Australian Capital Territory

Work Health and Safety Act 2011

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About this republication

The republished law

This is a republication of the *Work Health and Safety Act 2011* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 19 August 2024. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 19 August 2024.

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

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Penalties

At the republication date, the value of a penalty unit for an offence against this law is $160 for an individual and $810 for a corporation (see *Legislation Act 2001*, s 133).

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Australian Capital Territory

Work Health and Safety Act 2011

An Act about work health and safety, and for other purposes

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Part 1 Preliminary

Division 1.1 Introduction

1 Name of Act

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

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

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(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.

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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.

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(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.

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(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

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(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.

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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 (2) 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.

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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 1 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).

Note 2 Other legislation in force in the ACT relating to hazardous chemicals includes the following:

- *Dangerous Goods (Road Transport) Act 2009*
- *Emergencies Act 2004*
- *Environment Protection Act 1997*
- *Medicines, Poisons and Therapeutic Goods Act 2008*.

Note 3 See the *Emergencies Act 2004* for provisions relating to hazardous materials incidents (which may include dangerous occurrences).

Note 4 See the *Dangerous Goods (Road Transport) Act 2009* for the transport by road of certain hazardous chemicals that are classified as dangerous goods under that Act.

(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.

(4) In this section:

hazardous chemical—see the *Work Health and Safety Regulation 2011*, dictionary.

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12AA Application of Act to dangerous goods and high risk plant—sch 1

Schedule 1 provides for the application of this Act to dangerous goods and high risk plant.

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

(1) 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***).

(2) However, the Criminal Code, part 2.5 (Corporate criminal responsibility) does not apply to an offence against this Act.

Note For this Act, corporate criminal responsibility is dealt with by div 13.4.

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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).

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(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

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(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

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(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.

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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

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(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

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(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

(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

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(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

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(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

(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

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(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

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(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

(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

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(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

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(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

(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

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(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

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(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) or division 2.6 (Industrial manslaughter) 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.

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(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

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(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

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).

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(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).

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31 Negligence or 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—

(i) exposes an individual to whom the duty is owed to a risk of death or serious injury or illness; or

(ii) if the person is an officer of a person conducting a business or undertaking—exposes an individual, to whom the person conducting a business or undertaking owes a health and safety duty, to a risk of death or serious injury or illness; and

(c) the person—

(i) engages in the conduct with negligence; or

(ii) is reckless as to the risk to an individual of death or serious injury or illness.

Maximum penalty:

(a) for an individual—category 1 monetary penalty or imprisonment for 10 years or both; or

(b) for a body corporate—category 1 monetary penalty.

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

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

(3) A category 1 offence is declared to be an indictable offence.

Note An indictable offence is an offence punishable by imprisonment for longer than 2 years or an offence declared by an ACT law to be an indictable offence (see Legislation Act, s 190 (1)).

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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: category 2 monetary penalty.

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: category 3 monetary penalty.

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).

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(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.

Division 2.6 Industrial manslaughter

34A Industrial manslaughter

(1) A person commits an offence if—

(a) the person conducts a business or undertaking, or is an officer of a person who conducts a business or undertaking; and

(b) the person has a health and safety duty; and

(c) the person engages in conduct; and

(d) the conduct results in a breach of the health and safety duty; and

(e) the conduct causes—

(i) the death of a worker; or

(ii) an injury to a worker and the injury later causes the death of the worker; or

(iii) the death of another person; and

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(f) the person is reckless or negligent about causing the death of the worker or other person by the conduct.

Maximum penalty:

(a) for an individual—imprisonment for 20 years; or

(b) for a body corporate—industrial manslaughter monetary penalty.

Note See s 244 and s 245 for imputing conduct to a body corporate or the Territory.

(2) Strict liability only applies to subsection (1) (a) and (b).

Note Subsection (2) displaces s 12A which states that strict liability applies to each physical element of each offence under this Act unless otherwise stated in the section containing the offence.

(3) An offence against this section is declared to be an indictable offence.

Note An indictable offence is an offence punishable by imprisonment for longer than 2 years or an offence declared by an ACT law to be an indictable offence (see Legislation Act, s 190 (1)).

(4) In this section:

causes death—a person's conduct ***causes*** death if the conduct substantially contributes to the death.

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) section 27 (Duty of officers).

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34B Alternative verdict for industrial manslaughter

(1) This section applies if, in a prosecution for an industrial manslaughter offence, the trier of fact—

(a) is not satisfied beyond reasonable doubt that the defendant committed an industrial manslaughter offence; and

(b) is satisfied beyond reasonable doubt that the defendant committed an alternative offence.

(2) The trier of fact may find the defendant guilty of the alternative offence, but only if the defendant has been given procedural fairness in relation to that finding of guilt.

(3) In this section:

alternative offence, for an industrial manslaughter offence, means a category 1 offence or a category 2 offence.

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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; or

(d) a sexual assault incident.

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

(1) 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

(vi) a spinal injury; or

(vii) the loss of a bodily function; or

(viii) serious lacerations; or

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(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).

(2) In this section:

medical treatment means treatment by a medical practitioner.

