



Australian Capital Territory

# Employment and Workplace Safety Legislation Amendment Act 2020

A2020-30

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Australian Capital Territory

# Employment and Workplace Safety Legislation Amendment Act 2020

**A2020-30**

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An Act to amend legislation about dangerous goods (road transport), workers compensation, work health and safety, and for other purposes

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

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Employment and Workplace Safety Legislation Amendment Act 2020*.

### 2 Commencement

- (1) Part 1, sections 109 to 122 and schedule 1, part 1.4 commence on the day after this Act's notification day.

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

- (2) Sections 105 to 108 commence 6 months after this Act's notification day.

- (3) Parts 2 and 3 and schedule 1, parts 1.1 to 1.3 commence on a day fixed by the Minister by written notice.

*Note 1* 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 2* If a provision of pt 3 or sch 1, parts 1.2 and 1.3, 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).

- (4) If a provision of part 2 or schedule 1, part 1.1 has not commenced within 12 months beginning on this Act's notification day, it automatically commences on the first day after that period.

- (5) The [Legislation Act](#), section 79 (Automatic commencement of postponed law) does not apply to part 2 and schedule 1, part 1.1.

### 3 Legislation amended

This Act amends the legislation mentioned in parts 2 to 4 and schedule 1.

## Part 2 Dangerous Goods (Road Transport) Act 2009

### 4 Meaning of *consigns* and *consignor* Section 10 (5)

*omit*

### 5 Meaning of *fit* to drive vehicle or run engine Section 16 (c)

*omit*

an ACT law

*substitute*

a territory law

### 6 New section 16 (d)

*insert*

(d) is not, at the relevant time, found to have a drug in the person's blood or oral fluid in contravention of a territory law.

### 7 Meaning of *unattended* vehicle Section 18 (2)

*substitute*

(2) In this section:

***driver***, of a vehicle that is a trailer, and is not connected (either directly or by 1 or more other trailers) to a towing vehicle, means the driver of the towing vehicle of the combination to which the trailer was, or apparently was, last connected.

**8 Production of identity cards  
Section 25 (1) (b)**

*omit*

if practicable,

**9 Section 25 (2)**

*substitute*

- (2) A police officer exercising a function as an authorised person under this Act must comply with a request to identify themselves by—
- (a) producing evidence that the person is a police officer; or
  - (b) stating orally or in writing the person's name, rank and place of duty.

**10 New sections 25A and 25B**

*insert*

**25A Impersonating authorised person**

A person must not impersonate an authorised person.

Maximum penalty: 60 penalty units.

**25B Obstructing or hindering authorised person**

- (1) A person commits an offence if—
- (a) the person, without reasonable excuse, obstructs or hinders—
    - (i) an authorised person in the exercise of the authorised person's functions under this Act; or
    - (ii) a person assisting an authorised person in the exercise of the authorised person's functions under this Act; and

(b) the authorised person's functions were being exercised lawfully.

Maximum penalty: 60 penalty units.

- (2) Without limiting subsection (1) (b), a function is exercised lawfully if it is—
- (a) exercisable without consent; or
  - (b) exercised with consent or under a warrant.

**11 Offence—s 33 conduct causing death or serious injury  
Section 34 (2)**

*substitute*

- (2) In this section:
- causes* death or serious injury—see section 31 (2).
- conduct*—see section 31 (2).

**12 Application—pt 3.2  
Section 38 (1) (b) (iii)**

*substitute*

- (iii) at premises occupied or owned by the Territory, a competent authority or any other public authority; or

**13 Direction to stop pt 3.2 vehicle  
Section 39 (3) and (4) (a)**

*omit*

, the other person or someone else

*substitute*

or another person

**14 Direction to produce record, device or other thing  
New section 59 (1) (c)**

*before the notes, insert*

- (c) a record, device or other thing that contains or may contain a record, in the person's possession or under the person's control relating to or indicating an offence.

**15 Power to enter premises and vehicles  
Section 72 (2)**

*substitute*

- (2) However, subsection (1) (a) or (b) does not authorise, without consent, entry into premises—
- (a) that are apparently unattended, unless the authorised person believes on reasonable grounds that someone is in attendance;  
or
- (b) used, or a part of the premises used, predominantly for residential purposes.
- (2A) To remove any doubt, premises are not being used for residential purposes only because temporary or casual sleeping or other accommodation is provided in the premises for drivers of vehicles.
- (2B) Before an authorised person enters premises under subsection (1) (b), the authorised person must give the occupier of the premises reasonable notice of the intention to enter, unless giving notice would be reasonably likely to defeat the purpose for which it is intended to enter the premises.

**16 Section 72 (5)**

*substitute*

- (5) An authorised person may—
- (a) for subsection (1) (a), (b), (c) or (e)—enter premises or a vehicle with necessary assistance; and
  - (b) for subsection (1) (d)—enter premises or a vehicle with necessary assistance and force.

*Note* A search warrant to enter premises or a vehicle, issued under this Act, permits an authorised person to enter premises or the vehicle with any necessary assistance and force (see s 89).

**17 New section 72 (7)**

*insert*

- (7) In this section:

***necessary assistance***, for an authorised person entering premises or a vehicle, includes the attendance of 1 or more people who, in the opinion of the authorised person, have knowledge or skills that could assist the authorised person to carry out the authorised person's function.

***reasonable time***, for entry into premises, includes a time when the public is entitled to use the premises or when the premises are open to or used by the public (whether or not on payment of money).

**18 Consent to entry  
Section 74 (1) (a)**

*substitute*

- (a) either—
- (i) if the person is an authorised person (other than a police officer)—produce the person's identity card; or

- (ii) if the person is a police officer—produce evidence that the person is a police officer; and

**19 General powers on entry to premises and vehicles**  
**New section 75 (1) (aa)**

*insert*

- (aa) inspect and take copies of, or extracts from, any records required to be kept under this Act;

**20 New section 75 (1) (ba)**

*insert*

- (ba) check the existence of and inspect any devices (including weighing, measuring, recording or monitoring devices) required to be installed, used or maintained under this Act and to inspect and take copies of, or extracts from, any readout or other data obtained from any of the devices;

**21 New section 75 (1A)**

*insert*

- (1A) This section does not authorise the use of force, but the authorised person may, under this section, do 1 or more of the following:
  - (a) open unlocked doors and other unlocked panels and objects;
  - (b) inspect anything that has been opened or otherwise accessed under the power to use reasonable force under section 53 or section 54;
  - (c) move, but not take away, anything that is locked up or sealed.



**22 New section 75 (4)**

*insert*

- (4) An authorised person who enters premises under this section must not unnecessarily impede any activities being conducted at the premises.

**23 Use of equipment to examine and process things  
New section 79 (1A)**

*insert*

- (1A) A thing may be moved to another place for carrying out the examination or processing of the thing to decide if it is a thing that may be seized if—
- (a) the authorised person believes on reasonable grounds that it is not practicable to examine or process the thing at the premises or in the vehicle; or
  - (b) the occupier of the premises or vehicle consents in writing.

**24 Warrants generally  
Section 89 (6) (a)**

*omit*

any reasonable and necessary force and assistance

*substitute*

necessary assistance and force

**25 Section 89 (6) (a), note 1**

*omit*

with any reasonable and necessary force and assistance

*substitute*

or vehicle with necessary assistance and force

**26 Section 128***substitute***Division 3.8.1A Proceedings for offences****127A Proceedings for offences**

A proceeding for an offence against this Act may be dealt with summarily.

**127B Proceedings may be brought by authorised person**

A proceeding for an offence against this Act may be brought by an authorised person.

