section 112 (2) (a) or (b), the court cannot make an order under section 111 (Order for compensation or reinstatement) in a proceeding for an offence under section 104 or section 107 in relation to the same conduct.
- (3) If the court makes an order under section 111 in a proceeding for an offence under section 104 or section 107, the court cannot make an order under section 112 in a proceeding in relation to conduct referred to in section 112 (2) (a) or (b) that is the same conduct.

115 Prohibition of multiple actions

A person cannot—

- (a) commence a proceeding under division 6.3 (Civil proceedings in relation to discriminatory or coercive conduct) if the person has commenced a proceeding or made an application or complaint in relation to the same matter under a law of the Commonwealth or a State and that proceeding, application or complaint has not been withdrawn; or

- (b) recover any compensation under division 6.3 if the person has received compensation for the matter under a law of the Commonwealth or a State; or
- (c) commence or continue an application under division 6.3 if the person has failed in a proceeding, application or complaint in relation to the same matter under a law of the Commonwealth or a State, other than a proceeding, application or complaint relating to workers' compensation.

Part 7 Workplace entry by WHS entry permit-holders

Note Div 13.7 sets out the procedure in relation to the bringing of a proceeding in relation to WHS civil penalty provisions.

Division 7.1 Introductory

116 Definitions—pt 7

In this part:

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

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

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

relevant worker, in relation to a workplace, means a worker—

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

Division 7.2 **Entry to inquire into suspected contraventions**

117 **Entry to inquire into suspected contraventions**

- (1) A WHS entry permit-holder may enter a workplace for the purpose of inquiring into a suspected contravention of this Act that relates to, or affects, a relevant worker.

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

- (2) The WHS entry permit-holder must reasonably suspect before entering the workplace that the contravention has occurred or is occurring.

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

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

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

WHS civil penalty provision.

Maximum penalty:

- (a) in the case of an individual—\$10 000; or
 - (b) in the case of a body corporate—\$50 000.
- (4) Subsection (3) places an evidential burden on the defendant to show a reasonable excuse.

Note 1 **Evidential burden**—see the Criminal Code, s 58.

Note 2 At least 24 hours notice is required for an entry to a workplace to inspect employee records or other documents held by someone other than a person conducting a business or undertaking (see s 120).

Note 3 The use or disclosure of personal information obtained under this section is regulated under the *Privacy Act 1988* (Cwlth).

119 Notice of entry

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

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

- (1) This section applies if a WHS entry permit-holder is entitled under section 117 (Entry to inquire into suspected contraventions) to enter a workplace to inquire into a suspected contravention of this Act.
- (2) For the purposes of the inquiry into the suspected contravention, the WHS entry permit-holder may enter any workplace for the purpose of inspecting, or making copies of—
 - (a) employee records that are directly relevant to a suspected contravention; or
 - (b) other documents that are directly relevant to a suspected contravention and that are not held by the relevant person conducting a business or undertaking.

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

Note The use or disclosure of personal information obtained under this section is regulated under the *Privacy Act 1988* (Cwlth).

Division 7.3 Entry to consult and advise workers

121 Entry to consult and advise workers

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

122 Notice of entry

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

Division 7.4 Requirements for WHS entry permit-holders

123 Contravening WHS entry permit conditions

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

WHS civil penalty provision.

Maximum penalty: \$10 000.

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

A WHS entry permit-holder must not enter a workplace unless he or she also holds an entry permit under the Fair Work Act.

WHS civil penalty provision.

Maximum penalty: \$10 000.

125 WHS entry permit to be available for inspection

A WHS entry permit-holder must, at all times that he or she is at a workplace under a right of entry under division 7.2 (Entry to inquiry into suspected contraventions) or division 7.3 (Entry to consult and advise workers), have his or her WHS entry permit and photographic identification available for inspection by any person on request.

WHS civil penalty provision.

Maximum penalty: \$10 000.

126 When right may be exercised

A WHS entry permit-holder may exercise a right under division 7.2 (Entry to inquire into suspected contraventions) or division 7.3 (Entry to consult and advise workers) only during the usual working hours at the workplace.

WHS civil penalty provision.

Maximum penalty: \$10 000.

127 Where the right may be exercised

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

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

128 Work health and safety requirements

A WHS entry permit-holder must not exercise a right of entry to a workplace under division 7.2 (Entry to inquire into suspected contraventions) or division 7.3 (Entry to consult and advise workers) unless he or she complies with any reasonable request by the relevant person conducting a business or undertaking or the person with management or control of the workplace to comply with—

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

WHS civil penalty provision.

Maximum penalty: \$10 000.

129 Residential premises

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

WHS civil penalty provision.

Maximum penalty: \$10 000.

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

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

Division 7.5 WHS entry permits

131 Application for WHS entry permit

- (1) A union may apply to the regulator for the issue of a WHS entry permit to a person who is an official of the union.
- (2) The application must specify the person who is to hold the WHS entry permit and include a statutory declaration by that person declaring that he or she—
 - (a) is an official of the union; and
 - (b) has satisfactorily completed the prescribed training; and
 - (c) holds, or will hold, an entry permit under the Fair Work Act.

132 Consideration of application

In considering whether to issue a WHS entry permit, the regulator must take into account—

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

133 Eligibility criteria

The regulator must not issue a WHS entry permit to an official of a union unless the regulator is satisfied that the official—

- (a) is an official of the union; and
- (b) has satisfactorily completed the prescribed training; and
- (c) holds, or will hold, an entry permit under the Fair Work Act.

134 Issue of WHS entry permit

The regulator may issue a WHS entry permit to a person if the regulator has taken into account the matters in section 132 (Consideration of application) and is satisfied about the matters in section 133.

135 Conditions on WHS entry permit

The regulator may impose conditions on a WHS entry permit.

136 Term of WHS entry permit

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

137 Expiry of WHS entry permit

- (1) Unless it is earlier revoked, a WHS entry permit expires at the first of the following to occur:
 - (a) at the end of the term of the WHS entry permit;
 - (b) at the end of the term of the entry permit held by the WHS entry permit-holder under the Fair Work Act;
 - (c) when the permit-holder ceases to be an official of the union that applied for the permit;
 - (d) the union that applied for the permit ceases to be an organisation that is registered, or taken to be registered, under the *Fair Work (Registered Organisations) Act 2009* (Cwlth).
- (2) An application may be made for the issue of a subsequent WHS entry permit before or after the current WHS entry permit expires.

138 Application to revoke WHS entry permit

- (1) The following persons may apply to the regulator for a WHS entry permit held by a person to be revoked:
 - (a) the relevant person conducting a business or undertaking;
 - (b) any other person in relation to whom the WHS entry permit-holder has exercised or purported to exercise a right under this part;
 - (c) any other person affected by the exercise or purported exercise of a right under this part by a WHS entry permit-holder.

Note The regulator has power to reverse or change the decision. The power to reverse or change the decision is exercisable in the same way, and subject to the same conditions, as the power to make the decision (see Legislation Act, s 180).

- (2) The grounds for an application for revocation of a WHS entry permit are—
- (a) that the permit-holder no longer satisfies the eligibility criteria for—
 - (i) a WHS entry permit; or
 - (ii) an entry permit under a corresponding WHS law, the Fair Work Act or the *Workplace Relations Act 1996* (Cwlth); or
 - (b) that the permit-holder has contravened any condition of the WHS entry permit; or
 - (c) that the permit-holder has acted, or purported to act, in an improper manner in the exercise of any right under this Act; or
- Note* A reference to an Act includes a reference to statutory instruments made or in force under the Act, including a regulation and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).
- (d) in exercising or purporting to exercise a right under this part, that the permit-holder has intentionally hindered or obstructed a person conducting the business or undertaking or workers at a workplace.
- (3) The applicant must give written notice of the application, setting out the grounds for the application, to the person who holds the WHS entry permit and the union concerned.
- (4) The person who holds the WHS entry permit and the union that the WHS entry permit-holder represents are parties to the application.

139 Regulator must permit WHS entry permit-holder to show cause

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

140 Determination of application

- (1) If the regulator is satisfied on the balance of probabilities about any of the matters in section 138 (2) (Application to revoke WHS entry permit), it may make 1 or more of the following orders:
 - (a) an order imposing conditions on the WHS entry permit;
 - (b) an order suspending the WHS entry permit;
 - (c) an order revoking the WHS entry permit;

- (d) an order about the future issue of a WHS entry permit to the person whose WHS entry permit is revoked;
 - (e) an order imposing any alternative action the regulator considers appropriate.
- (2) In deciding what action to take under subsection (1), in relation to a person, the regulator must take into account—
- (a) the seriousness of any findings of the regulator having regard to the object of this Act; and
 - (b) any other matters the regulator considers relevant.

Division 7.6 Dealing with disputes

141 Application for assistance of inspector to resolve dispute

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

142 Regulator may deal with a dispute about a right of entry under this Act

- (1) The regulator may deal with a dispute about the exercise or purported exercise by a WHS entry permit-holder of a right of entry under this Act (including a dispute about whether a request under section 128 (Work health and safety requirements) is reasonable).
- (2) The regulator may deal with the dispute in any manner it thinks fit, including by means of mediation, conciliation or arbitration.
- (3) If the regulator deals with the dispute by arbitration, it may make 1 or more of the following orders:
 - (a) an order imposing conditions on a WHS entry permit;
 - (b) an order suspending a WHS entry permit;

- (c) an order revoking a WHS entry permit;
 - (d) an order about the future issue of WHS entry permits to 1 or more persons;
 - (e) any other order it considers appropriate.
- (4) The regulator may deal with the dispute—
- (a) on its own initiative; or
 - (b) on application by any of the following to whom the dispute relates:
 - (i) a WHS entry permit-holder;
 - (ii) the relevant union;
 - (iii) the relevant person conducting a business or undertaking;
 - (iv) any other person in relation to whom the WHS entry permit-holder has exercised or purported to exercise the right of entry;
 - (v) any other person affected by the exercise or purported exercise of the right of entry by a WHS entry permit-holder.
- (5) In dealing with a dispute, the regulator must not confer any rights on the WHS entry permit-holder that are additional to, or inconsistent with, rights exercisable by the WHS entry permit-holder under this part.