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

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(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).

37A What is a *sexual assault incident*—pt 3

In this part:

sexual assault incident means an incident (including a suspected incident) in relation to a workplace that exposes a worker or any other person at the workplace to sexual assault.

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: tier D monetary penalty.

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.

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(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 acknowledgment 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: tier F monetary penalty.

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

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(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.

(9) For a sexual assault incident, the person conducting the business or undertaking—

(a) need only give the following details about the incident:

(i) the name and contact details of the person conducting the business or undertaking;

(ii) a description of the workplace where the incident happened;

(iii) whether or not the incident was reported to police; and

(b) must not give information disclosing the identity of any person involved in the incident when notifying the regulator.

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: tier D monetary penalty.

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

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(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.

(4) Subsection (1) does not apply to a sexual assault incident.

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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: tier B monetary penalty.

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: tier C monetary penalty.

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

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(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: tier C monetary penalty.

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: tier C monetary penalty.

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: tier C monetary penalty.

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

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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: tier C monetary penalty.

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: tier C monetary penalty.

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: tier C monetary penalty.

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

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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: tier C monetary penalty.

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: tier C monetary penalty.

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.

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(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;

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(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 5.3.1A Definitions

49A Meaning of *major construction project*—pt 5

(1) For this part, a ***major construction project*** is a project involving construction work with a contract price that is more than—

(a) $5 000 000; or

(b) if a regulation prescribes another amount—the prescribed amount.

(2) However, a ***major construction project*** does not include a project in which construction work involves only the construction of a single dwelling house.

(3) In this section:

construction work—see the *Work Health and Safety Regulation 2011*, dictionary.

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contract price, for a major construction project—

(a) means the contract price agreed with the principal contractor before work starts on the project; but

(b) does not include any variations to the contract price made during the project.

49B Meaning of *principal contractor*—pt 5

(1) In this part, a person conducting a business or undertaking that commissions a major construction project is, subject to this section, the ***principal contractor*** for the project.

(2) If the person mentioned in subsection (1) engages another person conducting a business or undertaking as principal contractor for the major construction project and authorises the person to have management or control of the workplace and to discharge the duties of a principal contractor under this division, the person so engaged is the ***principal contractor*** for the project.

(3) A construction project has only 1 principal contractor at any specific time.

Note A person with management or control of a workplace must comply with s 20.

49C Meaning of *eligible union*—div 5.3

(1) In this division:

eligible union, for a major construction project, means a registered employee association that is eligible to represent the industrial interests of 1 or more workers carrying out work in connection with the project.

(2) In this section:

registered employee association—see the *Fair Work Act 2009* (Cwlth), section 12.

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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.

50A Consultation with eligible unions—major construction project

(1) This section applies in relation to a major construction project.

(2) The principal contractor for the major construction project must, before work on the project commences, consult with each eligible union for the project about the following:

(a) the number and composition of work groups to be represented by health and safety representatives on the major construction project;

(b) the number of health and safety representatives and deputy health and safety representatives (if any) to be elected;

(c) anything else prescribed by regulation.

Maximum penalty: tier D monetary penalty.

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

(3) Subsection (2) does not apply if the regulator has, under section 50B, exempted the principal contractor from complying with this section.

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(4) For the purposes of subsection (2), the principal contractor must give each eligible union written notice of the major construction project and the requirement to consult with the union about the matters mentioned in subsection (2).

Note For how documents may be given, see the Legislation Act, pt 19.5.

(5) The notice must include a statement that, if the eligible union wants to participate in the consultation, the union must respond, in writing, to the notice not later than 14 days after receiving the notice.

(6) The principal contractor is taken to have consulted with an eligible union if—

(a) the principal contractor gives the eligible union a notice under subsection (4); and

(b) the union fails to respond to the notice within the time mentioned in subsection (5).

(7) To remove any doubt, this section does not give an eligible union a right of entry to the workplace.

50B Exemption from certain requirements under this part

(1) On application by the principal contractor for a major construction project, the regulator may, by written notice, exempt the principal contractor from complying with 1 or more of the following sections:

(a) section 50A;

(b) section 50C;

(c) section 52 (2) (a) (Negotiations for agreement for work group);

(d) section 72A (Obligation to train health and safety representatives—major construction project);

(e) a regulation under section 75 (Health and safety committees) requiring the principal contractor to establish a health and safety committee;

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(f) section 79A (Obligation to train health and safety committee members—major construction project).

(2) The exemption is subject to the conditions stated in the notice of exemption.

(3) The regulator may issue guidelines in relation to the matters that may be taken into account when deciding whether to exempt the principal contractor for a major construction project from complying with section 50A.

(4) A guideline is a notifiable instrument.

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

50C Election of health and safety representatives—major construction project

(1) This section applies in relation to a major construction project.

(2) The principal contractor for the major construction project must, when work starts at the project, facilitate the conduct of an election of 1 or more health and safety representatives to represent workers who carry out work for the project.

Subdivision 5.3.2 Determination of work groups

51 Determination of work groups

(1) This section applies if—

(a) a request is made under section 50 (Request for election of health and safety representative); or

(b) the principal contractor for a major construction project is required, under section 50C (2), to facilitate the conduct of an election.