**127C Period within which proceedings for offences may be commenced**

- (1) Unless this Act otherwise provides, proceedings for an offence may be commenced within—
  - (a) 2 years after the day of commission of the offence; or
  - (b) if the period mentioned in paragraph (a) has expired—within 12 months after the day an authorised person first obtained evidence of the commission of the offence considered reasonably sufficient by the person to warrant commencing proceedings.
- (2) For subsection (1), a certificate issued by an authorised person that states the date when the person first obtained evidence mentioned in subsection (1) (b), is admissible in proceedings as evidence of the matter.

## Division 3.8.1B Available penalties

### 128 Penalties imposed by courts

- (1) A court that convicts a person, or finds a person guilty, of an offence against this Act may impose 1 or more penalties under this part.
- (2) Without affecting a court's discretion, the court must consider, when imposing more than 1 penalty under this part, the combined effect of the penalties imposed.
- (3) Nothing in this part affects a discretion or power that a court or other person or body has apart from this part.
- (4) If orders are made under this part, whether by the same or different courts, which result in a supervisory intervention order and an exclusion order being in force at the same time in relation to the same person, the supervisory intervention order is taken to be suspended for the period the exclusion order is in force.

*Note* Supervisory intervention orders are dealt with in div 3.8.4. Exclusion orders are dealt with in div 3.8.5.

### 27 Supervisory intervention orders Section 133 (5), note 2

*substitute*

*Note 2* If both a supervisory intervention order and an exclusion order are in force at the same time in relation to the same person, the supervisory intervention order is taken to be suspended for the period the exclusion order is in force (see s 128 (4)).

### 28 Definitions—pt 3.9 Section 141, new definition of *recovery of costs order*

*insert*

*recovery of costs order*—see section 146A (2).

**29 Section 144 (2) (d), examples**

*substitute*

**Examples—par (d)**

- 1 a certificate estimating the monetary value of a part or all of the road infrastructure or of the damage to it
- 2 a certificate estimating the cost of remedying the damage
- 3 a certificate estimating the extent of the offender's contribution to the damage

**30 New division 3.9.2A**

*insert*

**Division 3.9.2A Costs compensation orders****146A Recovery of costs orders—making**

- (1) This section applies if a court convicts a person or finds a person guilty of an offence against 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).

- (2) The court may make an order (a ***recovery of costs order***) requiring the person to pay to a competent authority the costs the court considers appropriate that were—
  - (a) reasonably incurred in taking action in relation to the offence; or
  - (b) directly related to the investigation of the offence.
- (3) Subsection (2) applies in addition to any other penalty imposed by a court for an offence against this Act.
- (4) In this section:

***costs*** includes costs for testing, transporting, storing and disposing of dangerous goods and other evidence.

**146B Recovery of costs orders—application**

- (1) A recovery of costs order may be made on the application of a competent authority.
- (2) The application may only be made—
  - (a) when the court convicts the person, or finds the person guilty, of an offence; or
  - (b) if an application is not made when the court convicts the person, or finds the person guilty, of an offence—before the end of the period within which a prosecution for the offence could have been started.

**31 New sections 156A and 156B**

*in division 3.11.1, insert*

**156A Multiple offenders**

- (1) This section applies where a provision of this Act provides (expressly or impliedly) that 2 or more people are liable for an offence.
- (2) A proceeding may be taken against all or any of the people.
- (3) A proceeding may be taken against any of the people—
  - (a) regardless of whether or not a proceeding has been commenced against any of the other people; and
  - (b) if a proceeding has been commenced against any of the other people—regardless of whether or not the proceeding has been concluded; and
  - (c) if a proceeding has been concluded against any of the other people—regardless of the outcome of the proceeding.
- (4) This section has effect subject to any provision of this Act to the contrary.

**156B Double jeopardy**

- (1) A person may be punished only once in relation to the same failure to comply with a particular provision of this Act, even if the person is liable in more than 1 capacity.
- (2) Despite subsection (1), a person may be punished for more than 1 breach of a provision of this Act where the breaches relate to different parts of the same vehicle or of the same dangerous goods.

*Note* If a person contravenes a provision of this Act and has been punished for the contravention against a law of another jurisdiction, the person is not liable to be punished for the contravention under this Act (see [Legislation Act](#), s 191 (2)).

**32 New section 159A**

*in division 3.11.1, insert*

**159A Offence—employers taken to have committed offences of employees**

- (1) If a person (the *offender*) who is an employee of another person (the *employer*) commits an offence against this Act in the course of the person's employment, the employer is taken to have committed the offence and is punishable accordingly.

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

- (2) Subsection (1) does not apply to a defendant if—
  - (a) the defendant had no knowledge of the offence; and
  - (b) the defendant took reasonable precautions and exercised appropriate diligence to prevent the commission of the offence.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 58).

- (3) This section does not affect the liability of the offender.

- (4) This section applies whether or not the offender is prosecuted for, or convicted of, the offence.

**33 Acts and omissions of representatives  
Section 162 (3) (a)**

*after*

omission

*insert*

was

**34 Section 166 heading**

*substitute*

**166 Proof of appointments and signatures unnecessary**

**35 New section 166 (2)**

*after the note, insert*

- (2) For this Act, a signature purporting to be the signature of an authorised person is evidence of the signature it purports to be.

**36 Use of codes of practice etc in proceedings  
Section 168 (4), definition of *relevant document***

*omit*

Australian Transport Council

*substitute*

Transport and Infrastructure Council

**37 Applications for internal review  
Section 171 (3), note**

*omit*

**38 New sections 190A and 190B**

*in part 5.4, insert*

**190A Making false or misleading statements to authorised person**

- (1) A person commits an offence if—
- (a) the person makes a statement (whether orally, in a document or in any other way); and
  - (b) the statement is false or misleading; and
  - (c) the person knows that the statement—
    - (i) is false or misleading; or
    - (ii) omits anything without which the statement is false or misleading; and
  - (d) the statement is made to an authorised person who is exercising a function under this Act.
- Maximum penalty: 100 penalty units, imprisonment for 1 year or both.
- (2) Absolute liability applies to subsection (1) (d).
- (3) A person commits an offence if—
- (a) the person makes a statement (whether orally, in a document or in any other way); and
  - (b) the statement is false or misleading; and



- (c) the person is reckless about whether the statement—
  - (i) is false or misleading; or
  - (ii) omits anything without which the statement is false or misleading; and
- (d) the statement is made to an authorised person who is exercising a function under this Act.

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

*Note* If recklessness is a fault element for a physical element of an offence, proof of intention, knowledge or recklessness satisfies the fault element.

- (4) Absolute liability applies to subsection (3) (d).
- (5) Subsections (1) (b), (1) (c) (i), (3) (b) and (3) (c) (i) do not apply if the statement is not false or misleading in a material particular.
- (6) Subsections (1) (b), (1) (c) (ii), (3) (b) and (3) (c) (ii) do not apply if the omission does not make the statement false or misleading in a material particular.

*Note* A defendant has an evidential burden in relation to the matters mentioned in s (5) and s (6) (see [Criminal Code](#), s 58).

- (7) In this section:

*authorised person* includes a person assisting the authorised person.

## **190B Producing false or misleading records to authorised person**

- (1) A person commits an offence if—
  - (a) the person produces a record to an authorised person who is exercising a function under this Act; and
  - (b) the record is false or misleading; and
  - (c) the person knows that the record is false or misleading; and

- (d) the record is produced in compliance or purported compliance with this Act.