143 Contravening order made to deal with dispute

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

WHS civil penalty provision.

Maximum penalty:

- (a) in the case of an individual—\$10 000; or
- (b) in the case of a body corporate—\$50 000.

Division 7.7 Prohibitions

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

- (1) A person must not, without reasonable excuse, refuse or unduly delay entry into a workplace by a WHS entry permit-holder who is entitled to enter the workplace under this part.

WHS civil penalty provision.

Maximum penalty:

- (a) in the case of an individual—\$10 000; or
- (b) in the case of a body corporate—\$50 000.

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

Note **Evidential burden**—see the Criminal Code, s 58.

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

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

WHS civil penalty provision.

Maximum penalty:

- (a) in the case of an individual—\$10 000; or
- (b) in the case of a body corporate—\$50 000.

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

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

WHS civil penalty provision.

Maximum penalty: \$10 000.

147 Misrepresentations about things authorised by this part

- (1) A person must not take action—
- (a) with the intention of giving the impression; or
 - (b) reckless as to whether the impression is given,
- that the doing of a thing is authorised by this part if it is not so authorised.

WHS civil penalty provision.

Maximum penalty:

- (a) in the case of an individual—\$10 000; or
 - (b) in the case of a body corporate—\$50 000.
- (2) Subsection (1) does not apply if the person reasonably believes that the doing of the thing is authorised.

148 Unauthorised use or disclosure of information or documents

A person must not use or disclose information or a document obtained under division 7.2 (Entry to inquire into suspected contraventions) in an inquiry into a suspected contravention for a purpose that is not related to the inquiry or rectifying the suspected contravention, unless—

- (a) the person reasonably believes that the use or disclosure is necessary to lessen or prevent—
 - (i) a serious risk to a person's health or safety; or
 - (ii) a serious threat to public health or safety; or
- (b) the person has reason to suspect that unlawful activity has been, is being or may be engaged in, and uses or discloses the information or document as a necessary part of an investigation of the matter or in reporting concerns to relevant persons or authorities; or
- (c) the use or disclosure is required or authorised by or under law; or
- (d) the person reasonably believes that the use or disclosure is reasonably necessary for 1 or more of the following by, or on behalf of, an enforcement body (within the meaning of the *Privacy Act 1988* (Cwlth):
 - (i) the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law;
 - (ii) the enforcement of laws relating to the confiscation of the proceeds of crime;
 - (iii) the protection of the public revenue;

- (iv) the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct;
- (v) the preparation for, or conduct of, a proceeding before any court or tribunal, or implementation of the orders of a court or tribunal;
- (e) if the information is, or the document contains, personal information—the use or disclosure is made with the consent of the individual to whom the information relates.

WHS civil penalty provision.

Maximum penalty:

- (a) in the case of an individual—\$10 000; or
- (b) in the case of a body corporate—\$50 000.

Division 7.8 General

149 Return of WHS entry permits

- (1) The person to whom a WHS entry permit is issued must return the permit to the regulator within 14 days of any of the following things happening:
 - (a) the permit is revoked or suspended;
 - (b) the permit expires.

WHS civil penalty provision.

Maximum penalty: \$2000.

- (2) After the end of a period of suspension of a WHS entry permit, the regulator must return the WHS entry permit to the person to whom it was issued if—
 - (a) the person, or the person's union, applies to the regulator for the return of the permit; and
 - (b) the permit has not expired.

150 Union to provide information to regulator

The relevant union must advise the regulator if—

- (a) the WHS entry permit-holder resigns from or otherwise leaves the union; or
- (b) the WHS entry permit-holder has had any entry permit granted under a corresponding WHS law, or the Fair Work Act or the *Workplace Relations Act 1996* (Cwlth) (no matter when in force) cancelled or suspended; or
- (c) the union ceases to be an organisation that is registered, or taken to be registered, under the *Fair Work (Registered Organisations) Act 2009* (Cwlth).

WHS civil penalty provision.

Maximum penalty:

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

151 Register of WHS entry permit-holders

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

Part 8 The regulator

Division 8.1 Functions of regulator

152 Functions of regulator

The regulator has the following functions:

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

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

153 Powers of regulator

Without limiting section 152, the regulator has all the powers and functions that an inspector has under this Act.

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

154 Delegation by regulator

The regulator may delegate the regulator's powers and functions under this Act, or another Territory law, to another person.

Note A delegation must be in writing. The power to delegate may not be delegated. A delegation may be conditional. A delegation may be amended or revoked. The delegator may exercise a power or function that has been delegated, despite the delegation (see Legislation Act, pt 19.4).

Division 8.2 Powers of regulator to obtain information

155 Powers of regulator to obtain information

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

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

- (2) The regulator may, by written notice served on the person, require the person to do 1 or more of the following:
- (a) to give the regulator, in writing signed by the person (or in the case of a body corporate, by a competent officer of the body corporate) and within the time and in the manner specified in the notice, that information of which the person has knowledge;
 - (b) to produce to the regulator, in accordance with the notice, those documents;
 - (c) to appear before a person appointed by the regulator on a day, and at a time and place, specified in the notice (being a day, time and place that are reasonable in the circumstances) and give either orally or in writing that evidence and produce those documents.
- (3) The notice must—
- (a) state that the requirement is made under this section; and
 - (b) contain a statement to the effect that a failure to comply with a requirement is an offence; and
 - (c) if the notice requires the person to provide information or documents or answer questions—
 - (i) contain a statement about the effect of—
 - (A) section 172 (Abrogation of privilege against self-incrimination); and
 - (B) section 269 (Act does not affect legal professional privilege); and
 - (ii) state that the person may attend with a legal practitioner.
- (4) The regulator must not make a requirement under subsection (2) (c) unless the regulator has taken all reasonable steps to obtain the

information under subsection (2) (a) and (b) and has been unable to do so.

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

Maximum penalty:

- (a) in the case of an individual—\$10 000; or
(b) in the case of a body corporate—\$50 000.

Note Strict liability applies to each physical element of this offence (see s 12A).

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

Note **Evidential burden**—see the Criminal Code, s 58.

- (7) Section 172 (with any necessary changes) applies to a requirement under this section.

Part 9 Securing compliance

Division 9.1 Appointment of inspectors

156 Appointment of inspectors

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

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

Note 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).

157 Identity cards

- (1) The regulator must give each inspector an identity card that includes—
 - (a) the person's name; and
 - (b) a statement that the person is an inspector; and
 - (c) a recent photograph of the person; and
 - (d) the card's date of issue and expiry; and
 - (e) anything else prescribed by regulation.
- (2) An inspector must produce his or her identity card for inspection on request when exercising compliance powers.

- (3) If a person to whom an identity card has been issued ceases to be an inspector, the person must return the identity card to the regulator as soon as practicable.

158 Accountability of inspectors

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

159 Suspension and ending of appointment of inspectors

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

Division 9.2 Functions and powers of inspectors

160 Functions and powers of inspectors

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

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

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

161 Conditions on inspectors' compliance powers

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

162 Inspectors subject to regulator's directions

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

Division 9.3 Powers relating to entry

Subdivision 9.3.1 General powers of entry

163 Powers of entry

- (1) An inspector may at any time enter a place that is, or that the inspector reasonably suspects is, a workplace.

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

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

164 Notification of entry

- (1) An inspector may enter a place under section 163 without prior notice to any person.
- (2) An inspector must, as soon as practicable after entry to a workplace or suspected workplace, take all reasonable steps to notify the following persons of the entry and the purpose of the entry:
 - (a) the relevant person conducting a business or undertaking at the workplace;
 - (b) the person with management or control of the workplace;
 - (c) any health and safety representative for workers carrying out work for that business or undertaking at the workplace.
- (3) However, an inspector is not required to notify any person if to do so would defeat the purpose for which the place was entered or cause unreasonable delay.
- (4) In this section:

relevant person conducting a business or undertaking means the person conducting a business or undertaking in relation to which the inspector is exercising the powers of entry.

165 General powers on entry

- (1) An inspector who enters a workplace under section 163 may do all or any of the following:
- (a) inspect, examine and make inquiries at the workplace;
 - (b) inspect and examine anything (including a document) at the workplace;
 - (c) bring to the workplace and use any equipment or materials that may be required;
 - (d) take measurements, conduct tests and make sketches or recordings (including photographs, films, audio, video, digital or other recordings);
 - (e) take and remove for analysis a sample of any substance or thing without paying for it;
 - (f) require a person at the workplace to give the inspector reasonable help to exercise the inspector's powers under paragraphs (a) to (e);
 - (g) exercise any compliance power or other power that is reasonably necessary to be exercised by the inspector for the purposes of this Act.
- (2) A person required to give reasonable help under subsection (1) (f) must not, without reasonable excuse, refuse or fail to comply with the requirement.

Maximum penalty:

- (a) in the case of an individual—\$10 000; or
- (b) in the case of a body corporate—\$50 000.

Note Strict liability applies to each physical element of this offence (see s 12A).

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

Note **Evidential burden**—see the Criminal Code, s 58.

166 Persons assisting inspectors

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

Subdivision 9.3.2 Search warrants

167 Search warrants

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

Example

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

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 magistrate may issue a search warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

(a) there is a particular thing or activity (the *evidence*) that may provide evidence of an offence against this Act; and

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

(b) the evidence is, or may be within the next 72 hours, at the place.

(5) The search warrant must state—

(a) that an inspector may, with any necessary and reasonable help and force, enter the place and exercise the inspector's compliance powers; and

(b) the offence for which the search warrant is issued; and

(c) the evidence that may be seized under the search warrant; and

(d) the hours when the place may be entered; and

(e) the date, within 7 days after the day of the search warrant's issue, the search warrant ends.

167A Warrants—application made other than in person

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

- (a) urgent circumstances; or
 - (b) other special circumstances.
- (2) Before applying for the warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.
- (3) The inspector may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the inspector if it is practicable to do so.
- (5) If it is not practicable to fax a copy to the inspector—
- (a) the magistrate must 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 the exercise of the inspector's powers under this part.
- (7) The inspector must, at the first reasonable opportunity, send to the magistrate—
- (a) the sworn application; and
 - (b) if the inspector completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.