(1A) The person conducting the business or undertaking, or the principal contractor, must facilitate the determination of 1 or more work groups of workers.

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(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 are proposed to 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—

(a) for a major construction project—when work on the project commences; or

(b) in any other case—within 14 days after the day a request is made under section 50 (Request for election of health and safety representative).

(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.

(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.

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(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: tier D monetary penalty.

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.

(7) In this section:

person conducting a business or undertaking includes the principal contractor for a major construction project.

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: tier H monetary penalty.

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

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(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: tier H monetary penalty.

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—

(i) for a major construction project—when work on the project commences; or

(ii) within 14 days after the day a request is made under section 50 (Request for election of health and safety representative); or

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(iii) within 14 days after the day 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.

(5) In this section:

person conducting a business or undertaking includes the principal contractor for a major construction project.

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.

Note For a major construction project to which s 50A applies, the principal contractor for the project must consult with the eligible unions for the project before work commences on the project (see s 50A (2)).

(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.

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(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: tier D monetary penalty.

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

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(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: tier H monetary penalty.

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: tier H monetary penalty.

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

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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.

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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: tier D monetary penalty.

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

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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.

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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

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(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.

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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

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(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.

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(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.

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(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

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(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

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(i) provide any other assistance to the health and safety representative for the work group that may be required by regulation.

Maximum penalty: tier D monetary penalty.

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: tier D monetary penalty.

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

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

Maximum penalty: tier D monetary penalty.

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

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(b) a course that the health and safety representative is entitled under the regulation to attend; and

(c) chosen by the health and safety representative.

(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) about a matter mentioned in subsection (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.

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(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: tier D monetary penalty.

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

(8) This section does not apply to a workplace to which section 72A applies.

72A Obligation to train health and safety representatives—major construction project

(1) This section applies in relation to a major construction project.

(2) The principal contractor for the major construction project must ensure the health and safety representative for the project attends 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 (6), chosen by the health and safety representative, in consultation with the principal contractor.

(3) The principal contractor must—

(a) as soon as practicable within the period of 3 months after the day the health and safety representative is elected, ensure the health and safety representative has 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.

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(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 principal contractor for the major construction project and the health and safety representative within the time required by subsection (3) as to the matters set out in subsections (2) (c) and (3), 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) The principal contractor for the major construction project must ensure the health and safety representative attends a course decided by the inspector and pay the costs decided by the inspector under subsection (6).

Maximum penalty: tier D monetary penalty.

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

(8) Subsection (7) does not apply if the regulator has, under section 50B (Exemption from certain requirements under this part), exempted the principal contractor from complying with this section.

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

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(b) the costs referred to in section 72 (2) (b) or section 72A (3) (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: tier H monetary penalty.

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.

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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: tier F monetary penalty.

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 (4A), 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.

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(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.

(4A) If the committee is established by the principal contractor for a major construction project, at least half the members of the committee must be workers carrying out work on the project.

(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.

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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: tier D monetary penalty.

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: tier D monetary penalty.

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

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(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: tier D monetary penalty.

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

79A Obligation to train health and safety committee members—major construction project

(1) This section applies in relation to a major construction project.

(2) The principal contractor for the major construction project must ensure the members of the health and safety committee for the major construction project attend a course of training in work health and safety that is—

(a) approved by the regulator; and

(b) a course that the members are entitled under the regulation to attend; and

(c) subject to subsection (6), chosen by the health and safety committee, in consultation with the principal contractor.

(3) The principal contractor for the major construction project must—

(a) as soon as practicable within the period of 3 months after the day the health and safety committee is constituted, ensure members of the health and safety committee have time off work to attend the course of training; and

(b) pay the course fees and any other reasonable costs associated with each member's attendance at the course of training.

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(4) Any time that a member of a health and safety committee 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 principal contractor for the major construction project and the health and safety committee within the time required by subsection (3) as to the matters set out in subsections (2) (c) and (3), 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) The principal contractor for the major construction project must ensure the members of the health and safety committee attend a course decided by the inspector and pay the costs decided by the inspector under subsection (6).

Maximum penalty: tier D monetary penalty.

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

(8) Subsection (7) does not apply if the regulator has, under section 50B (Exemption from certain requirements under this part), exempted the principal contractor from complying with this section.

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;

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(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.

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(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.

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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 section 72A (2) (b) (Obligation to train health and safety representatives—major construction project); or

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(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.

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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.

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(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 section 72A (2) (b) (Obligation to train health and safety representatives—major construction project); 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

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(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.

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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: tier F monetary penalty.

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: tier F monetary penalty.

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: tier B monetary penalty.

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

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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.

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(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.

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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: tier A monetary penalty.

(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

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(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

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(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

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(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: tier A monetary penalty.

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

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(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: tier A monetary penalty.

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 and rescue service, 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

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(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: tier A monetary penalty.

(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.

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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

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(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—an order that—

(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.

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(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.

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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

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(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.

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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.

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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;

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

(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, 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).

(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: WHS civil penalty provision tier 2.