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

- (2) A person commits an offence if—
- (a) the person produces a record to an authorised person who is exercising a function under this Act; and
  - (b) the record is false or misleading; and
  - (c) the person is reckless about whether the record is false or misleading; and
  - (d) the record is produced in compliance or purported compliance with this Act.

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

*Note* If recklessness is a fault element for a physical element of an offence, proof of intention, knowledge or recklessness satisfies the fault element.

- (3) Subsections (1) (b) and (c) and (2) (b) and (c) do not apply if the record is not false or misleading in a material particular.

*Note* A defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).

- (4) Subsections (1) and (2) do not apply to a person who produces a record if the record is accompanied by a signed statement—
- (a) stating that the record is, to the signing person's knowledge, false or misleading in a material particular; and
  - (b) setting out, or referring to, the material particular in which the record is, to the signing person's knowledge, false or misleading.

- (5) The statement under subsection (4) must be signed by—
- (a) the person; or
  - (b) if the person who produces the record is a corporation—a competent officer of the corporation.
- (6) In this section:  
*authorised person* includes a person assisting the authorised person.

### **39 New section 191A**

*insert*

#### **191A Recovery of costs of public authorities**

- (1) This section applies to an incident relating to the transport of dangerous goods by road and that—
- (a) is wholly or partly constituted by or arises from—
    - (i) the escape of dangerous goods; or
    - (ii) an explosion or fire involving dangerous goods; or
  - (b) involves the danger of the escape of dangerous goods or an explosion or fire involving dangerous goods.
- (2) If a public authority incurs costs as a result of the incident occurring, so much of the costs as were reasonably incurred are recoverable as a debt due to the authority by action in a court of competent jurisdiction.
- (3) The costs are recoverable jointly or severally from the following people:
- (a) the person who was the owner of the dangerous goods at the time of the incident;
  - (b) the person who was in control or possession of the dangerous goods at the time of the incident;

- (c) the person who caused the incident;
  - (d) the person responsible, otherwise than as an employee, agent or sub-contractor of another person, for the transport of the dangerous goods by road.
- (4) Costs are not recoverable from a person who establishes that—
- (a) the incident was due to the act or default of someone else; and
  - (b) the person could not, exercising reasonable care, have prevented the incident; and
  - (c) the incident was not attributable to an employee, agent or sub-contractor of the person.
- (5) The recovery of costs incurred by a public authority as a result of the incident occurring, including an award or judgment in relation to those costs or expenses, does not preclude the recovery of costs incurred by another public authority as a result of the incident occurring.
- (6) This section does not affect a right to recover an amount in relation to costs or expenses that exists apart from this section, however a public authority is not entitled to recover, in relation to the same costs or expenses, an amount under this section and an amount in a proceeding founded on other rights.

- (7) In a proceeding under this section, a document that appears to be signed by the head (however described) of the public authority, and that states details of the costs reasonably incurred as a result of the incident occurring is, in the absence of evidence to the contrary, evidence of the matter.

**40**      **Approved forms**  
**Section 195**

*omit*

**41**      **Regulations—competent and corresponding authorities**  
**etc**  
**Section 199 (b) (i) and (ii)**

*before*

vehicles

*insert*

containers,

**42**      **New section 199 (ba)**

*insert*

- (ba) the approval by a competent authority of the form in which applications are to be made to the authority and the form in which documents are to be issued by the authority, for a regulation;

**43 Regulations—application etc of laws of other jurisdictions and instruments**  
**Section 202 (1) and examples and note**

*substitute*

- (1) A regulation may apply, adopt or incorporate a law of another jurisdiction or an instrument, as in force at a particular time or from time to time.

**Examples—instruments**

- 1 a code, standard or rule about dangerous goods
- 2 a code, standard or rule about the transport of dangerous goods

*Note 1* The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or 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](#).

*Note 3* A reference to an instrument includes a reference to a provision of an instrument (see [Legislation Act](#), s 14 (2)).

**44 Dictionary, note 2**

*insert*

- territory law

**45 Dictionary, new definitions**

*insert*

***employment order***, for part 5.3 (Victimisation of people for reporting breaches and assisting with investigations)—see section 189.

***recovery of costs order***, for part 3.9 (Compensation orders)—see section 146A (2).

## Part 3                      Workers Compensation Act 1951

### 46                      **Meaning of *insurer* for ch 5** **Section 86A (1) (a) and (b)**

*substitute*

- (a) a licensed insurer; or
- (b) a licensed self-insurer; or

### 47                      **Functions** **Section 103D (b)**

*omit*

self insurer

*substitute*

licensed self-insurer

### 48                      **Without prejudice payments** **Section 133**

*omit*

An insurer

*substitute*

A licensed insurer

**49 Liability on claim not accepted or rejected  
Section 134 (4)**

*before*

self-insurer's

*insert*

licensed

**50 New division 8.1.1 heading etc**

*insert*

**Division 8.1.1 Interpretation****143A Definitions**

In this Act:

***insurance service***—an insurer provides an ***insurance service*** if, in the course of carrying on a business, the insurer indemnifies an employer for any liability of the employer, in relation to the employer's workers, under this Act.

***insurer licence*** means a licence issued under section 145D.

***licensed insurer*** means an insurer who holds an insurer licence.

***licensed self-insurer*** means an employer who holds a self-insurer licence.

***self-insurer licence*** means a licence issued under section 145O.



**51 Section 145**

*substitute*

**Division 8.1.2 Licences—insurers****145 Requirement to hold insurer licence**

An insurer must not provide an insurance service unless the insurer holds an insurer licence.

*Note* Section 145H makes it an offence to provide an insurance service without a licence.

**145A Application for insurer licence**

- (1) An insurer may apply to the regulator for an insurer licence.
- (2) The application must—
  - (a) be in writing; and
  - (b) comply with the requirements for the application.

*Note 1* A regulation may prescribe how an insurer may apply for an insurer licence (see s 145J (a)).

*Note 2* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see [Criminal Code](#), pt 3.4).

**145B Regulator may request more information**

- (1) The regulator may, by written notice, require an applicant for an insurer licence to give the regulator information that the regulator reasonably needs to decide the application, within a stated time, at a stated place.
- (2) If the applicant does not comply with a requirement in the notice, the regulator may refuse to consider the application further.

**145C Change of information must be provided**

- (1) This section applies if the information in an application for an insurer licence changes before the application is decided.
- (2) The applicant must give the regulator written notice of the details of the change as soon as practicable.

**145D Issue of insurer licence**

- (1) If an insurer applies for an insurer licence, the regulator must, within a reasonable period—
  - (a) issue the licence; or
  - (b) refuse to issue the licence.

*Note 1* A decision to refuse to issue a licence is a reviewable decision (see ch 12 and *Workers Compensation Regulation 2002*, sch 3, pt 3.1).

*Note 2* A licence may be issued with a condition (see s 145E).

- (2) The regulator may issue the licence to the applicant, only if the regulator is satisfied that the applicant meets the criteria for issuing an insurer licence.

*Note* A regulation may prescribe the criteria for issuing an insurer licence (see s 145J (b)).

**145E Insurer licence—conditions**

- (1) An insurer licence includes—
  - (a) a condition that the licensee must comply with this Act; and
  - (b) a condition that the licensee must not contravene a protocol that relates to licensed insurers; and
  - (c) a condition that the licensee notify the regulator of any regulatory action taken against the licensee under a workers compensation law; and
  - (d) a regulator condition, if any; and

- (e) any other condition prescribed by regulation.
- (2) A regulator condition may be included, in writing, on an insurer licence—
  - (a) when the licence is issued; or
  - (b) by amending the licence at any time.
- (3) The regulator may, at any time, amend or revoke a regulator condition included on an insurer licence.