- (9) A court must find that a power exercised by the inspector was not authorised by a warrant under this section if—
- (a) the question arises in a proceeding in 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.

168 Announcement before entry on warrant

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

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

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

- (a) identify himself or herself to that person by producing his or her identity card for inspection; and

- (b) give that person—
 - (i) a copy of the warrant; and
 - (ii) a document setting out the rights and obligations of the person.

169A Occupier entitled to be present during search etc

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

Subdivision 9.3.3 Limitation on entry powers

170 Places used for residential purposes

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

- (a) with the consent of the person with management or control of the place; or
- (b) under the authority conferred by a search warrant; or
- (c) for the purpose only of gaining access to a suspected workplace, but only—

- (i) if the inspector reasonably believes that no reasonable alternative access is available; and
- (ii) at a reasonable time having regard to the times at which the inspector believes work is being carried out at the place to which access is sought.

Subdivision 9.3.4 Specific powers on entry

171 Power to require production of documents and answers to questions

- (1) An inspector who enters a workplace under this division may—
 - (a) require a person to tell the inspector who has custody of, or access to, a document; or
 - (b) require a person who has custody of, or access to, a document to produce that document to the inspector while the inspector is at that workplace or within a specified period; or
 - (c) require a person at the workplace to answer any questions put by the inspector.
- (2) A requirement under subsection (1) (b) must be made by written notice unless the circumstances require the inspector to have immediate access to the document.
- (3) An interview conducted by an inspector under subsection (1) (c) must be conducted in private if—
 - (a) the inspector considers it appropriate; or
 - (b) the person being interviewed so requests.
- (4) Subsection (3) does not—
 - (a) limit the operation of section 166 (Persons assisting inspectors); or

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

Maximum penalty:

- (a) in the case of an individual—\$10 000; or
- (b) in the case of a body corporate—\$50 000.

Note 1 See s 172 and s 173 in relation to self-incrimination and s 269 in relation to legal professional privilege.

Note 2 Strict liability applies to each physical element of this offence (see s 12A).

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

Note **Evidential burden**—see the Criminal Code, s 58.

172 Abrogation of privilege against self-incrimination

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

arising out of the false or misleading nature of the answer, information or document.

173 Warning to be given

- (1) Before requiring a person to answer a question or provide information or a document under this part, an inspector must—
 - (a) identify himself or herself to the person as an inspector by producing the inspector's identity card or in some other way; and
 - (b) warn the person that failure to comply with the requirement or to answer the question, without reasonable excuse, would constitute an offence; and
 - (c) warn the person about the effect of section 172; and
 - (d) advise the person about the effect of section 269 (Act does not affect legal professional privilege).
- (2) It is not an offence for an individual to refuse to answer a question put by an inspector or provide information or a document to an inspector under this part on the ground that the question, information or document might tend to incriminate him or her, unless he or she was first given the warning in subsection (1) (c).
- (3) Nothing in this section prevents an inspector from obtaining and using evidence given to the inspector voluntarily by any person.

174 Powers to copy and retain documents

- (1) An inspector may—
 - (a) make copies of, or take extracts from, a document given to the inspector in accordance with a requirement under this Act; and
 - (b) keep that document for the period that the inspector considers necessary.

- (2) While an inspector retains custody of a document, the inspector must permit the following persons to inspect or make copies of the document at all reasonable times:
- (a) the person who produced the document;
 - (b) the owner of the document;
 - (c) a person authorised by a person referred to in paragraph (a) or (b).

175 Power to seize evidence etc

- (1) An inspector who enters a workplace under section 163 (Powers of entry) may seize anything (including a document) at the place if the inspector reasonably believes the thing is evidence of 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 a regulation and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

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

176 Inspector’s power to seize dangerous workplaces and things

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

- (b) plant at the workplace; or
- (c) a substance at the workplace or part of the workplace; or
- (d) a structure at a workplace,

is defective or hazardous to a degree likely to cause serious injury or illness or a dangerous incident to occur.

- (2) The inspector may seize the workplace or part, the plant, the substance or the structure.

177 Powers supporting seizure

- (1) Having seized a thing, an inspector may—
 - (a) move the thing from the place where it was seized (the *place of seizure*); or
 - (b) leave the thing at the place of seizure but take reasonable action to restrict access to it; or
 - (c) if the thing is plant or a structure—dismantle or cause to be dismantled the plant or structure.

Examples—par (b)

- 1 sealing a thing and marking it to show access to it is restricted
- 2 sealing the entrance to a room where a thing is situated and marking it to show access to it is restricted

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) If an inspector restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing or something restricting access to the thing without an inspector's approval.

Maximum penalty:

- (a) in the case of an individual—\$10 000; or

(b) in the case of a body corporate—\$50 000.

Note Strict liability applies to each physical element of this offence (see s 12A).

(3) To enable a thing to be seized, an inspector may require the person in control of it—

(a) to take it to a stated reasonable place by a stated reasonable time; and

(b) if necessary, to remain in control of it at the stated place for a reasonable time.

(4) The requirement—

(a) must be made by written notice; or

(b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by written notice as soon as practicable.

(5) A further requirement may be made under this section in relation to the same thing if it is necessary and reasonable to make the further requirement.

(6) The person must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (3) or (5).

Maximum penalty:

(a) in the case of an individual—\$10 000; or

(b) in the case of a body corporate—\$50 000.

Note Strict liability applies to each physical element of this offence (see s 12A).

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

Note **Evidential burden**—see the Criminal Code, s 58.

178 Receipt for seized things

- (1) As soon as practicable after an inspector seizes a thing, the inspector must give a receipt for it to the person from whom it was seized.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt in a conspicuous position and in a reasonably secure way at the place of seizure.
- (3) The receipt must describe generally each thing seized and its condition.
- (4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt required by this section (given the thing's nature, condition and value).

179 Forfeiture of seized things

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

- (5) Subsection (4) does not apply if—
 - (a) the regulator cannot find the person entitled to the thing, after making reasonable inquiries; or
 - (b) it is impracticable or would be unreasonable to give the notice.
- (6) The notice must state—
 - (a) the reasons for the decision; and
 - (b) that the person entitled to the thing may apply within 28 days after the date of the notice for the decision to be reviewed; and
 - (c) how the person may apply for the review; and
 - (d) that the person may apply for a stay of the decision if the person applies for a review.
- (7) In deciding whether and, if so, what inquiries and efforts are reasonable or whether it would be unreasonable to give notice about a thing, regard must be had to the thing's nature, condition and value.
- (8) Any costs reasonably incurred by the Territory in storing or disposing of a thing forfeited under subsection (1) (c) may be recovered in a court of competent jurisdiction as a debt due to the Territory from that person.
- (9) In this section:
person entitled to a thing means the person from whom it was seized unless that person is not entitled to possess it in which case it means the owner of the thing.

180 Return of seized things

- (1) If a seized thing has not been forfeited, the person entitled to the thing may apply to the regulator for the return of the thing after the end of 6 months after it was seized.

- (2) The regulator must return the thing to the applicant under subsection (1) unless the regulator has reasonable grounds to retain the thing.
- (3) The regulator may impose any conditions on the return of the thing under this section that the regulator considers appropriate to eliminate or minimise any risk to work health or safety related to the thing.
- (4) In this section:
person entitled to a thing means the person entitled to possess the thing or the owner of the thing.

181 Access to seized things

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

Division 9.4 Damage and compensation

182 Damage etc to be minimised

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

183 Inspector to give notice of damage

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

184 Compensation

- (1) A person may claim compensation from the Territory if the person incurs loss or expense because of the exercise, or purported exercise, of a power under division 9.3 (Powers relating to entry).
- (2) Compensation may be claimed and ordered in a proceeding—
 - (a) brought in a court of competent jurisdiction; or
 - (b) for an offence against this Act brought against the person claiming compensation.
- (3) The court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

Division 9.5 Other matters

185 Power to require name and address

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

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

- (2) When asking a person to provide their name and home address, the inspector must—
 - (a) tell the person the reason for the requirement to provide his or her name and home address; and
 - (b) warn the person that it is an offence to fail to state his or her name and home address, unless the person has a reasonable excuse.
- (3) If the inspector reasonably believes that the name or home address is false, the inspector may require the person to give evidence of its correctness.

- (4) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1) or (3).

Maximum penalty: \$10 000.

Note Strict liability applies to each physical element of this offence (see s 12A).

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

Note **Evidential burden**—see the Criminal Code, s 58.

186 Inspector may take affidavits

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

187 Attendance of inspector at coronial inquests

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

Division 9.6 Offences in relation to inspectors

188 Offence to hinder or obstruct inspector

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

Maximum penalty:

- (a) in the case of an individual—\$10 000; or
(b) in the case of a body corporate—\$50 000.

189 Offence to impersonate inspector

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

Maximum penalty: \$10 000.

190 Offence to assault, threaten or intimidate inspector

A person commits an offence if—

- (a) the person engages in conduct; and
- (b) the person intends, by engaging in that conduct, to directly or indirectly assault, threaten or intimidate another person; and
- (c) the other person is an inspector or a person assisting an inspector.

Maximum penalty:

- (a) in the case of an individual—\$50 000 or imprisonment for 2 years or both; or
- (b) in the case of a body corporate—\$250 000.

Part 10 Enforcement measures

Division 10.1 Improvement notices

191 Issue of improvement notices

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

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

- (2) The inspector may issue an improvement notice requiring the person to—
- (a) remedy the contravention; or
 - (b) prevent a likely contravention from occurring; or
 - (c) remedy the things or operations causing the contravention or likely contravention.

192 Contents of improvement notices

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

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

193 Compliance with improvement notice

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

Maximum penalty:

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

Note Strict liability applies to each physical element of this offence (see s 12A).

194 Extension of time for compliance with improvement notices

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

- (4) In this section:

compliance period means the period stated in the improvement notice under section 192 (Contents of improvement notices), and includes that period as extended under this section.

Division 10.2 Prohibition notices

195 Power to issue prohibition notice

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

196 Contents of prohibition notice

- (1) A prohibition notice must state—
- (a) that the inspector believes that grounds for the issue of the prohibition notice exist and the basis for that belief; and

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

197 Compliance with prohibition notice

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

Maximum penalty:

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

Note Strict liability applies to each physical element of this offence (see s 12A).