(4) Subsection (3) places an evidential burden on the defendant to show a reasonable excuse.

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(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.

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).

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.

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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.

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(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.

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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: WHS civil penalty provision tier 1.

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: WHS civil penalty provision tier 2.

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: WHS civil penalty provision tier 2.

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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: WHS civil penalty provision tier 2.

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: WHS civil penalty provision tier 2.

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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: WHS civil penalty provision tier 2.

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 statement by that person declaring that he or she—

(a) is an official of the union; and

(b) has satisfactorily completed the prescribed training; and

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(c) holds, or will hold, an entry permit under the Fair Work Act.

Note 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).

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.

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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).

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(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.

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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;

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(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;

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(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: WHS civil penalty provision tier 2.

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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: WHS civil penalty provision tier 2.

(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: WHS civil penalty provision tier 2.

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: WHS civil penalty provision tier 2.

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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: WHS civil penalty provision tier 2.

(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

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(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; or

(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: WHS civil penalty provision tier 2.

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;

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(b) the permit expires.

WHS civil penalty provision.

Maximum penalty: WHS civil penalty provision tier 4.

(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: WHS civil penalty provision tier 3.

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.

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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).

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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).

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(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.

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

(2A) The notice may be served in any way that a notice may be issued or given under section 209 (Issue and giving of notice).

(3) The notice must—

(a) state that the requirement is made under this section; and

(b) contain a statement to the effect that it is an offence to refuse or fail to comply with the requirement without reasonable excuse; 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.

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(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: tier D monetary penalty.

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.

(8) A notice may be served on a person under this section even though—

(a) the person is outside the ACT; or

(b) the notice relates to information, documents or evidence—

(i) outside the ACT; or

(ii) relating to a matter happening outside the ACT.

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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.

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(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.

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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.

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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;

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(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 1 or more 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);

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(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: tier D monetary penalty.

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.

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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.

(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.

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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 provide a written copy to the inspector if it is practicable to do so.

(5) If it is not practicable to provide a written 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 written 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.

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(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.

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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.

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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, while the inspector is at the workplace—

(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 mentioned in paragraph (a) to produce the document to the inspector; or

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(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.

(2A) Also, within 30 days after the day an inspector enters a workplace under this division, the inspector or another inspector may give a written notice to a person—

(a) if the person has custody of, or access to, a stated document—requiring the person to produce the document to the inspector within a specified period; or

(b) requiring the person to give written answers to specified questions within a specified period; or

(c) requiring the person to—

(i) attend before the inspector at a specified time and place and answer any questions put by the inspector; or

(ii) attend before the inspector at a specified time, by audiovisual link or audio link, and answer any questions put by the inspector.

(2B) If a person is required under subsection (2A) (c) (i) to attend before the inspector in person—

(a) the person may ask to attend before the inspector by audiovisual link or audio link instead; and

(b) the inspector must agree to the request if it would be reasonable in the circumstances.

(2C) If a person is required under subsection (2A) (c) (ii) to attend before the inspector by audiovisual link or audio link—

(a) the person may ask to attend before the inspector in person instead; and

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(b) the inspector must agree to the request if it would be reasonable in the circumstances.

(2D) A requirement under subsection (2A) may only relate to a document or question relevant to the purpose for which the workplace was entered.

(2E) A notice under subsection (2A) may be served in any way that a notice may be issued or given under section 209 (Issue and giving of notice).

(3) An interview conducted by an inspector under subsection (1) (c) or (2A) (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: tier D monetary penalty.

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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, if the person is an individual, 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 individual 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.

(3) To remove any doubt, this section does not apply to answering a question or providing information or a document in response to a requirement made under a corresponding WHS law.

Example

If the regulator in NSW issues a notice under the *Work Health and Safety Act 2011* (NSW), s 155 to a person in the ACT, that Act, s 172 applies to the requirement.

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173 Warning to be given

(1) Before requiring a person to answer a question or provide information or a document under this part, other than by a written notice under section 171 (2A), 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 it is an offence to refuse or fail to comply with the requirement without reasonable excuse; 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).

(1A) A written notice under section 171 (2A) must—

(a) state that the notice is given under section 171 (2A); and

(b) state the purpose of the entry to the workplace to which the notice relates; and

(c) contain a statement to the effect that it is an offence to refuse or fail to comply with a requirement in the notice without reasonable excuse; and

(d) contain a statement about the effect of section 172 and section 269; and

(e) if the notice requires the person to attend before an inspector—state that the person may attend with a legal practitioner or other representative.

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(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 the person, unless the person was first given—

(a) the warning in subsection (1) (c); or

(b) a notice with the statement mentioned in subsection (1A) (d).

(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).

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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.

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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

(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: tier D monetary penalty.

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.

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(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: tier D monetary penalty.

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

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(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.

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(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.

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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).

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(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 his or her 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

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(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: tier D monetary penalty.

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: tier D monetary penalty.

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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: tier D monetary penalty.

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) for an individual—tier B monetary penalty or imprisonment for 2 years or both; or

(b) for a body corporate—tier B monetary penalty.

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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

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(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: tier B monetary penalty.

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.