*Note* A decision by the regulator under s (2) or (3) is a reviewable decision (see ch 12 and *Workers Compensation Regulation 2002*, sch 3, pt 3.1).

- (4) If the regulator amends a licensed insurer's licence under subsection (2) or (3), the regulator must tell the licensed insurer about the amendment as soon as practicable, but not later than 30 days after the day the regulator decides the amendment.

#### **145F Insurer licence—period**

An insurer licence—

- (a) takes effect on the day stated in the licence; and
- (b) continues in force until it is cancelled or surrendered.

#### **145G Insurer licence—surrender**

- (1) A licensed insurer may surrender its insurer licence by giving written notice (a *surrender notice*) of the surrender to the regulator.
- (2) The surrender notice must be accompanied by—
  - (a) the insurer licence; or
  - (b) if the insurer licence has been lost, stolen or destroyed—a statement verifying that the licence has been lost, stolen or destroyed.

- (3) An insurer licence is taken to be cancelled if the licence is surrendered under this section.

**145H Providing insurance services without insurer licence**

- (1) A person commits an offence if the person—
- (a) provides an insurance service; and
  - (b) does not hold an insurer licence.

Maximum penalty: 100 penalty units.

- (2) A person commits an offence if the person falsely represents that the person holds an insurer licence.

Maximum penalty: 100 penalty units.

**145I Breach of insurer licence condition**

A person commits an offence if—

- (a) the person holds an insurer licence; and
- (b) the licence is subject to a condition; and
- (c) the person fails to comply with the condition.

Maximum penalty: 100 penalty units.

**145J Regulations about insurer licences**

A regulation may prescribe the following in relation to insurer licences:

- (a) how an insurer may apply for an insurer licence;
- (b) the criteria for issuing an insurer licence;
- (c) the conditions that may be imposed on an insurer licence;
- (d) the records to be kept by licensed insurers, to whom the records must be provided and the way to provide the records;

- (e) how insurance premium calculations by licensed insurers may be reviewed;
- (f) how licensed insurers' performance may be monitored and reviewed;
- (g) what and when licensed insurers must report to the regulator;
- (h) how and why an insurer licence may be suspended or cancelled.

### **Division 8.1.3 Licences—self-insurers**

#### **145K Requirement to hold self-insurer licence**

An employer must hold a self-insurer licence unless the employer holds a compulsory insurance policy with a licensed insurer.

*Note* Section 145S makes it an offence to fail to hold a self-insurer licence if the employer does not hold a compulsory insurance policy with a licensed insurer.

#### **145L Application for self-insurer licence**

- (1) An employer may apply to the regulator for a self-insurer licence.
- (2) The application must—
  - (a) be in writing; and
  - (b) comply with the requirements for the application.

*Note 1* A regulation may prescribe how an employer may apply for a self-insurer licence (see s 145U (a)).

*Note 2* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see [Criminal Code](#), pt 3.4).

**145M Regulator may request more information**

- (1) The regulator may, by written notice, require an applicant for a self-insurer licence to give the regulator information that the regulator reasonably needs to decide the application, within a stated time, at a stated place.
- (2) If the applicant does not comply with a requirement in the notice, the regulator may refuse to consider the application further.

**145N Change of information must be provided**

- (1) This section applies if the information in an application for a self-insurer licence changes before the application is decided.
- (2) The applicant must give the regulator written notice of the details of the change as soon as practicable.

**145O Issue of self-insurer licence**

- (1) If an employer applies for a self-insurer licence, the regulator must, within a reasonable period—
  - (a) issue the licence; or
  - (b) refuse to issue the licence.

*Note 1* A decision to refuse to issue a self-insurer licence is a reviewable decision (see ch 12 and [Workers Compensation Regulation 2002](#), sch 3, pt 3.1).

*Note 2* A licence may be issued with a condition (see s 145P).

- (2) The regulator may issue the licence to the applicant, only if the regulator is satisfied that the applicant meets the criteria for issuing a self-insurer licence.

*Note* A regulation may prescribe the criteria for issuing a self-insurer licence (see s 145U (b)).

**145P Self-insurer licence—conditions**

- (1) A self-insurer licence includes—
  - (a) a condition that the licensee must comply with this Act; and
  - (b) a condition that the licensee must not contravene a protocol that relates to licensed self-insurers; and
  - (c) a condition that the licensee notify the regulator of any regulatory action taken against the licensee under a workers compensation law; and
  - (d) a regulator condition, if any; and
  - (e) any other condition prescribed by regulation.
- (2) A regulator condition may be included, in writing, on a self-insurer licence—
  - (a) when the licence is issued; or
  - (b) by amending the licence at any time.
- (3) The regulator may, at any time, amend or revoke a regulator condition included on a self-insurer licence.

*Note* A decision by the regulator under s (2) or (3) is a reviewable decision (see ch 12 and *Workers Compensation Regulation 2002*, sch 3, pt 3.1).

- (4) If the regulator amends a licensed self-insurer's licence under subsection (2) or (3), the regulator must tell the licensed self-insurer about the amendment as soon as practicable, but not later than 30 days after the day the regulator decides the amendment.

**145Q Self-insurer licence—period**

A self-insurer licence—

- (a) takes effect on the day stated in the licence; and
- (b) continues in force until it is cancelled or surrendered.

**145R Self-insurer licence—surrender**

- (1) A licensed self-insurer may surrender its self-insurer licence by giving written notice (a *surrender notice*) of the surrender to the regulator.
- (2) The surrender notice must be accompanied by—
  - (a) the self-insurer licence; or
  - (b) if the self-insurer licence has been lost, stolen or destroyed—a statement verifying that the licence has been lost, stolen or destroyed.
- (3) A self-insurer licence is taken to be cancelled if the licence is surrendered under this section.

**145S Failing to hold a self-insurer licence**

- (1) A person commits an offence if the person—
  - (a) is an employer; and
  - (b) does not hold a compulsory insurance policy with a licensed insurer; and
  - (c) fails to hold a self-insurer licence.

Maximum penalty: 100 penalty units.

*Note* Section 147A requires an employer to maintain a compulsory insurance policy with a licensed insurer unless the employer is a licensed self-insurer.

- (2) A person commits an offence if the person—
  - (a) is an employer; and
  - (b) the person falsely represents that the person holds a self-insurer licence.

Maximum penalty: 100 penalty units.



**145T Breach of self-insurer licence condition**

A person commits an offence if—

- (a) the person is an employer; and
- (b) the person holds a self-insurer licence; and
- (c) the licence is subject to a condition; and
- (d) the person fails to comply with the condition.

Maximum penalty: 100 penalty units.

**145U Regulations about self-insurer licences**

A regulation may prescribe the following in relation to self-insurer licences:

- (a) how an employer may apply for a self-insurer licence;
- (b) the criteria to be considered by the regulator when deciding whether to issue a self-insurer licence to an employer;
- (c) the conditions that may be imposed on a self-insurer licence;
- (d) the records to be kept by licensed self-insurers, to whom the records must be provided and the way to provide the records;
- (e) how licensed self-insurers' performance may be monitored and reviewed;
- (f) what and when licensed self-insurers must report to the regulator;
- (g) the suspension and cancellation of self-insurer licences.