Division 10.3 Non-disturbance notices

198 Issue of non-disturbance notice

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

199 Contents of non-disturbance notice

- (1) A non-disturbance notice may require the person to—
 - (a) preserve the site at which a notifiable incident has occurred for a specified period; or
 - (b) prevent the disturbance of a particular site (including the operation of plant) in other circumstances for a specified period that is reasonable in the circumstances.
- (2) A non-disturbance notice must specify the period (of not more than 7 days) for which it applies and set out—
 - (a) the obligations of the person to whom the notice is issued; and
 - (b) the measures to be taken to preserve a site or prevent disturbance of a site; and
 - (c) the penalty for contravening the notice.
- (3) In subsection (1) a reference to a site includes any plant, substance, structure or thing associated with the site.
- (4) A non-disturbance notice does not prevent any action—
 - (a) to assist an injured person; or
 - (b) to remove a deceased person; or
 - (c) that is essential to make the site safe or to prevent a further incident; or

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

200 Compliance with non-disturbance notice

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

Maximum penalty:

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

Note Strict liability applies to each physical element of this offence (see s 12A).

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

Note **Evidential burden**—see the Criminal Code, s 58.

201 Issue of subsequent notices

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

Division 10.4 General requirements applying to notices

202 Application—div 10.4

In this division:

notice means improvement notice, prohibition notice or non-disturbance notice.

203 Notice to be in writing

A notice must be in writing.

204 Directions in notices

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

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

205 Recommendations in notice

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

206 Changes to notice by inspector

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

207 Regulator may vary or cancel notice

Except as provided in section 206, a notice issued by an inspector may only be varied or cancelled by the regulator.

208 Formal irregularities or defects in notice

A notice is not invalid only because of—

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

209 Issue and giving of notice

- (1) A notice may be issued or given to a person—
 - (a) by delivering it personally to the person or sending it by post or facsimile or electronic transmission to the person's usual or last known place of residence or business; or
 - (b) by leaving it for the person at the person's usual or last known place of residence or business with a person who appears to be over 16 years and who appears to reside or work there; or
 - (c) by leaving it for the person at the workplace to which the notice relates with a person who is or appears to be the person with management or control of the workplace; or
 - (d) in a prescribed manner.
- (2) A regulation may prescribe—
 - (a) the manner of issuing a notice; and
 - (b) the steps a person to whom a notice is issued must take to bring it to the attention of other persons.

210 Display of notice

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

Maximum penalty:

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

Note Strict liability applies to each physical element of this offence (see s 12A).

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

Maximum penalty:

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

Division 10.5 Remedial action

211 When regulator may carry out action

- (1) This section applies if a person to whom a prohibition notice is issued fails to take reasonable steps to comply with the notice.
- (2) The regulator may take any remedial action the regulator believes reasonable to make the workplace or situation safe after giving written notice to the person to whom the prohibition notice was issued of—
- (a) the regulator's intention to take that action; and
(b) the owner's or person's liability for the costs of that action.

212 Power of the regulator to take other remedial action

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

213 Costs of remedial or other action

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

- (a) section 211 (When regulator may carry out action) from the person to whom the notice is issued; or
- (b) section 212 from any person to whom the prohibition notice could have been issued in relation to the matter,

as a debt due to the Territory.

Division 10.6 Injunctions

214 Application—div 10.6

In this division:

notice means improvement notice, prohibition notice or non-disturbance notice.

215 Injunction for noncompliance with notice

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

Part 11 Enforceable undertakings

216 Regulator may accept WHS undertakings

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

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

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

217 Notice of decision and reasons for decision

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

218 When a WHS undertaking is enforceable

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

219 Compliance with WHS undertaking

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

Maximum penalty:

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

Note Strict liability applies to each physical element of this offence (see s 12A).

220 Contravention of WHS undertaking

- (1) The regulator may apply to a court for an order if a person contravenes a WHS undertaking.
- (2) If the court is satisfied that the person who made the WHS undertaking has contravened the undertaking, the court, in addition to the imposition of any penalty, may make 1 or both of the following orders:
 - (a) an order directing the person to comply with the undertaking;
 - (b) an order discharging the undertaking.
- (3) In addition to the orders referred to in subsection (2), the court may make any other order that the court considers appropriate in the circumstances, including orders directing the person to pay to the Territory—
 - (a) the costs of the proceeding; and
 - (b) the reasonable costs of the regulator in monitoring compliance with the WHS undertaking in the future.
- (4) Nothing in this section prevents a proceeding being brought for the contravention or alleged contravention of this Act to which the WHS undertaking relates.

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

221 Withdrawal or variation of WHS undertaking

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

222 Proceeding for alleged contravention

- (1) Subject to this section, no proceeding for a contravention, or alleged contravention, of this Act may be brought against a person if a WHS undertaking is in effect in relation to that contravention.
- (2) No proceeding may be brought for a contravention, or alleged contravention, of this Act against a person who has made a WHS undertaking in relation to the contravention and has completely discharged the WHS undertaking.
- (3) The regulator may accept a WHS undertaking in relation to a contravention, or alleged contravention, before a proceeding in relation to the contravention has been finalised.
- (4) If the regulator accepts a WHS undertaking before the proceeding is finalised, the regulator must take all reasonable steps to have the proceeding discontinued as soon as possible.

Part 12 Review of decisions

Division 12.1 Reviewable decisions

223 Which decisions are reviewable

- (1) Table 223 sets out—
 - (a) decisions made under this Act that are reviewable in accordance with this part (*reviewable decisions*); and
 - (b) who is eligible to apply for review of a reviewable decision (the *eligible person*).
- (2) Unless the contrary intention appears, a reference in this part to a decision includes a reference to:
 - (a) making, suspending, revoking or refusing to make an order, determination or decision;
 - (b) giving, suspending, revoking or refusing to give a direction, approval, consent or permission;
 - (c) issuing, suspending, revoking or refusing to issue an authorisation;
 - (d) imposing a condition;
 - (e) making a declaration, demand or requirement;
 - (f) retaining, or refusing to deliver up, a thing;
 - (g) doing or refusing to do another act or thing.

- (3) In this section:

person entitled to a thing means the person from whom it was seized unless that person is not entitled to possess it, in which case it means the owner of the thing.

Note Decisions under the regulation that will be reviewable decisions will be set out in the regulation.

Table 223 Reviewable decisions and eligible persons

column 1 item	column 2 provision under which reviewable decision is made	column 3 eligible person in relation to reviewable decision
1	s 54 (2) (decision following failure to commence negotiations)	(1) A worker whose interests are affected by the decision or his or her representative appointed for the purpose of s 52 (1) (b) (2) A person conducting a business or undertaking whose interests are affected by the decision. (3) A health and safety representative who represents a worker whose interests are affected by the decision.
2	s 72 (6) (decision in relation to training of health and safety representative)	(1) A person conducting a business or undertaking whose interests are affected by the decision. (2) A health and safety representative whose interests are affected by the decision.
3	s 76 (6) (decision relating to health and safety committee)	(1) A worker whose interests are affected by the decision. (2) A person conducting a business or undertaking whose interests are affected by the decision. (3) A health and safety representative who represents a worker whose interests are affected by the decision.

column 1 item	column 2 provision under which reviewable decision is made	column 3 eligible person in relation to reviewable decision
4	s 102 (decision on review of provisional improvement notice)	(1) The person to whom the provisional improvement notice was issued. (2) The health and safety representative who issued the provisional improvement notice. (3) A worker whose interests are affected by the decision. (4) A health and safety representative who represents a worker whose interests are affected by the decision. (5) A person conducting a business or undertaking whose interests are affected by the decision.
5	s 134 (decision to refuse to issue a WHS permit)	(1) The relevant union. (2) The person for whom the entry permit is sought.
6	s 140 (decision to revoke, suspend or take other action in relation to a WHS entry permit)	(1) The relevant union. (2) The WHS permit-holder.
7	s 179 (forfeiture of thing)	The person entitled to the thing.
8	s 180 (return of seized things)	The person entitled to the thing.

column 1 item	column 2 provision under which reviewable decision is made	column 3 eligible person in relation to reviewable decision
9	s 191 (issue of improvement notice)	(1) The person to whom the notice was issued. (2) A person conducting a business or undertaking whose interests are affected by the decision. (3) A worker whose interests are affected by the decision. (4) A health and safety representative who represents a worker whose interests are affected by the decision.
10	s 194 (extension of time for compliance with improvement notice)	(1) The person to whom the notice was issued. (2) A person conducting a business or undertaking whose interests are affected by the decision. (3) A worker whose interests are affected by the decision. (4) A health and safety representative who represents a worker whose interests are affected by the decision.

column 1 item	column 2 provision under which reviewable decision is made	column 3 eligible person in relation to reviewable decision
11	s 195 (issue of prohibition notice)	(1) The person to whom the notice was issued. (2) The person with management or control of the workplace, plant or substance. (3) A person conducting a business or undertaking whose interests are affected by the decision. (4) A worker whose interests are affected by the decision. (5) A health and safety representative who represents a worker whose interests are affected by the decision. (6) A health and safety representative who gave a direction under s 85 to cease work, that is relevant to the prohibition notice.
12	s 198 (issue of a non-disturbance notice)	(1) The person to whom the notice was issued. (2) The person with management or control of the workplace. (3) A person conducting a business or undertaking whose interests are affected by the decision. (4) A worker whose interests are affected by the decision. (5) A health and safety representative who represents a worker whose interests are affected by the decision.

column 1 item	column 2 provision under which reviewable decision is made	column 3 eligible person in relation to reviewable decision
13	s 201 (issue of subsequent notice)	<ul style="list-style-type: none"> (1) The person to whom the notice was issued. (2) The person with management or control of the workplace. (3) A person conducting a business or undertaking whose interests are affected by the decision. (4) A worker whose interests are affected by the decision. (5) A health and safety representative who represents a worker whose interests are affected by the decision.
14	s 207 (Decision of regulator to vary or cancel notice)	<ul style="list-style-type: none"> (1) The person to whom the notice was issued. (2) The person with management or control of the workplace. (3) A person conducting a business or undertaking whose interests are affected by the decision. (4) A worker whose interests are affected by the decision. (5) A health and safety representative who represents a worker whose interests are affected by the decision. (6) For a prohibition notice, a health and safety representative whose direction under s 85 to cease work gave rise to the notice.
15	A provision of the regulation prescribed by regulation to be reviewable in accordance with this part.	A person prescribed by regulation as eligible to apply for review of the reviewable decision.