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(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

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(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: tier A monetary penalty.

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

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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.

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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.

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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: tier A monetary penalty.

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.

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.

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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.

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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: tier B monetary penalty.

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, non-disturbance notice or prohibited asbestos notice.

203 Notice to be in writing

A notice must be in writing.

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204 Directions in notices

A direction included in an improvement notice, prohibition notice or prohibited asbestos notice may—

(a) refer to a code of practice; and

(b) offer the person to whom it is issued a choice of measures to take or ways in which to remedy the contravention.

205 Recommendations in notice

(1) An improvement notice, prohibition notice or prohibited asbestos notice may include recommendations.

(2) It is not an offence to fail to comply with recommendations in a notice.

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

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(b) to correct errors or references; or

(c) to reflect changes of address or other circumstances.

207 Regulator may vary or cancel notice

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

(2) A notice issued by the regulator 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.

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(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: tier F monetary penalty.

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: tier F monetary penalty.

Division 10.5 Remedial action

211 When regulator may carry out action

(1) This section applies if a person to whom a prohibition notice or prohibited asbestos 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 or prohibited asbestos 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.

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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 or prohibited asbestos notice can be issued exist; and

(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.

(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 or prohibited asbestos notice could have been issued in relation to the matter,

as a debt due to the Territory.

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Division 10.6 Injunctions

214 Application—div 10.6

In this division:

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

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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 of—

(a) a category 1 offence; or

(b) an industrial manslaughter 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.

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219 Compliance with WHS undertaking

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

Maximum penalty: tier B monetary penalty.

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.

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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.

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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.

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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.
2A	s 72A (7) (decision in relation to training of health and safety representative)	(1) The principal contractor for a major construction project. (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.

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column 1 item	column 2 provision under which reviewable decision is made	column 3 eligible person in relation to reviewable decision
3A	s 79A (7) (decision in relation to training of members of health and safety committee)	(1) The principal contractor for a major construction project. (2) A health and safety committee member whose interests are affected by the 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.

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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.
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.

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column 1 item	column 2 provision under which reviewable decision is made	column 3 eligible person in relation to reviewable 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.
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.

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column 1 item	column 2 provision under which reviewable decision is made	column 3 eligible person in relation to reviewable decision
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.
13	s 201 (issue of subsequent 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.

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column 1 item	column 2 provision under which reviewable decision is made	column 3 eligible person in relation to reviewable decision
14	s 207 (Decision of regulator to vary or cancel 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. (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.

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(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.

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(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.

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(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 ACAT to give the eligible person a statement of reasons, within 14 days after the day on which the statement is provided.

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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.

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231 Procedure if prosecution is not brought

(1) This section applies if—

(a) a person—

(i) reasonably considers that the occurrence of an act, matter or thing constitutes a category 1 offence or a category 2 offence; or

(ii) reasonably considers, from a coronial report or a proceeding at a coronial inquiry or inquest, that a category 1 offence or a category 2 offence has been committed; and

(b) no prosecution for the offence has been brought.

(1A) The person may make a written request to the regulator that a prosecution be brought.

(1B) The request may be made—

(a) if subsection (1) (a) (i) applies—at least 6 months but not more than 18 months after the act, matter or thing happens; or

(b) if subsection (1) (a) (ii) applies—within 6 months after the day the report is made or the inquiry or inquest ends.

Note See s 232 in relation to the limitation period for prosecutions.

(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

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(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.

(2A) If, under subsection (2) (a) (i), the regulator advises the person that the investigation is not complete, the regulator must—

(a) until the investigation is complete, give the person a written update about the investigation at least every 3 months; and

(b) when the investigation is complete, give the person a written notice stating—

(i) whether a prosecution will be brought; and

(ii) if a prosecution will not be brought—the reasons why.

(3) If the regulator advises the person under subsection (2) or (2A) that the regulator will not be referring a matter concerning a category 1 offence, a category 2 offence or an industrial manslaughter 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.

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(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.

(3) This section does not apply to a proceeding for an industrial manslaughter offence.

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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).

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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.

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(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.

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(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.

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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: tier B monetary penalty.

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.

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Division 13.4 Offences by bodies corporate

244 Definitions—div 13.4

In this division:

authorised person, for a body corporate, means an officer, employee or agent of the body corporate acting within their actual or apparent authority.

board of directors, of a body corporate, means the body, whatever it is called, exercising the executive authority of the body corporate.

244A Physical elements

The conduct constituting the physical element of an offence is taken to have been engaged in by a body corporate if the conduct is engaged in by—

(a) the body corporate's board of directors; or

(b) 1 or more authorised people for the body corporate; or

(c) 1 or more people acting at the direction of or with the express or implied agreement or consent of—

(i) an authorised person for the body corporate; or

(ii) the body corporate's board of directors.