**Division 8.1.4 Licences—compliance and other requirements**

**52 Section 146***substitute***146 Effect of cancellation or suspension of insurer licence**

- (1) If the insurer licence of a licensed insurer is cancelled or suspended, section 147 (1) (which requires an employer to have a compulsory insurance policy) applies in relation to an insurance policy (a *pre-cancellation policy*) issued by the insurer when the insurer was licensed, or the licence was not suspended, as if the insurer were still licensed or the licence not suspended.
- (2) The cancellation or suspension of the licence of an insurer does not—
  - (a) annul a pre-cancellation policy; or
  - (b) affect the liability of the insurer under a pre-cancellation policy; or
  - (c) affect the liability of the insurer under section 168A (Contributions to DI fund by licensed insurers and licensed self-insurers).
- (3) However, a regulation may prescribe circumstances in which (and when) a pre-cancellation policy issued by an insurer whose licence has been cancelled stops being a compulsory insurance policy.

**146A Effect of cancellation or suspension of self-insurer licence**

- (1) The regulator may assign any rights, obligations and liabilities acquired, accrued or incurred by a former self-insurer, in relation to an injured worker, to the DI fund.
- (2) The DI fund is taken to be the licensed insurer for the former self-insurer in relation to a claim by an injured worker.

- (3) Unless otherwise directed by the regulator, if an assignment is made, the former self-insurer must not fail to provide the DI fund with copies of all documents relating to a claim by an injured worker.

Maximum penalty: 50 penalty units.

- (4) In this section:

*former self-insurer* means a licensed self-insurer whose self-insurer licence, is cancelled or suspended, or ends.

**53 Effect of failure to maintain compulsory insurance on other insurance etc for this Act  
Section 148 (2) (c)**

*before*

self-insurers

*insert*

licensed

**54 Failure to maintain compulsory insurance policy—  
director-general entitled to recovery amount  
Section 149 (4), note**

*omit*

director-general's

*substitute*

regulator's

**55 Self-insurers  
Section 151**

*omit*

**56 Section 152 heading**

*substitute*

**152 Compulsory insurance—licensed insurers**

**57 Sections 152 and 153 (1)**

*omit*

An approved insurer

*substitute*

A licensed insurer

**58 Cover notes  
Section 154 (1) and (3)**

*omit*

An insurer

*substitute*

A licensed insurer

**59 Section 154 (3)**

*omit*

the insurer

*substitute*

the licensed insurer

**60 Sections 155 to 158 headings***substitute***155 Information for licensed insurers on application for issue or renewal of policies****155A Employer must notify licensed insurer of certain corrected information****156 Information for licensed insurers after renewal of policies****157 Information for licensed insurers after end or cancellation of policies****158 Information for new licensed insurers after change of licensed insurers****61 Avoiding payment of premium—director-general entitled to recovery amount  
Section 162A (3), note***omit*

director-general's

*substitute*

regulator's

**62 New division 8.1.5**

*after section 164, insert*

**Division 8.1.5 Regulatory action****164A Meaning of *regulatory action*—div 8.1.5**

In this division:

*licence* means an insurer licence or a self-insurer licence.

*licensee* means a licensed insurer or a licensed self-insurer.

*regulatory action*, against a licensee, means any of the following actions:

- (a) including, amending, or revoking, a regulator condition on the licence;
- (b) suspending the licence for either a fixed period or until a particular event happens;
- (c) disqualifying the licensee from applying for another licence for a fixed period or until a particular event happens;
- (d) cancelling the licence.

**164B When regulatory action may be taken**

The regulator may take regulatory action against a licensee only if satisfied on reasonable grounds that the licensee—

- (a) used false or misleading information to obtain the licence; or
- (b) contravened a condition of the licence; or
- (c) failed to give the Minister information requested under section 164 (2); or
- (d) failed to comply with a provision of this Act; or

- (e) no longer meets the criteria under section 145D (Issue of insurer licence) or section 145O (Issue of self-insurer licence) to hold the licence; or
- (f) has contravened—
  - (i) a workers compensation law; or
  - (ii) a law prescribed by regulation.

### **164C Notification of proposed regulatory action**

- (1) Before the regulator takes regulatory action against a licensee, the regulator must give the licensee a written notice (a *show cause notice*) stating—
  - (a) the grounds on which, under section 164B, the regulator considers regulatory action may be taken; and
  - (b) details of the proposed regulatory action; and
  - (c) that the licensee may, not later than 14 days after the day the licensee is given the notice, give a written submission to the regulator about the proposed regulatory action.
- (2) The regulator must consider any written submission received by the regulator in response to the show cause notice when making a decision to take regulatory action against the licensee.

### **164D Taking regulatory action**

- (1) This section applies if the regulator, after complying with section 164C, is satisfied on reasonable grounds that it is appropriate to take the regulatory action.
- (2) The regulator may—
  - (a) if the proposed regulatory action is including, amending or revoking a condition on a licence—include, amend or revoke the condition; or

- (b) if the proposed regulatory action is suspending a licence—take any of the following action:
  - (i) the action mentioned in paragraph (a);
  - (ii) suspend the licence for a period; or
- (c) if the proposed regulatory action is disqualifying a licensee from applying for a further licence—take any of the following action:
  - (i) the action mentioned in paragraph (b);
  - (ii) disqualify the licensee from applying for a further licence for a period; or
- (d) if the proposed regulatory action is cancelling a licence—take any of the following action:
  - (i) the action mentioned in paragraph (c);
  - (ii) cancel the licence.

*Note* A decision under s (2) is a reviewable decision (see ch 12 and [Workers Compensation Regulation 2002](#), sch 3, pt 3.1).

- (3) Before taking regulatory action against a licensee under this section, the regulator must tell the licensee, by written notice (a ***notice of regulatory action***)—
  - (a) the regulatory action that will be taken; and
  - (b) the day on which the regulatory action takes effect.
- (4) Regulatory action against the licensee takes effect on the day stated in the notice of regulatory action.
- (5) In this section:

***proposed regulatory action***, in relation to a licensee, means regulatory action mentioned in a show cause notice given to the person under section 164C (1).



**164E Not taking regulatory action**

- (1) This section applies if, after considering a submission under section 164C (2) received from a licensee, the regulator is satisfied on reasonable grounds that regulatory action against the licensee—
  - (a) may not be taken; or
  - (b) may be taken, but it is not appropriate to take the action.
- (2) The regulator must give the licensee written notice telling the licensee that regulatory action will not be taken against the licensee in relation to the matters stated in the show cause notice.

**164F Regulatory action in another jurisdiction**

- (1) This section applies if—
  - (a) a licensee holds a licence under another workers compensation law; and
  - (b) regulatory action is taken, or is proposed to be taken, against the licensee in relation to that licence.
- (2) The licensee must, as soon as possible after the licensee becomes aware of the regulatory action, tell the regulator—
  - (a) the proposed regulatory action or regulatory action taken; and
  - (b) the day on which the regulatory action takes effect.

*Note* It is also a condition of a licence under s 145E and s 145P that the licensee notify the regulator of any regulatory action taken against the licensee under a workers compensation law.

**164G Effect of suspension**

If the regulator suspends a licence, the licensee is taken not to hold the licence during the period of suspension.

**63 Purpose of DI fund  
Section 166A (3) (b) and (5) (b)**

*omit*

self insurer

*substitute*

licensed self-insurer

**64 Section 168**

*substitute*

**168 Licensed insurers and licensed self-insurers must give information**

- (1) The DI fund manager may, by written notice given to a licensed insurer, require the insurer to give the manager, within a stated reasonable time, the following:
  - (a) a written statement of the licensed insurer's gross written premiums for a stated period;
  - (b) any other stated information in relation to the amounts paid or earned by the licensed insurer in relation to compulsory insurance policies.
- (2) The licensed insurer must comply with the notice under subsection (1).
- (3) The DI fund manager may, by written notice given to a licensed self-insurer, require the self-insurer to give the manager, within a stated reasonable time, the following:
  - (a) a written statement of the licensed self-insurer's total wages for a stated period;
  - (b) any other stated information in relation to the amounts paid under this Act in relation to an injured worker.