Division 12.2 Internal review

224 Application for internal review

- (1) An eligible person in relation to a reviewable decision, other than a decision made by the regulator or a delegate of the regulator, may apply to the regulator for review (an *internal review*) of the decision within—
 - (a) the relevant time after the day on which the decision first came to the eligible person's notice; or
 - (b) such longer period that the regulator allows.
- (2) The application must be made in the manner and form required by the regulator.

Note If a form is approved under s 277 for this provision, the form must be used.

- (3) For the purposes of this section:

relevant time means—

- (a) in the case of a decision to issue an improvement notice—the period specified in the notice for compliance with the notice or 14 days, whichever is the lesser; and
- (b) in any other case—14 days.

225 Internal reviewer

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

226 Decision of internal reviewer

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

227 Decision on internal review

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

- (a) the decision on the internal review; and
- (b) the reasons for the decision.

228 Stays of reviewable decisions on internal review

- (1) An application for an internal review of a reviewable decision (other than a decision to issue a prohibition notice or a non-disturbance notice) stays the operation of the decision.
- (2) If an application is made for an internal review of a decision to issue a prohibition notice or a non-disturbance notice, the reviewer may stay the operation of the decision.
- (3) The reviewer may make the decision to stay the operation of a decision on the reviewer's own initiative or on the application of the applicant for review.
- (4) The reviewer must make a decision on an application for a stay within 1 working day after the reviewer receives the application.
- (5) If the reviewer has not made a decision to stay a decision within the time set out in subsection (4), the reviewer is taken to have made a decision to grant a stay.
- (6) A stay of the operation of a decision pending a decision on an internal review continues until whichever of the following is earlier:
 - (a) the end of the prescribed period for applying for an external review of the decision made on the internal review;
 - (b) an application for external review is made.

Division 12.3 External review

229 Application for external review

- (1) An eligible person may apply to the ACAT for review (an *external review*) of—
 - (a) a reviewable decision made by the regulator; or
 - (b) a decision made, or taken to have been made, on an internal review.
- (2) The application must be made—
 - (a) if the decision was to forfeit a thing (including a document) within 28 days after the day on which the decision first came to the applicant's notice; or
 - (b) in the case of any other decision—within 14 days after the day on which the decision first came to the applicant's notice; or
 - (c) if the regulator is required by the external review body to give the eligible person a statement of reasons, within 14 days after the day on which the statement is provided.

Part 13 Legal proceedings

Division 13.1 General matters

230 Prosecutions

- (1) Subject to subsection (5), a proceeding for an offence against this Act may be brought by—
 - (a) the regulator; or
 - (b) an inspector with the written authorisation of the regulator (either generally or in a particular case).

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

- (2) If the regulator believes on reasonable grounds that a person has committed an offence against this Act, the regulator may refer the matter to the DPP.
- (3) The regulator must issue, and publish on the regulator's website, general guidelines in relation to—
 - (a) the referral of matters to the DPP under this section; and
 - (b) the acceptance of WHS undertakings under this Act.
- (4) A guideline is a notifiable instrument.

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

- (5) Nothing in this section affects the ability of the DPP to bring a proceeding for an offence against this Act.

231 Procedure if prosecution is not brought

- (1) A person (the *applicant*) may make a written request to the regulator that the regulator refer a matter to the DPP if—
 - (a) the applicant reasonably considers that the occurrence of an act, matter or thing constitutes a category 1 offence or a category 2 offence; and
 - (b) no prosecution has been brought in relation to the occurrence of the act, matter or thing after 6 months but not later than 12 months after the occurrence.
- (2) Within 3 months after the regulator receives a request the regulator must—
 - (a) advise the applicant (in writing)—
 - (i) whether the investigation is complete; and
 - (ii) if the investigation is complete—
 - (A) whether the regulator has referred or will be referring the matter to the DPP; or
 - (B) the reasons why the regulator will not be referring the matter to the DPP; and
 - (b) advise the person who the applicant believes committed the offence of the application.
- (3) If the regulator advises the person that the regulator will not be referring a matter concerning a category 1 or category 2 offence to the DPP, the regulator must—
 - (a) advise the person that the person may ask the regulator to refer the matter to the DPP for consideration; and
 - (b) if the person makes a written request to the regulator to do so, refer the matter to the DPP within 1 month of the request.

- (4) The DPP must consider the matter and advise (in writing) the regulator as soon as practicable as to whether the DPP considers that a prosecution should be brought.
- (5) If the DPP considers that a prosecution should not be brought, the regulator must ensure that written reasons for the decision are given to—
 - (a) the person who made the request; and
 - (b) the person who the applicant believes committed the offence.
- (6) If the regulator declines to follow the advice of the DPP to bring a proceeding, the regulator must give written reasons for the decision to any person to whom written reasons are given under subsection (5).
- (7) In this section a reference to the occurrence of an act, matter or thing includes a reference to a failure in relation to an act, matter or thing.

232 Limitation period for prosecutions

- (1) A proceeding for an offence against this Act may be brought within the latest of the following periods:
 - (a) within 2 years after the offence first comes to the notice of the regulator;
 - (b) within 1 year after a coronial report was made or a coronial inquiry or inquest ended, if it appeared from the report or the proceeding at the inquiry or inquest that an offence had been committed against this Act;
 - (c) if a WHS undertaking has been given in relation to the offence—within 6 months after—
 - (i) the WHS undertaking is contravened; or
 - (ii) it comes to the notice of the regulator that the WHS undertaking has been contravened; or

- (iii) the regulator has agreed under section 221 (Withdrawal or variation of WHS undertaking) to the withdrawal of the WHS undertaking.
- (2) A proceeding for a category 1 offence may be brought after the end of the applicable limitation period in subsection (1) if fresh evidence relevant to the offence is discovered and the court is satisfied that the evidence could not reasonably have been discovered within the relevant limitation period.

233 Multiple contraventions of health and safety duty provision

- (1) Two or more contraventions of a health and safety duty provision by a person that arise out of the same factual circumstances may be charged as a single offence or as separate offences.
- (2) However, this section does not authorise contraventions of 2 or more health and safety duty provisions to be charged as a single offence.
- (3) A single penalty only may be imposed in relation to 2 or more contraventions of a health and safety duty provision that are charged as a single offence.
- (4) In this section:
 - health and safety duty provision* means a provision of—
 - (a) division 2.2 (Primary duty of care); or
 - (b) division 2.3 (Further duties of persons conducting businesses or undertakings); or
 - (c) division 2.4 (Duty of officers, workers and other persons).

Division 13.2 Sentencing for offences

234 Application—div 13.2

This division applies if a court convicts a person, or finds a person guilty (the *offender*), of 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 a regulation and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

235 Orders generally

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

Note An order under this division may be made as a condition of a good behaviour order under the *Crimes (Sentencing) Act 2005*.

236 Adverse publicity orders

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

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

237 Orders for restoration

- (1) The court may order the offender to take such steps as are specified in the order, within the period specified, to remedy any matter caused by the commission of the offence that appears to the court to be within the offender's power to remedy.

- (2) The period in which an order under this section must be complied with may be extended, or further extended, by order of the court but only if an application for the extension is made before the end of that period.

238 Work health and safety project orders

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

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

- (1) The court may (with or without recording a conviction) adjourn the proceeding for a period of up to 2 years and make an order for the release of the offender on the offender giving an undertaking with specified conditions (a *court-ordered WHS undertaking*).
- (2) A court-ordered WHS undertaking must specify the following conditions:
 - (a) that the offender appears before the court if called on to do so during the period of the adjournment and, if the court so specifies, at the time to which the further hearing is adjourned;
 - (b) that the offender does not commit, during the period of the adjournment, any offence against this Act;
 - (c) that the offender observes any special conditions imposed by the court.
- (3) An offender who has given a court-ordered WHS undertaking under this section may be called on to appear before the court by order of the court.

- (4) An order under subsection (3) must be served on the offender not less than 4 days before the time specified in it for the appearance.
- (5) If the court is satisfied at the time to which a further hearing of a proceeding is adjourned that the offender has observed the conditions of the court-ordered WHS undertaking, it must discharge the offender without any further hearing of the proceeding.

240 Injunctions

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

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

241 Training orders

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

242 Offence to fail to comply with order

- (1) A person must not, without reasonable excuse, fail to comply with an order under this division.

Maximum penalty:

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

Note Strict liability applies to each physical element of this offence (see s 12A).

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

Note **Evidential burden**—see the Criminal Code, s 58.

- (3) This section does not apply to an order or injunction under—
- (a) section 239 (Release on the giving of a court-ordered WHS undertaking); or
 - (b) section 240 (Injunctions).

Division 13.3 Infringement notices

243 Infringement notices

Note Infringement notices for offences against this Act are dealt with under the *Magistrates Court Act 1930*, pt 3.8.

Division 13.4 Offences by bodies corporate

244 Imputing conduct to bodies corporate

Note 1 A physical element of an offence consisting of conduct is taken to be committed by a corporation if it is committed by an employee, agent or officer of the corporation acting within the actual or apparent scope of his or her employment or within his or her actual or apparent authority (see Criminal Code, s 50.)

Note 2 For fault elements in relation to corporations, see the Criminal Code s 51 (Fault elements other than negligence) and s 52 (Corporation negligence).

Note 3 For mistake of fact in relation to corporations, see the Criminal Code s 53.

Division 13.5 The Territory

245 Offences and the Territory

- (1) If the Territory is guilty of an offence against this Act, the penalty to be imposed on the Territory is the penalty applicable to a body corporate.

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

- (2) For the purposes of this Act, any conduct engaged in on behalf of the Territory by an employee, agent or officer of the Territory acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is conduct also engaged in by the Territory.
- (3) If an offence under this Act requires proof of knowledge, intention or recklessness, it is sufficient in a proceeding against the Territory for that offence to prove that the person referred to in subsection (2) had the relevant knowledge, intention or recklessness.
- (4) If for an offence against this Act mistake of fact is relevant to determining liability, it is sufficient in a proceeding against the Territory for the offence if the person referred to in subsection (2) made that mistake of fact.