244B Fault elements other than negligence

(1) If it is necessary to establish that a body corporate had a state of mind in relation to a physical element of an offence, it is sufficient to show that—

(a) the body corporate's board of directors—

(i) engaged in the conduct constituting the offence and had that state of mind in relation to the physical element of the offence; or

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(ii) expressly, tacitly or impliedly authorised or permitted the conduct constituting the offence; or

(b) an authorised person for the body corporate—

(i) engaged in the conduct constituting the offence and had that state of mind in relation to the physical element of the offence; or

(ii) expressly, tacitly or impliedly authorised or permitted the conduct constituting the offence; or

(c) a corporate culture existed within the body corporate that directed, encouraged, tolerated or led to the conduct constituting the offence.

(1A) For subsection (1), having a state of mind in relation to a physical element of an offence does not include being negligent in relation to that physical element.

Note For how negligence applies in relation to a body corporate, see s 244BA.

(2) Also—

(a) subsection (1) (b) and (c) do not apply if the body corporate proves it took reasonable precautions to prevent the conduct constituting the offence; and

(b) subsection (1) (b) (ii) does not apply if the body corporate proves it took reasonable precautions to prevent the authorised person from authorising or permitting the conduct constituting the offence.

(3) Factors relevant to the application of subsection (1) (c) include—

(a) whether authority or permission to engage in the conduct constituting an offence, of the same or a similar character, had previously been given by a corporate officer of the body corporate; and

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(b) whether the person who engaged in the conduct constituting the offence believed on reasonable grounds, or had a reasonable expectation, that a corporate officer of the body corporate would have authorised or permitted the conduct.

(4) In this section:

corporate culture, within a body corporate, means 1 or more attitudes, policies, rules, courses of conduct or practices existing within the body corporate generally or in the part of the body corporate in which the relevant activity takes place.

corporate officer, of a body corporate, means an officer within the meaning of the Corporations Act, section 9AD.

244BA Negligence

(1) If negligence is a fault element in relation to a physical element of an offence, the fault element may exist on the part of a body corporate, despite no individual authorised person for the body corporate having the fault element, if the body corporate's conduct is negligent when viewed as a whole, determined by aggregating the conduct of more than 1 authorised person.

Note The test of negligence for a body corporate is that set out in the Criminal Code, s 21.

(2) Negligence may be evidenced by the fact that the prohibited conduct was substantially attributable to—

(a) inadequate corporate management, control or supervision of the conduct of 1 or more authorised people; or

(b) failure to provide adequate systems for conveying relevant information to relevant people in the body corporate.

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244C Mistake of fact

If mistake of fact is relevant to determining liability for an offence, a body corporate may rely on mistake of fact only if—

(a) the employee, agent or officer of the body corporate who engaged in the conduct constituting the offence was under a mistaken but reasonable belief about facts that, had they existed, would have meant the conduct would not have constituted the offence; and

(b) the body corporate proves it took reasonable precautions to prevent the conduct.

244D Failure to take reasonable precautions

For sections 244B (2) and 244C (b), a failure to take reasonable precautions may be evidenced by the fact that the conduct constituting the offence was substantially attributable to—

(a) inadequate management, control or supervision of the conduct of 1 or more of the body corporate's employees, agents or officers; or

(b) failure to provide adequate systems for conveying relevant information to relevant persons in the body corporate.

244E How this division applies to public authorities

If a body corporate is a public authority, this division applies in relation to the body corporate in accordance with section 251.

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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.

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(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 a 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) The following notices to be given to or served on the Territory may be given to or served on the responsible agency in relation to the notice:

(a) a provisional improvement notice, improvement notice, prohibition notice, non-disturbance notice or notice of entry under part 7 (Workplace entry by WHS entry permit-holders) to be given or served under this Act;

(b) an infringement notice for an infringement notice offence to be given or served under the *Magistrates Court Act 1930*.

(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.

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(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

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(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.

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(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.

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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 a maximum penalty, expressed as a WHS civil penalty provision tier, 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 a maximum penalty, expressed as a WHS civil penalty provision tier, 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.

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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.

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(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.

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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

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(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.

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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.

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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: tier D monetary penalty.

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 authorised under section 271A; 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

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(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: tier D monetary penalty.

(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.

271A Additional ways that regulator may use and share information

(1) This section applies in relation to information or a document mentioned in section 271 (1).

(2) The regulator or a person authorised by the regulator may, in the circumstances stated in subsection (3)—

(a) disclose the information, or the contents of or information contained in the document, to any other person including a corresponding regulator; or

(b) give access to the document to any other person including a corresponding regulator; or

(c) use the information or document.

(3) The circumstances are that the regulator reasonably believes the disclosure, access or use—

(a) is necessary for administering or enforcing, or monitoring compliance with, this Act; or

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(b) is necessary for administering or enforcing another law prescribed by regulation; or

(c) is necessary for administering or enforcing another territory law, if the disclosure, access or use is necessary to lessen or prevent a serious risk to public health or safety; or

(d) is necessary for recognising authorisations under a corresponding WHS law; or

(e) is required for the exercise of a power or function under a corresponding WHS law.

(4) This section does not limit the operation of section 271 (3) (a), (b), (d), (e) or (f) in relation to the disclosure of information, giving of access to a document or use of information or a document by the regulator or a person authorised by the regulator.

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).