- (4) The licensed self-insurer must comply with the notice under subsection (3).

**65 Section 168A heading**

*substitute*

**168A Contributions to DI fund by licensed insurers and licensed self-insurers**

**66 Section 168A (1)**

*omit*

approved insurers and self-insurers

*substitute*

licensed insurers and licensed self-insurers

**67 Section 168A (1) (b) (i)**

*omit*

approved

*substitute*

licensed

**68 Section 168A (1) (b) (ii)**

*before*

self-insurer

*insert*

licensed

**69 Section 168A (2) (a)**

*omit*

approved insurers and self-insurers

*substitute*

licensed insurers and licensed self-insurers

**70 Section 168A (2) (b)**

*omit*

an insurer or self-insurer's

*substitute*

a licensed insurer's or licensed self-insurer's

**71 Section 168A (3) (a)**

*omit*

an approved

*substitute*

a licensed

**72 Section 168A (3) (b)**

*before 1st mention of*

self-insurer

*insert*

licensed

**73 Section 168A (4)**

*omit*

approved insurer and self-insurer

*substitute*

licensed insurer and licensed self-insurer

**74 Section 168A (4), note**

*omit*

An insurer

*substitute*

A licenced insurer

**75 Section 168A (5)**

*omit*

approved insurer or self-insurer

*substitute*

licensed insurer or licensed self-insurer

**76 Section 168A (7)**

*omit 1st mention of*

insurer or self-insurer

*substitute*

licensed insurer or licensed self-insurer

**77 Section 168A (8)**

*omit*

an approved insurer or self-insurer

*substitute*

a licensed insurer or licensed self-insurer

**78 Section 168AA heading**

*substitute*

**168AA Supplementary contributions to DI fund by licensed insurers and licensed self-insurers**

**79 Section 168AA (2)**

*omit*

approved insurers and self-insurers

*substitute*

licensed insurers and licensed self-insurers

**80 Division 8.2.5 heading**

*substitute*

**Division 8.2.5 DI fund's relationship with liquidators of licensed insurers**

**81 Displacement of liquidator's Corporations Act obligation  
Section 169 (2)**

*omit*

an approved insurer may exercise his or her powers

*substitute*

a licensed insurer may exercise the liquidator's powers

**82 Claim for payment if final judgment etc and self-insurer  
unable to cover liability  
Section 170HB (1) (b)**

*omit*

self insurer

*substitute*

licensed self-insurer

**83 Section 171E heading**

*substitute*

**171E DI fund paying claims for payment against licensed  
insurers and licensed self-insurers if settlement approved****84 Premiums—maximum rates  
Section 176 (1)**

*omit*

An insurer

*substitute*

A licensed insurer

**85**      **Definitions—pt 8.3**  
**Section 179B, definition of *insurer***

*substitute*

*insurer* means a licensed insurer or a licensed self-insurer.

**86**      **Inspectors**  
**Section 188 (1), note 1**

*omit*

**87**      **Apportioning cost of administering workers**  
**compensation and safety legislation**  
**Section 210 (1)**

*omit*

approved insurers or self-insurers

*substitute*

licensed insurers or licensed self-insurers

**88**      **Section 210 (2) (b)**

*omit*

insurer and self-insurer

*substitute*

licensed insurer and licensed self-insurer

**89**      **Section 210 (3)**

*omit*

insurer and self-insurer's

*substitute*

licensed insurer and licensed self-insurer's



**90 Section 210 (3) (b)**

*omit*

insurer and self-insurer

*substitute*

licensed insurer and licensed self-insurer

**91 Section 210 (5), except note**

*substitute*

- (5) If an amount apportioned to a licensed insurer or licensed self-insurer is not paid within the time stated for payment in a notice under section 210A, the amount is a debt owing to the Territory by the licensed insurer or licensed self-insurer.

**92 New chapter 21**

*insert*

## **Chapter 21 Transitional—Employment and Workplace Safety Legislation Amendment Act 2020**

**269 Meaning of *commencement day***

In this chapter:

*commencement day* means the day the *Employment and Workplace Safety Legislation Amendment Act 2020*, part 3 (Workers Compensation Act 1951) commences.

**270 Approved insurers**

- (1) This section applies if, immediately before the commencement day, an insurer was an approved insurer under this Act.

- (2) The insurer is, on the commencement day, taken to be a licensed insurer until the end of the period for which the insurer was approved under section 145, as in force immediately before the commencement day.

### **271 Self-insurers**

- (1) This section applies if, immediately before the commencement day, an employer was a self-insurer under this Act.
- (2) The employer is, on the commencement day, taken to be a licensed self-insurer until the end of the period for which the employer was exempted under section 151, as in force immediately before the commencement day.

### **272 Transitional regulations**

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Employment and Workplace Safety Legislation Amendment Act 2020*.
- (2) A regulation may modify this chapter (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 chapter.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.

### **273 Expiry—ch 21**

This chapter expires 2 years after the day it commences.

*Note* Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

**93 Dictionary, definition of *approved insurer***

*omit*

**94 Dictionary, definition of *gross written premiums***

*substitute*

***gross written premiums***, in relation to a licensed insurer, means the total amount of premiums, less GST, for all insurance policies written by the licensed insurer for a policy period.

**95 Dictionary, new definitions**

*insert*

***insurance service***—see section 143A.

***insurer licence***—see section 143A.

***licence***, for division 8.1.5 (Regulatory action)—see section 164A.

***licensed insurer***—see section 143A.

***licensed self-insurer***—see section 143A.

***licensee***, for division 8.1.5 (Regulatory action)—see section 164A.

***regulator***—see the [Work Health and Safety Act 2011](#), dictionary.

***regulator condition***, in relation to an insurer licence or a self-insurer licence, means a condition the regulator considers appropriate for the licence.

***regulatory action***, for division 8.1.5 (Regulatory action)—see section 164A.

**96 Dictionary, definition of *self-insurer***

*omit*

**97 Dictionary, new definition of *self-insurer licence***

*insert*

*self-insurer licence*—see section 143A.

**98 Further amendments, mentions of *an approved***

*omit*

an approved

*substitute*

a licensed

*in*

- section 94B (2)
- section 125 (2), definition of *insurer*, paragraph (a)
- sections 147 to 147B
- sections 149 and 150
- section 160 (1)
- section 161 (1) (a)
- sections 162 and 162A
- section 164 (1)
- section 166B (1) (b)
- section 166G (2) and (3)
- section 167 (1) (b)
- section 169A to 169D
- section 170J
- section 179G (3) (a)
- section 196 (2), definition of *insurer*, paragraph (a)

- section 210A (4), definition of *the amount*, paragraph (b) (i)
- section 223 (2) (h)

## **99 Further amendments, mentions of *approved***

*omit*

approved

*substitute*

licensed

*in*

- section 108 (5)
- section 127 (1), definition of *insurer*, paragraph (a)
- section 148 (2) (c)
- section 160 (2), (3) and (4)
- section 162 (2) (c) and (d)
- section 169 (1)
- section 169C heading
- section 170H (1) (d)
- section 170I (1) (c)
- section 171E (4)
- section 178 (1) and (2) (b)
- section 179A (3), definition of *premium pool*, paragraph (a)
- section 210A (1) and (2)

**100 Further amendments, mentions of *director-general***

*omit*

director-general

*substitute*

regulator

*in*

- section 102 (4) (c)
- section 147
- section 149
- sections 162A and 162B
- sections 188 and 189
- sections 199 to 199B
- section 200A (2)
- section 201A
- section 205
- schedule 3