246 WHS civil penalty provisions and the Territory

- (1) If the Territory contravenes a WHS civil penalty provision, the monetary penalty to be imposed on the Territory is the penalty applicable to a body corporate.

- (2) For the purposes of a WHS civil penalty provision, any conduct engaged in on behalf of the Territory by an employee, agent or officer of the Territory acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is conduct also engaged in by the Territory.
- (3) If a WHS civil penalty provision requires proof of knowledge, it is sufficient in a proceeding against the Territory for a contravention of that provision to prove that the person referred to in subsection (2) had that knowledge.

247 Officers

- (1) A person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking of the Territory is taken to be an officer of the Territory for the purposes of this Act.
- (2) A Minister of a State or the Commonwealth is not in that capacity an officer for the purposes of this Act.

248 Responsible agency for the Territory

- (1) A provisional improvement notice, improvement notice, prohibition notice, non-disturbance notice, infringement notice or notice of entry under part 7 (Workplace entry by WHS entry permit-holders) to be given to or served on the Territory under this Act may be given to or served on the responsible agency.
- (2) If an infringement notice is to be served on the Territory for an offence against this Act, the responsible agency may be specified in the infringement notice.
- (3) If a proceeding is brought against the Territory for an offence against this Act or in relation to a contravention of this Act, the responsible agency in relation to the offence or contravention may be specified in any document initiating, or relating to, the proceeding.

- (4) The responsible agency in relation to an offence or a contravention of this Act is entitled to act in a proceeding against the Territory for the offence or relating to the contravention and, subject to any relevant rules of court, the procedural rights and obligations of the Territory as the accused or defendant in the proceeding are conferred or imposed on the responsible agency.
- (5) The person prosecuting the offence or bringing the proceeding may change the responsible agency during the proceeding with the court's leave.
- (6) In this section:

responsible agency—

- (a) in relation to a notice referred to in subsection (1) means—
- (i) in the case of a provisional improvement notice, improvement notice or infringement notice—the territory agency the acts or omissions of which are alleged to contravene this Act; and
 - (ii) in the case of a prohibition notice—the territory agency which has control over the activity referred to in section 195 (1) (a) or (b) (Power to issue prohibition notice); and
 - (iii) in the case of a non-disturbance notice—the territory agency with the management and control of the workplace; and
 - (iv) in the case of a notice of entry under part 7 (Workplace entry by WHS entry permit-holders)—the territory agency conducting the relevant business or undertaking or with the management and control of the workplace; and

- (b) in relation to an offence or proceeding for a contravention of this Act means the agency of the Territory—
- (i) the acts or omissions of which are alleged to constitute the offence or contravention; or
 - (ii) if that agency has ceased to exist—that is the successor of that agency; or
 - (iii) if that agency has ceased to exist and there is no clear successor, that the court declares to be the responsible agency.

Division 13.6 Public authorities

249 Application to public authorities that are bodies corporate

This division applies only to public authorities that are bodies corporate.

250 Proceedings against public authorities

- (1) A proceeding may be brought under this Act against a public authority in its own name.
- (2) Nothing in this division affects any privileges that a public authority may have under the Crown.

251 Imputing conduct to public authorities

- (1) For the purposes of this Act, any conduct engaged in on behalf of a public authority by an employee, agent or officer of the public authority acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is conduct also engaged in by the public authority.

- (2) If an offence under this Act requires proof of knowledge, intention or recklessness, it is sufficient in a proceeding against the public authority for that offence to prove that the person referred to in subsection (1) had the relevant knowledge, intention or recklessness.
- (3) If, for an offence against this Act, mistake of fact is relevant to determining liability, it is sufficient in a proceeding against the public authority for that offence if the person referred to in subsection (1) made that mistake of fact.

252 Officer of public authority

A person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking of a public authority is taken to be an officer of the public authority for the purposes of this Act.

253 Proceedings against successors to public authorities

- (1) A proceeding for an offence against this Act that was instituted against a public authority before its dissolution, or that could have been instituted against a public authority if not for its dissolution, may be continued or instituted against its successor if the successor is a public authority.
- (2) An infringement notice served on a public authority for an offence against this Act is taken to be an infringement notice served on its successor if the successor is a public authority.
- (3) Similarly, any penalty paid by a public authority in relation to an infringement notice is taken to be a penalty paid by its successor if the successor is a public authority.

Division 13.7 WHS civil penalty provisions

254 When is a provision a *WHS civil penalty provision*

- (1) A subsection of part 7 (Workplace entry by WHS entry permit-holders) (or a section of part 7 that is not divided into subsections) is a *WHS civil penalty provision* if—
 - (a) the words ‘WHS civil penalty provision’ and 1 or more amounts by way of monetary penalty are set out at the foot of the subsection (or section); or
 - (b) another provision of part 7 specifies that the subsection (or section) is a WHS civil penalty provision.
- (2) A subsection of a regulation (or a section of a regulation that is not divided into subsections) is a *WHS civil penalty provision* if—
 - (a) the words ‘WHS civil penalty provision’ and 1 or more amounts by way of monetary penalty are set out at the foot of the subsection (or section); or
 - (b) another provision of a regulation specifies that the subsection (or section) is a WHS civil penalty provision.

255 Proceedings for contravention of WHS civil penalty provision

Subject to this division, a proceeding may be brought in a court against a person for a contravention of a WHS civil penalty provision.

256 Involvement in contravention treated in same way as actual contravention

- (1) A person who is involved in a contravention of a WHS civil penalty provision is taken to have contravened that provision.
- (2) A person is *involved in* a contravention of a civil penalty provision if, and only if, the person—
 - (a) has aided, abetted, counselled or procured the contravention; or
 - (b) has induced the contravention, whether by threats or promises or otherwise; or
 - (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention; or
 - (d) has conspired with others to effect the contravention.

257 Contravening a civil penalty provision is not an offence

A contravention of a WHS civil penalty provision is not an offence.

258 Civil proceeding rules and procedure to apply

A court must apply the rules of evidence and procedure for a civil proceeding when hearing a proceeding for a contravention of a WHS civil penalty provision.

259 Proceeding for a contravention of a WHS civil penalty provision

- (1) In a proceeding for a contravention of a WHS civil penalty provision, if the court is satisfied that a person has contravened a WHS civil penalty provision, the court may—
 - (a) order the person to pay a monetary penalty that the court considers appropriate; and
 - (b) make any other order that the court considers appropriate, including an injunction.

- (2) A monetary penalty imposed under subsection (1) must not exceed the relevant maximum amount of monetary penalty specified under part 7 (Workplace entry by WHS entry permit-holders) or prescribed by regulation in relation to a contravention of that WHS civil penalty provision.

260 Proceeding may be brought by the regulator or an inspector

A proceeding for a contravention of a WHS civil penalty provision may only be brought by—

- (a) the regulator; or
- (b) an inspector with the written authorisation of the regulator (either generally or in a particular case).

261 Limitation period for WHS civil penalty proceedings

A proceeding for a contravention of a WHS civil penalty provision may be brought within 2 years after the contravention first comes to the notice of the regulator.

262 Recovery of a monetary penalty

If the court orders a person to pay a monetary penalty—

- (a) the penalty is payable to the Territory; and
- (b) the Territory may enforce the order as if it were a judgment of the court.

263 Civil double jeopardy

A court must not make an order against a person under section 259 (Proceeding for a contravention of a WHS civil penalty provision) for contravention of a WHS civil penalty provision if an order has been made against the person under a civil penalty provision under an Act of the Commonwealth or a State in relation to conduct that is substantially the same as the conduct constituting the contravention.

264 Criminal proceedings during civil proceedings

- (1) A proceeding against a person for a contravention of a WHS civil penalty provision is stayed if—
 - (a) a criminal proceeding is commenced or has already commenced against the person for an offence; and
 - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention of the WHS civil penalty provision.
- (2) The proceeding for the order may be resumed if the person is not convicted or found guilty of the offence.
- (3) If the proceeding for the order is not resumed, the proceeding is dismissed.

265 Criminal proceedings after civil proceedings

A criminal proceeding may be commenced against a person for conduct that is substantially the same as conduct constituting a contravention of a WHS civil penalty provision regardless of whether an order has been made against the person under section 259 (Proceeding for a contravention of a WHS civil penalty provision).

266 Evidence given in proceedings for contravention of WHS civil penalty provision not admissible in criminal proceedings

- (1) Evidence of information given, or evidence of production of documents, by an individual is not admissible in a criminal proceeding against the individual if—
 - (a) the individual previously gave the information or produced the documents in a proceeding against the individual for a contravention of a WHS civil penalty provision (whether or not the order was made); and

- (b) the conduct alleged to constitute the offence is substantially the same as the conduct alleged to constitute the contravention of the WHS civil penalty provision.
- (2) However, this does not apply to a criminal proceeding in relation to the falsity of the evidence given by the individual in the proceeding for the contravention of the WHS civil penalty provision.

Division 13.8 Civil liability not affected by this Act

267 Civil liability not affected by this Act

Except as provided in part 6 (Discriminatory, coercive and misleading conduct), part 7 (Workplace entry by WHS entry permit-holders) and division 13.7 (WHS civil penalty provisions), nothing in this Act is to be construed as—

- (a) conferring a right of action in a civil proceeding in relation to a contravention of a provision of this Act; or
- (b) conferring a defence to an action in a civil proceeding or otherwise affecting a right of action in a civil proceeding; or
- (c) affecting the extent (if any) to which a right of action arises, or a civil proceeding may be brought, in relation to breaches of duties or obligations imposed by regulation.

Part 14 **General**

Division 14.1 **General provisions**

268 **Offence to give false or misleading information**

Note It is an offence to give false or misleading information or produce false or misleading documents (see Criminal Code, s 338 and s 339).

269 **Act does not affect legal professional privilege**

Nothing in this Act requires a person to produce a document that would disclose information, or otherwise provide information, that is the subject of legal professional privilege.