272A No insurance or other indemnity against penalties

(1) A person must not, without reasonable excuse—

(a) enter into a contract of insurance or other arrangement under which the person, or another person, is purportedly covered for all or part of a liability for a monetary penalty under this Act; or

(b) provide insurance or a grant of indemnity for all or part of a liability for a monetary penalty under this Act; or

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(c) take the benefit of a contract of insurance, arrangement or grant of indemnity mentioned in paragraph (a) or (b).

Maximum penalty: tier B monetary penalty.

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) A term of a contract of insurance or other arrangement is void to the extent it purports to cover a person for all or part of a liability for a monetary penalty under this Act.

272B Liability of officers for offences by body corporate under s 272A

(1) A person commits an offence if—

(a) a body corporate contravenes section 272A; and

(b) the person is an officer of the body corporate; and

(c) the person is involved in the body corporate's contravention of section 272A.

Maximum penalty: tier B monetary penalty.

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

(2) For subsection (1) (c), section 256 (2) applies as if a reference in that section to a civil penalty provision were a reference to section 272A.

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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: tier F monetary penalty.

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

273A Relationship with Legislative Assembly

(1) To remove any doubt, work carried out by a member of the Legislative Assembly in the exercise of the member's functions, and work carried out by other people to support the member in the exercise of the member's functions, is work carried out in an undertaking for this Act.

(2) Nothing in this Act limits any power, privilege or immunity given under the Self-Government Act, section 24 to—

(a) the Legislative Assembly; or

(b) a committee of the Legislative Assembly; or

(c) a member of the Legislative Assembly.

(3) Without limiting subsection (2), nothing in this Act gives the regulator or anyone else exercising a function under this Act the power to improperly prohibit a proceeding of the Legislative Assembly or any of its committees.

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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 approve a code of practice includes the power to amend or repeal the approval of the code of practice. The power to amend or repeal the approval 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 (other than a code of practice in relation to the management, control or removal of asbestos or asbestos containing material) 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.

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

(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 approval of a code of practice is also a notifiable instrument (see Legislation Act, s 46 (2)).

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(5) The Minister must, as soon as practicable after approving a code of practice, give additional public notice of the approval.

Note ***Public notice*** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see Legislation Act, dict, pt 1). The requirement in s (5) is in addition to the requirement for notification on the legislation register as a notifiable instrument.

(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.

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(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) 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).

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(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 the following penalties for an offence under a regulation:

(i) a tier E monetary penalty;

(ii) a tier F monetary penalty;

(iii) a tier G monetary penalty;

(iv) a tier H monetary penalty;

(v) a tier I monetary penalty.

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277 Approved forms

(1) The Minister may 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.

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

(see s 12AA)

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 reference in this Act to—

(aa) a person conducting a business or undertaking includes a reference to a person in control of premises where the dangerous goods are stored or handled; and

(ab) a business or undertaking, or the conduct of a business or undertaking, includes a reference to the storage or handling of dangerous goods; and

(ac) a worker includes a reference to a person at the premises at or in which the dangerous goods are stored or handled; and

(a) carrying out work includes a reference to the storage or handling of dangerous goods; and

(b) a workplace includes a reference to the premises at or in which the dangerous goods are stored or handled; and

(ba) a work environment includes a reference to the environment at the premises at or in which the dangerous goods are stored or handled; and

(c) work health and safety (however expressed) includes a reference to public health and safety; and

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(d) a business address includes a reference to the address of the premises where the dangerous goods are stored or handled.

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.

premises includes a vehicle, vessel, aircraft or other mobile structure.

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

Part 2.1 Work health and safety council

Division 2.1.1 Establishment, functions and powers

2.1 Establishment

The Work Health and 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 health and safety; or

(ii) workers compensation; or

(iii) bullying in the workplace and other workplace psychosocial issues; or

(b) to inquire into and report to the Minister on matters referred to the council by the Minister in relation to—

(i) work health and safety; or

(ii) workers compensation; or

(iii) bullying in the workplace and other workplace psychosocial issues; or

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(c) at the first council meeting that happens after the publication of the annual report required under section 2.41 (Annual report)—

(i) review and consider the annual report; and

(ii) advise the Minister and the WHS commissioner on any matters arising from the review and consideration; or

(d) 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 powers necessary and convenient to exercise the function (see Legislation Act, s 196 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;

(aa) the performance of the office of the work health and safety commissioner and the WHS commissioner;

(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 health and safety;

(d) the promotion of work health and safety;

(e) the operation of the *Workers Compensation Act 1951*;

(f) the approval of a protocol or an amendment to a protocol under the *Workers Compensation Act 1951*;

(g) the provision of education and training in relation to workers' compensation;

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(h) the operation of the *Dangerous Substances Act 2004*;

(i) the operation of the *Workplace Privacy Act 2011*.

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

(1) The council consists of—

(a) 5 members appointed by the Minister after consultation with the people or bodies that the Minister considers represent the interests of employees; and

(b) 5 other members appointed by the Minister after consultation with the people or bodies that the Minister considers represent the interests of employers; and

(c) the WHS commissioner; and

(d) the public sector workers compensation commissioner.

(2) The Minister must not appoint more than 1 public servant as a member under subsection (1).