**101 Further amendments, mentions of *an insurer***

*omit*

an insurer

*substitute*

a licensed insurer

*in*

- section 13 (6) (b)
- section 126A (1) and (2)
- section 127 (1), definition of *insurer*, paragraph (c) (ii)
- section 155 (1)

- section 155A (1) and (5) (b)
- section 158 (1) (a)
- section 166A (3) (a) and (5) (a)
- section 190 (6), definition of *related information*, paragraph (f)
- section 200A (1) (f)
- section 223 (2) (h)

## **102 Further amendments, mentions of *insurer***

*before*

insurer

*insert*

licensed

*in*

- section 9 (3)
- section 86A (1), definition of *insurer*, paragraph (c) and note
- section 86A (2) (a)
- section 119 (5), definition of *insurer*, paragraph (b)
- section 120A (4) (c)
- section 122 (3), definition of *insurer*, paragraph (b)
- section 126A (2) (1st mention)
- section 127 (2) (2nd and 3rd mentions)
- sections 134 and 135 (3)
- section 137 (1)
- section 147B (2)
- section 152 (3) (b)
- section 155 (2) and (3)
- section 155A (2), (3) and (5) (c)
- sections 156 and 157

- section 158 (1) (b)
- section 170B heading
- section 170C heading
- section 170C (1) (c) (1st mention) and (2) (b)
- section 170D heading
- section 170D (1) (c)
- section 171E (1) (a), note
- section 200A (2)
- section 201 (3)
- section 210A (1) (b)
- section 210A (4), definition of *the amount*, paragraph (b) (i) (2nd mention)

### **103 Further amendments, mentions of *insurers***

*before*

insurers

*insert*

licensed

*in*

- section 8 (3) (a)
- section 126A heading
- section 160 (3) (a)
- section 162 (3), definition of *relevant statement*
- section 162A (6), definition of *relevant statement*
- section 163 (1)
- section 202 (1)
- section 203 (6), definition of *relevant offence*



**104 Further amendments, mentions of *self-insurer***

*before*

self-insurer

*insert*

licensed

*in*

- section 86A (1) (d)
- section 89 (3)
- section 93 (3)
- section 94A (1)
- section 94C (e)
- sections 95 and 96
- sections 97 and 98
- section 100 (3)
- section 103B (b)
- section 119
- section 126 (4)
- section 127 (1)
- section 129
- sections 147 (2) (a) and 147A (8) (c)
- sections 148 (1) (a) and 149 (7)
- section 164 (1)
- section 170 (1) (c)
- sections 170E to 170G
- sections 170HA and 170HB
- section 171E (1) (a), note
- section 171G

- section 178
- section 179A (3), definition of *premium pool*, paragraph (b)
- section 179G (3) (b)
- section 210A
- section 223 (2) (h)
- dictionary, definition of *notional gross written premium*

## Part 4 Work Health and Safety Act 2011

### 105 Rights that may be exercised while at workplace New section 118 (1) (da)

*insert*

- (da) take photographs, films, or audio, video or other recordings relevant to the suspected contravention;

### 106 Section 118 (2)

*substitute*

- (2) However, if it would result in a contravention of a law of the Commonwealth or a law of a State—
- (a) the relevant person is not required, under subsection (1) (d), to allow the WHS entry permit-holder to inspect or make copies of a document; and
- (b) the WHS entry permit-holder must not, under subsection (1) (da), take photographs, films, or audio, video or other recordings.

*Note* *State* includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

### 107 New section 118 (5)

*before the notes, insert*

- (5) If, in the course of inquiring into a suspected contravention of this Act, the WHS entry permit-holder reasonably suspects that another contravention of this Act has occurred, the WHS entry permit-holder may exercise a right mentioned in subsection (1) in relation to the other contravention.

**108 New section 118A***insert***118A Notice of exercise of right under s 118 (1) (da)**

- (1) This section applies in relation to the exercise of a right under section 118 (1) (da) by a WHS entry permit-holder.
- (2) The WHS entry permit-holder must give notice to the relevant person conducting a business or undertaking about the exercise of the right—
  - (a) if, at the time the WHS entry permit-holder enters the workplace under this division, the WHS entry permit-holder intends to exercise the right in relation to the suspected contravention of this Act—as soon as reasonably practicable after entering the workplace; and
  - (b) if, while at a workplace under this division, the WHS entry permit-holder forms the intention to exercise, or has exercised, the right in relation to another contravention of this Act in the circumstances mentioned in section 118 (5)—as soon as reasonably practicable after forming that intention or exercising the right.

**109 New division 10.2A**

*after section 197, insert*

**Division 10.2A Prohibited asbestos notices****197A Definitions—div 10.2A**

In this division:

***asbestos*** means the asbestiform varieties of mineral silicates belonging to the serpentine or amphibole groups of rock forming minerals, including the following:

- (a) actinolite asbestos;
- (b) grunerite (or amosite) asbestos (brown);
- (c) anthophyllite asbestos;
- (d) chrysotile asbestos (white);
- (e) crocidolite asbestos (blue);
- (f) tremolite asbestos;
- (g) a mixture that contains 1 or more of the minerals referred to in paragraphs (a) to (f).

***asbestos containing material (ACM)*** means any material or thing that, as part of its design, contains asbestos.

***prohibited asbestos*** means asbestos or ACM, fixed or installed in a workplace on or after 31 December 2003.

***relevant person***, in relation to a workplace, means a person—

- (a) conducting a business or undertaking at the workplace; or
- (b) with management or control of the workplace; or
- (c) with management or control of fixtures, fittings or plant at the workplace; or

- (d) who the regulator reasonably believes is or was involved in, or caused, whether directly or indirectly, the fixing or installing of prohibited asbestos at the workplace.

### **197B Issue of prohibited asbestos notice**

The regulator must issue a prohibited asbestos notice to a relevant person in relation to a workplace if the regulator reasonably believes prohibited asbestos is present in the workplace.

### **197C Contents of prohibited asbestos notice**

- (1) A prohibited asbestos notice must state—
  - (a) that the regulator believes prohibited asbestos is present in the workplace and the basis of that belief; and
  - (b) details of the prohibited asbestos, including the location, type and condition of the prohibited asbestos; and
  - (c) directions in relation to specific measures the relevant person to whom the prohibited asbestos notice is issued is required to take in relation to the prohibited asbestos, including in relation to the management or removal of the prohibited asbestos; and
  - (d) the day by which the relevant person to whom the prohibited asbestos notice is issued is required to comply with the prohibited asbestos notice.
- (2) The day stated for compliance with the prohibited asbestos notice must be reasonable in all the circumstances.
- (3) The regulations may prescribe factors that must be considered by the regulator when determining specific measures the relevant person to whom a prohibited asbestos notice is issued is required to take in relation to prohibited asbestos.

**197D Compliance with prohibited asbestos notice**

A relevant person to whom a prohibited asbestos notice is issued under section 197B must comply with the 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).

**197E Extension of time for compliance with prohibited asbestos notice**

- (1) This section applies if a relevant person has been issued with a prohibited asbestos notice.
- (2) The regulator may, by written notice given to the relevant person, extend the compliance period for the prohibited asbestos notice.
- (3) However, the regulator may extend the compliance period only if the period has not ended.
- (4) In this section:

*compliance period* means the period stated in the prohibited asbestos notice under section 197C, and includes that period as extended under this section.