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

270 **Immunity from liability**

- (1) An inspector, or other person engaged in the administration of this Act, incurs no civil liability for an act or omission done or omitted to be done in good faith and in the execution or purported execution of powers and functions under this Act.
- (2) Any civil liability that would, apart from this section, attach to a person attaches instead to the Territory.

271 Confidentiality of information

- (1) This section applies if a person obtains information or gains access to a document in exercising any power or function under this Act (other than under part 7 (Workplace entry by WHS entry permit-holders)).

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

- (2) The person must not do any of the following:
- (a) disclose to anyone else—
 - (i) the information; or
 - (ii) the contents of or information contained in the document;
 - (b) give access to the document to anyone else;
 - (c) use the information or document for any purpose.

Maximum penalty:

- (a) in the case of an individual—\$10 000; or
- (b) in the case of a body corporate—\$50 000.

Note Strict liability applies to each physical element of this offence (see s 12A).

- (3) Subsection (2) does not apply to the disclosure of information, or the giving of access to a document or the use of information or a document—
- (a) about a person, with the person's consent; or
 - (b) that is necessary for the exercise of a power or function under this Act; or

- (c) that is made or given by the regulator or a person authorised by the regulator if the regulator reasonably believes the disclosure, access or use—
 - (i) is necessary for administering, or monitoring or enforcing compliance with, this Act; or
 - (ii) is necessary for the administration or enforcement of another Act prescribed by regulation; or
 - (iii) is necessary for the administration or enforcement of another Act or law, if the disclosure, access or use is necessary to lessen or prevent a serious risk to public health or safety; or
 - (iv) is necessary for the recognition of authorisations under a corresponding WHS law; or
 - (v) is required for the exercise of a power or function under a corresponding WHS law; or
 - (d) that is required by any court, tribunal, authority or person having lawful authority to require the production of documents or the answering of questions; or
 - (e) that is required or authorised under a law; or
 - (f) to a Minister.
- (4) A person commits an offence if—
- (a) the person (the *defendant*) intentionally discloses to another person the name of an individual; and
 - (b) the individual has made a complaint in relation to the person to whom the individual's name is disclosed; and
 - (c) the defendant knows or is reckless as to that fact.

Maximum penalty:

- (a) in the case of an individual—\$10 000; or

(b) in the case of a body corporate—\$50 000.

- (5) However, the defendant does not commit an offence under subsection (4) if the disclosure is made with the consent of the individual or is required under a law.

272 No contracting out

A term of any agreement or contract that purports to exclude, limit or modify the operation of this Act or any duty owed under this Act or to transfer to another person any duty owed under this Act is void.

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

273 Person not to levy workers

A person conducting a business or undertaking must not impose a levy or charge on a worker, or permit a levy or charge to be imposed on a worker, for anything done, or provided, in relation to work health and safety.

Maximum penalty:

- (a) in the case of an individual—\$5000; or
(b) in the case of a body corporate—\$25 000.

Note Strict liability applies to each physical element of this offence (see s 12A).

Division 14.2 Codes of practice

274 Approved codes of practice

- (1) The Minister may approve a code of practice for the purposes of this Act.

Note The power to make a code of practice includes the power to amend or repeal the code of practice. The power to amend or repeal the code of practice is exercisable in the same way, and subject to the same conditions, as the power to make it (see Legislation Act, s 46).

- (2) The Minister may only approve a code of practice if the code of practice was developed by a process that involved consultation between—
- (a) the Governments of the Commonwealth and each State and Territory; and
 - (b) unions; and
 - (c) employer organisations.
- (3) An approved code of practice may apply, adopt or incorporate an instrument, as in force from time to time.

Note 1 The text of an applied, adopted or incorporated instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

Note 2 A notifiable instrument must be notified under the Legislation Act.

- (4) An approval of a code of practice is a notifiable instrument.

Note 1 A notifiable instrument must be notified under the Legislation Act.

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

- (5) As soon as practicable after approving a code of practice, the Minister must ensure that notice of the approval is published in a daily newspaper.

- (6) The regulator must ensure that a copy of—
- (a) each code of practice that is currently approved; and
 - (b) each document applied, adopted or incorporated (to any extent) by an approved code of practice, is available for inspection by members of the public without charge at the office of the regulator during normal business hours.

275 Use of codes of practice in proceedings

- (1) This section applies in a proceeding for 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 a regulation and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

- (2) An approved code of practice is admissible in the proceeding as evidence of whether or not a duty or obligation under this Act has been complied with.
- (3) The court may—
- (a) have regard to the code as evidence of what is known about a hazard or risk, risk assessment or risk control to which the code relates; and
 - (b) rely on the code in determining what is reasonably practicable in the circumstances to which the code relates.

Note **Reasonably practicable**—see s 18.

- (4) Nothing in this section prevents a person from introducing evidence of compliance with this Act in a manner that is different from the code but provides a standard of work health and safety that is equivalent to or higher than the standard required in the code.

Division 14.3 Regulation-making power, forms and fees

276 Regulation-making powers

- (1) The Executive may make regulations for this Act in relation to any matter relating to work health and safety.

Note 1 A regulation may be made in relation to any matter that is required or permitted to be prescribed by the Act or is necessary or convenient to be prescribed for carrying out or giving effect to the Act (see Legislation Act, s 44).

Note 2 Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) Without limiting subsection (1), a regulation may make provision in relation to matters set out in schedule 3.

- (3) A regulation may—

- (a) be of general or limited application; or
(b) differ according to differences in time, place or circumstance;
or

Note Power to make a regulation includes power to make different provision for different categories (see Legislation Act, s 48).

- (c) leave any matter or thing to be, from time to time, determined, applied or approved by the regulator, an inspector or any other prescribed person or body of persons; or

Note A regulation may authorise or require an entity to make provision about a matter, whether or not from time to time. **Provision** includes determining the matter, applying an instrument to the matter, being satisfied or forming an opinion about anything relating to the matter, or doing anything else in relation to the matter (see Legislation Act, s 52)

- (d) apply, adopt or incorporate any matter contained in any document formulated, issued or published by a person or body whether—
 - (i) with or without modification; or
 - (ii) as in force at a particular time or as in force or remade from time to time; or
- (e) prescribe exemptions from complying with a regulation on the terms and conditions (if any) prescribed; or
- (f) allow the regulator to provide exemptions from complying with a regulation on the terms and conditions (if any) prescribed or, if a regulation allows, on the terms and conditions (if any) determined by the regulator; or
- (g) prescribe a penalty for any contravention of a regulation not exceeding \$30 000.

277 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.

278 Determination of fees

- (1) The Minister may 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.

Part 20 Transitional

300 Definitions—pt 20

In this part:

commencement day means the day the *Work Health and Safety Act 2011* commences.

301 Worker consultation units to be work groups

- (1) This section applies if a group of workers is a worker consultation unit under the *Work Safety Act 2008* immediately before the commencement day.
- (2) The group is, on the commencement day, taken to be a work group.

302 Work safety representatives to be health and safety representatives

- (1) This section applies if a person is a work safety representative for a worker consultation unit under the *Work Safety Act 2008* immediately before the commencement day.
- (2) The person is, on the commencement day, taken to be a health and safety representative for the work group corresponding to the worker consultation unit.

303 Work safety committees to be health and safety committees

- (1) This section applies if a work safety committee exists under the *Work Safety Act 2008* immediately before the commencement day.
- (2) The committee is, on the commencement day, taken to be a health and safety committee.

304 Authorised representatives to be WHS entry permit-holders

- (1) This section applies if a person is an authorised representative under the *Work Safety Act 2008* immediately before the commencement day.
- (2) The person is, on the commencement day, taken to be a WHS entry permit-holder.

305 Inspectors

- (1) This section applies if a person is an inspector under the *Work Safety Act 2008* immediately before the commencement day.
- (2) The person is, on the commencement day, taken to be an inspector.

306 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.

307 Expiry—pt 20

- (1) This part expires 2 years after the day it commences.
- (2) This part is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

Schedule 1 Application of Act to dangerous goods and high risk plant

- 1** This Act applies to the storage and handling of dangerous goods even if the dangerous goods are not at a workplace or for use in carrying out work.

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

- 2** For the purposes of section 1—
- (a) a reference in this Act to carrying out work includes a reference to the storage or handling of dangerous goods; and
 - (b) a reference in this Act to a workplace includes a reference to the premises at or in which the dangerous goods are stored or handled; and
 - (c) a reference in this Act to work health and safety (however expressed) includes a reference to public health and safety.

- 3** This Act applies to the operation or use of high risk plant, affecting public safety, even if the plant is not situated, operated or used at a workplace or for use in carrying out work.

- 4** For the purposes of section 3—
- (a) a reference in this Act to carrying out work includes a reference to the operation and use of high risk plant affecting public safety; and
 - (b) a reference in this Act to a workplace includes a reference to any high risk plant affecting public safety and the premises at or in which the plant is situated or used; and

(c) a reference in this Act to work health and safety (however expressed) includes a reference to public health and safety.

5 The operation of this schedule is subject to any exclusions or modifications prescribed by regulation.

6 In this schedule:

dangerous goods means anything prescribed by regulation as dangerous goods.

high risk plant means plant prescribed by regulation as high risk plant.

Schedule 2	The regulator and local tripartite consultation arrangements and other local arrangements
Part 2.1	Work safety council
Division 2.1.1	Establishment, functions and powers
Section 2.1	

Schedule 2 The regulator and local tripartite consultation arrangements and other local arrangements

Part 2.1 Work safety council

Division 2.1.1 Establishment, functions and powers

2.1 Establishment

The Work Safety Council is established.

2.2 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 274 (Approved codes of practice);
 - (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 a regulation (see Legislation Act, s 104).

Division 2.1.2 Constitution and meetings

2.3 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

Schedule 2	The regulator and local tripartite consultation arrangements and other local arrangements
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(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).

2.4 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*).

2.5 Appointment of chair and deputy chair

The Minister must appoint a member of the council appointed under section 2.3 (c) or (d) as chair of the council and another member as deputy chair of the council.

2.6 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.

2.7 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.

2.8 Reporting of disclosed council interests to Minister

- (1) Within 3 months after the day a material interest is disclosed under section 2.7 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 2.7.

- (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.