**110 Application—div 10.4  
Section 202**

*omit*

or non-disturbance notice

*substitute*

, non-disturbance notice or prohibited asbestos notice

**111 Directions in notices  
Section 204**

*omit*

or prohibition notice

*substitute*

, prohibition notice or prohibited asbestos notice

**112 Section 204 (b)**

*after*

choice of

*insert*

measures to take or

**113 Recommendations in notice  
Section 205 (1)**

*omit*

or prohibition notice

*substitute*

, prohibition notice or prohibited asbestos notice

**114 Section 206**

*substitute*

**206 Changes to notice**

(1) An inspector may—

(a) make minor changes to a notice issued by an inspector; or



- (b) extend the compliance period for an improvement notice in accordance with section 194.
- (2) The regulator may—
  - (a) make minor changes to a prohibited asbestos notice issued by the regulator; or
  - (b) extend the compliance period of a prohibited asbestos notice in accordance with section 197E.
- (3) In this section:  
*minor changes* mean a minor change to a notice—
  - (a) for clarification; or
  - (b) to correct errors or references; or
  - (c) to reflect changes of address or other circumstances.

**115 Regulator may vary or cancel notice**  
**New section 207 (2)**

*insert*

- (2) A notice issued by the regulator may only be varied or cancelled by the regulator.

**116 When regulator may carry out action**  
**Section 211**

*after*

prohibition notice

*insert*

or prohibited asbestos notice

**117 Power of the regulator to take other remedial action  
Section 212 (1) (a)**

*after*

prohibition notice

*insert*

or prohibited asbestos notice

**118 Section 212 (1) (b)**

*substitute*

- (b) a prohibition notice or prohibited asbestos notice cannot be issued because, after taking reasonable steps—
- (i) in relation to a prohibition notice—the person with management or control of the workplace cannot be found;  
or
  - (ii) in relation to a prohibited asbestos notice—a relevant person in relation to the workplace cannot be found.

**119 Costs of remedial or other action  
Section 213 (b)**

*after*

prohibition notice

*insert*

or prohibited asbestos notice

**120 Application—div 10.6  
Section 214**

*omit*

or non-disturbance notice

*substitute*

, non-disturbance notice or prohibited asbestos notice

**121 Which decisions are reviewable  
Table 223, new items 9A and 9B**

*insert*

9A	s 197B (issue of prohibited asbestos 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.
9B	s 197E (extension of time for compliance with prohibited asbestos 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.

**122 Dictionary**  
**New definitions**

*insert*

*asbestos*, for division 10.2A (Prohibited asbestos notices)—see section 197A.

*asbestos containing material (ACM)*, for division 10.2A (Prohibited asbestos notices)—see section 197A.

*prohibited asbestos*, for division 10.2A (Prohibited asbestos notices)—see section 197A.

*relevant person*, in relation to a workplace, for division 10.2A (Prohibited asbestos notices)—see section 197A.

## **Schedule 1      Consequential amendments**

(see s 3)

### **Part 1.1                      Dangerous Goods (Road Transport) Regulation 2010**

**[1.1]      Section 175 (1), note 1**

*omit*

### **Part 1.2                      Lifetime Care and Support (Catastrophic Injuries) Act 2014**

**[1.2]      Section 84B (1)**

*omit*

self insurer

*substitute*

licensed self-insurer

**[1.3]      Section 84B (1) (b) (ii) and (3), note 3**

*before*

self-insurer

*insert*

licensed

**[1.4] Section 84C**

*before*

self-insurer

*insert*

licensed

**[1.5] Section 90A (3), definition of *employer***

*before*

self-insurer

*insert*

licensed

**[1.6] Section 90A (3), note**

*omit*

***Self-insurer***

*substitute*

***Licensed self-insurer***

**[1.7] Section 94 (1) (a)**

*substitute*

(a) a licensed insurer within the meaning of the [MAI Act](#);

**[1.8] Dictionary, note 4**

*insert*

- licensed self-insurer

**[1.9] Dictionary, note 4**

*omit*

- self-insurer

**[1.10] Dictionary, definition of *insurer*, paragraph (b)**

*omit*

self insurer

*substitute*

licensed self-insurer

**[1.11] Dictionary, definition of *workers compensation insurer***

*substitute*

***workers compensation insurer***, in relation to a workers compensation claim, means a licensed insurer within the meaning of the [Workers Compensation Act 1951](#).

## Part 1.3 Workers Compensation Regulation 2002

### [1.12] Schedule 3

*substitute*

## Schedule 3 Reviewable decisions

(see s 98, s 98A and s 98B)

### Part 3.1 Reviewable decisions

column 1 item	column 2 section	column 3 decision	column 4 entity	column 5 decision-maker
1	<a href="#">Act, 18 (3)</a>	refuse to exempt principal from s 18 (2) (which makes commercial volunteers workers)	applicant for exemption	Minister
2	<a href="#">Act, 145D (1)</a>	refuse to issue insurer licence	applicant for insurer licence	regulator
3	<a href="#">Act, 145E (2) (a)</a>	include regulator condition on issue of insurer licence	applicant for insurer licence	regulator
4	<a href="#">Act, 145E (2) (b)</a>	amend insurer licence to include regulator condition	licensed insurer	regulator



column 1 item	column 2 section	column 3 decision	column 4 entity	column 5 decision- maker
5	<a href="#">Act, 145E (3)</a>	amend or revoke regulator condition included on insurer licence	licensed insurer	regulator
6	<a href="#">Act, 145O (1)</a>	refuse to issue self-insurer licence	applicant for self-insurer licence	regulator
7	<a href="#">Act, 145P (2) (a)</a>	include regulator condition on issue of self-insurer licence	applicant for self-insurer licence	regulator
8	<a href="#">Act, 145P (2) (b)</a>	amend self-insurer licence to include regulator condition	licensed self-insurer	regulator
9	<a href="#">Act, 145P (3)</a>	amend or revoke regulator condition included on self-insurer licence	licensed self-insurer	regulator
10	<a href="#">Act, 149 (4)</a>	determine recovery amount	employer	regulator
11	<a href="#">Act, 162A (3)</a>	determine recovery amount	employer	regulator
12	<a href="#">Act, 164D (2)</a>	take regulatory action	licensee	regulator
13	16 (1)	refuse to approve person as rehabilitation provider	applicant for approval	Minister

**Schedule 1** Consequential amendments  
**Part 1.3** Workers Compensation Regulation 2002

Amendment [1.12]

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<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>	<b>column 4 entity</b>	<b>column 5 decision- maker</b>
14	16 (2)	approve rehabilitation provider for less than 3 years	applicant for approval	Minister

## **Part 3.2 Internally reviewable decisions**

<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>	<b>column 4 decision-maker</b>
1	<a href="#">Act, 149 (4)</a>	determine recovery amount	regulator
2	<a href="#">Act, 162A (3)</a>	determine recovery amount	regulator

## **Part 1.4**

# **Work Health and Safety Regulation 2011**

### **[1.13] New section 419 (3) (ja)**

*insert*

- (ja) work that is being carried out in accordance with a prohibited asbestos notice issued under the [Act](#), section 197B;

### **[1.14] Dictionary, note 3**

*insert*

- asbestos (see s 197A)
- asbestos containing material (ACM) (see s 197A)

### **[1.15] Dictionary, definitions of *asbestos* and *asbestos containing material (ACM)***

*omit*

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 18 June 2020.

**2 Notification**

Notified under the [Legislation Act](#) on 9 July 2020.

**3 Republications of amended laws**

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

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I certify that the above is a true copy of the Employment and Workplace Safety Legislation Amendment Bill 2020, which was passed by the Legislative Assembly on 2 July 2020.

Acting Clerk of the Legislative Assembly

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