2.9 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—
 - (a) the member has become bankrupt or personally insolvent; or
 - (b) the member was appointed under section 2.3 (a) and the Minister is satisfied that the member no longer represents the interests of employees; or
 - (c) the member was appointed under section 2.3 (b) and the Minister is satisfied that the member no longer represents the interests of employers; or
 - (d) the Minister becomes aware that the member has failed to comply with section 2.7 (Disclosure of interest) without reasonable excuse; or

- (e) the Minister becomes aware that the member has at any time been convicted, in Australia, of an offence punishable by imprisonment for 1 year or longer; or
 - (f) the Minister becomes aware that the member 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) The Minister may end the appointment of a member of the council—
- (a) if the member is absent from 3 consecutive meetings of the council, otherwise than on leave approved under section 2.6; or
 - (b) if the member contravenes a territory law; or
 - (c) for misbehaviour; or
 - (d) 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).

- (4) However, before ending the appointment of the member under subsection (2) (e) or (f) or (3) (b) the Minister must be satisfied that the conviction or contravention affects the person’s suitability as a member of the council.

2.10 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.

2.11 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.

2.12 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 2.3 (a); and
- (b) 2 members, at least 1 of whom is not an acting member, mentioned in section 2.3 (b); and
- (c) 2 members, at least 1 of whom is not an acting member, mentioned in section 2.3 (c).

2.13 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.

2.14 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.

2.15 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 2.1.3 Advisory committees

2.16 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.

Schedule 2	The regulator and local tripartite consultation arrangements and other local arrangements
Part 2.2	Work safety commissioner

Section 2.17

Part 2.2 Work safety commissioner

2.17 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).

2.18 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 director-general.

2.19 Retirement

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

2.20 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 or personally insolvent.
- (3) The commissioner must not be removed from office except as provided by this section or section 2.21.

2.21 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.

Schedule 2	The regulator and local tripartite consultation arrangements and other local arrangements
Part 2.2	Work safety commissioner

Section 2.22

- (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.

2.22 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.

2.23 Staff

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

2.24 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.

Schedule 3 Regulation-making powers

(see s 276 (2))

1 Duties

- 1.1 Matters relating to the way in which duties imposed by this Act are to be performed.
- 1.2 Matters relating to the regulation or prohibition of specified activities or a specified class of activities—
 - (a) at workplaces or a specified class of workplaces; or
 - (b) by a specified class of persons on whom duties or obligations are imposed by this Act,to eliminate or minimise risks to health and safety.
- 1.3 Imposing duties on persons in relation to any matter provided for by regulation.

2 Incidents

Matters relating to incidents at workplaces including—

- (a) regulating or requiring the taking of any action to avoid an incident at a workplace or in the course of conducting a business or undertaking; and
- (b) regulating, requiring or prohibiting the taking of any action in the event of an incident at a workplace or in the conduct of a business or undertaking.

3 Plant, substances or structures

Matters relating to plant, substances or structures including—

- (a) regulating the storage and handling of plant, substances and structures; and
- (b) regulating or requiring—
 - (i) the examination, testing, labelling, maintenance or repair of plant and structures; or
 - (ii) the examination, testing, analysis or labelling of a substance.

4 Protection and welfare of workers

Matters relating to the protection and welfare of workers including—

- (a) regulating or requiring the provision and use of protective clothing or equipment, or rescue equipment, in specified circumstances; and
- (b) regulating or requiring the provision of specified facilities for the welfare of workers at the workplace; and
- (c) health and safety in relation to accommodation provided to workers.

5 Hazards and risks

Matters relating to hazards and risks including—

- (a) the prescribing of standards relating to the use of or exposure to any physical, biological, chemical or psychological hazard; and
- (b) matters relating to safety cases, safety management plans and safety management systems (however described); and
- (c) matters relating to measures to control risks.

6 Records and notices

- 6.1 The keeping and availability of records of health and safety representatives and deputy health and safety representatives.
- 6.2 The keeping of records in relation to incidents.
- 6.3 The keeping of records of specified activities, matters or things to be kept by specified persons.
- 6.4 The giving of notice of or information about specified activities, matters or things to the regulator, an inspector or other specified person.

7 Authorisations

- 7.1 Matters relating to authorisations (including licences, registrations and permits) and qualifications, and experience for the purposes of part 4 (Authorisations) or a regulation including providing for—
 - (a) applications for the grant, issue, renewal, variation, suspension and cancellation of authorisations, including the minimum age to be eligible for an authorisation; and
 - (b) the evidence and information to be provided in relation to applications including the provision of statutory declarations; and
 - (c) exemptions; and
 - (d) variations of authorisations by the regulator whether on application or otherwise; and
 - (e) authorisation of persons as trainers and assessors; and
 - (f) examination of applicants for authorisations; and
 - (g) conditions of authorisations.
- 7.2 The recognition of authorisations under corresponding WHS laws and exceptions to recognition.

7.3 The sharing of information with corresponding regulators relating to the grant, issue, renewal, variation, suspension or cancellation of authorisations.

8 Work groups

Matters relating to work groups and variation of work groups and agreements or variations of agreements relating to the determination of work groups.

9 Health and safety committees and health and safety representatives

Matters relating to health and safety committees and health and safety representatives.

10 Issue resolution

Matters relating to issue resolution including—

- (a) the minimum requirements for an agreed procedure for resolving an issue; and
- (b) the requirements for a default issue resolution procedure where there is no agreed procedure.

11 WHS entry permits

Matters relating to WHS entry permits, including providing for—

- (a) eligibility for WHS entry permits; and
- (b) procedures for applications for WHS entry permits and objections to applications for WHS entry permits; and
- (c) conditions of WHS entry permits; and
- (d) the form of WHS entry permits; and
- (e) requirements for training; and
- (f) records of WHS entry permits.

12 Identity cards

Matters relating to identity cards.

13 Forfeiture

Matters relating to—

- (a) costs of forfeiture and disposal of forfeited things; and
- (b) disposal of seized things and forfeited things.

14 Review of decisions

Matters relating to the review of decisions under a regulation including—

- (a) prescribing decisions as reviewable decisions for the purposes of part 12 (Review of decisions) or for the purposes of the regulation; and
- (b) prescribing procedures for internal and external review of decisions under the regulation; and
- (c) conferring jurisdiction on the ACAT to conduct reviews under the regulation.

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:

- ACAT
- Act
- corporation
- daily newspaper
- emergency service
- function
- home address
- medical practitioner
- police officer
- public employee
- the Territory
- working day.

approved code of practice means a code of practice approved under division 14 2 (Codes of practice).

authorised, for part 4 (Authorisations)—see section 40.

category 1 offence—see section 31.

category 2 offence—see section 32.

category 3 offence—see section 33.

cease work under this division, for division 5.6 (Right to cease or direct cessation of unsafe work)—see section 83.

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

condition includes limitation and restriction.

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

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

corresponding WHS law means a law prescribed by regulation as a corresponding WHS law.

dangerous incident, for part 3 (Incident notification)—see section 37.

demolition includes deconstruction.

design, in relation to plant, a substance or a structure includes—

- (a) design of part of the plant, substance or structure; and
- (b) redesign or modify a design.

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

discriminatory conduct, for part 6 (Discriminatory, coercive and misleading conduct)—see section 105.

document includes record.

eligible person, for part 12 (Review of decisions)—see section 223.

employee record, in relation to an employee—see the *Privacy Act 1988* (Cwlth), section 6 (1).

employer organisation means an organisation of employers.

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

external review—see section 229.

Fair Work Act means the *Fair Work Act 2009* (Cwlth).

handling includes transport.

health means physical and psychological health.

health and safety committee, for a business or undertaking—see division 5.4 (Health and safety committees).

health and safety duty, for division 2.5 (Offences and penalties)—see section 30.

health and safety representative, in relation to a worker, means the health and safety representative elected under part 5 (Consultation, representation and participation) for the work group of which the worker is a member.

import means to bring into the ACT from outside Australia.

inspector means an inspector appointed under part 9 (Securing compliance).

internal review—see section 224.

internal reviewer means—

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

medical treatment means treatment by a medical practitioner.

notice—

- (a) for division 10.4 (General requirements applying to notices)—see section 202; or
- (b) for division 10.6 (Injunctions)—see section 214.

notifiable incident—see section 35.

offender, for division 13.2 (Sentencing for offences)—see section 234.

officer means—

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

official of a union, for part 7 (Workplace entry by WHS entry permit-holders)—see section 116.

parties, in relation to an issue, for division 5.5 (Issue resolution)—see section 80.

personal information—see the *Privacy Act 1988* (Cwlth), section 6 (1).

person conducting a business or undertaking—see section 5.

plant includes—

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

prohibited reason, for part 6 (Discriminatory, coercive and misleading conduct)—see section 106.

prohibition notice—see section 195.

public authority means a territory authority.

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

regulator means the director-general.

relevant person conducting a business or undertaking, for part 7 (Workplace entry by WHS entry permit-holders)—see section 116.

relevant union, for part 7 (Workplace entry by WHS entry permit-holders)—see section 116.

relevant worker, for part 7 (Workplace entry by WHS entry permit-holders)—see section 116.

representative, in relation to a worker, means—

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

reviewable decisions, for part 12 (Review of decisions)—see section 223.

serious injury or illness, for part 3 (Incident notification)—see section 36.

State includes Territory.

State or Territory industrial law—see the Fair Work Act, section 26 (2).

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

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

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

supply, of a thing—see section 6.

union means—

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

volunteer means a person who is acting on a voluntary basis (whether or not the person receives out-of-pocket expenses).

WHS civil penalty provision—see section 254.

WHS entry permit means a WHS entry permit issued under part 7 (Workplace entry by WHS entry permit-holders).

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

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

worker—see section 7.

work group means a work group determined under part 5 (Consultation, representation and participation).

workplace—see section 8.

work safety commissioner—means the Work Safety Commissioner under schedule 2, part 2.2.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 23 June 2011.

2 Notification

Notified under the Legislation Act on 29 September 2011.

3 Republications of amended laws

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

I certify that the above is a true copy of the Work Health and Safety Bill 2011, which was passed by the Legislative Assembly on 20 September 2011.

Acting Clerk of the Legislative Assembly

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