(3) In this section:

public sector workers compensation commissioner means the PSWC commissioner under the *Public Sector Workers Compensation Fund Act 2018*.

2.3A Meaning of *appointed member*—div 2.1.2

In this division:

appointed member, of the council, means a member of the council appointed by the Minister under section 2.3 (1) (a) or (b).

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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 4 years.

(3) A person who has been an appointed member of the council for 8 consecutive years is not eligible for reappointment.

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 Chair and deputy chair

(1) The appointed members of the council must elect a chair of the council, and a deputy chair of the council.

Note The appointed members must elect a chair and deputy chair of the council as soon as possible and as often as needed (see Legislation Act, s 151B).

(2) The chair and the deputy chair must be elected for not longer than 2 years.

(3) If the chair is elected from the members appointed under section 2.3 (1) (a)—the deputy chair must be elected from the members appointed under section 2.3 (1) (b).

(4) If the chair is elected from the members appointed under section 2.3 (1) (b)—the deputy chair must be elected from the members appointed under section 2.3 (1) (a).

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.

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(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.

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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

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(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 Assembly committee within 31 days after the day the Minister receives the statement.

(4) In this section:

relevant Assembly committee means a standing committee of the Legislative Assembly nominated, in writing, by the Speaker for subsection (3).

2.9 Ending appointment of council member

(2) The Minister must end the appointment of an appointed member of the council if—

(a) the member has become bankrupt or personally insolvent; 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.

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(3) The Minister may end the appointment of an appointed 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.

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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) 3 members appointed under section 2.3 (1) (a), at least 2 of whom are not acting members; and

(b) 3 members appointed under section 2.3 (1) (b), at least 2 of whom are not acting members.

2.13 Voting at council meetings

(1) At a meeting of the council each appointed member has a vote on each question to be decided.

(2) A question is decided by a majority of the votes of the appointed members present and voting.

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

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(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 health and safety.

(3) Subject to any direction by the council, an advisory committee may decide how it is to exercise its functions.

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Part 2.2 Office of the Work Health and Safety Commissioner

Division 2.2.1 Preliminary

2.17 Definitions—pt 2.2

In this part:

compliance and enforcement policy—see section 2.37.

statement of expectations—see section 2.39.

statement of operational intent—see section 2.40.

strategic plan—see section 2.38.

Division 2.2.2 Establishment and functions of office

2.18 Establishment of office

The Office of the Work Health and Safety Commissioner is established.

2.19 Constitution of office

The office consists of—

(a) the WHS commissioner; and

(b) the staff of the office.

2.20 Functions of office

The functions of the office include—

(a) to promote an understanding and acceptance of, and compliance with, this Act or another territory law relating to work health and safety; and

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(b) to undertake research, and develop educational and other programs for the purpose of promoting work health and safety; and

(c) to advise the Minister on any matter relevant to the operation of a territory law under which the commissioner performs a function; and

(d) any other function given to the office under this Act or another territory law under which the office performs a function.

Note 1 The commissioner is the regulator under this Act (see dict, def ***regulator***).

Note 2 ***Function*** includes authority, duty or power (see Legislation Act, dict, pt 1).

Note 3 A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def ***entity***).

Division 2.2.3 Work health and safety commissioner

2.21 Appointment of WHS commissioner

(1) The Executive must appoint a person as the Work Health and Safety Commissioner (the ***WHS commissioner***).

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

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

(2) The Executive must not appoint a person as WHS commissioner unless satisfied that—

(a) the Minister consulted with the chair and deputy chair of the council in relation to the selection process for the commissioner; and

(b) the appointment follows an open and accountable selection process; and

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(c) the person has the experience or expertise necessary to exercise the commissioner's functions.

(3) The WHS commissioner must not be appointed for longer than 5 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***).

(4) The WHS commissioner's conditions of employment are the conditions agreed between the commissioner and the Executive that are stated in the instrument of appointment, subject to any determination under the *Remuneration Tribunal Act 1995*.

(5) The appointment is a notifiable instrument.

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

2.22 Functions of WHS commissioner

In addition to the functions of the regulator under section 152, the functions of the WHS commissioner are—

(a) exercising the functions of the office of the work health and safety commissioner; and

Note The WHS commissioner is the regulator under this Act (see dict, def ***regulator***).

(b) managing the administration of the office; and

(c) the efficient and effective financial management of the office's resources; and

(d) making the following for the office:

(i) a compliance and enforcement policy;

(ii) a strategic plan;

(iii) a draft statement of operational intent; and

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(e) ensuring, as far as practicable, that the functions of the office are exercised—

(i) in an orderly and prompt way; and

(ii) in a way that takes into account, and complies with, the compliance and enforcement policy, the strategic plan and the statement of operational intent; and

(f) any other function given to the WHS commissioner under this Act or another territory law under which the WHS commissioner performs a function.

Note The WHS commissioner has functions under other territory laws including the *Dangerous Substances Act 2004*, the *Dangerous Substances (Explosives) Regulation 2004*, the *Dangerous Substances (General) Regulation 2004* and the *Machinery Act 1949*.

2.23 Independence of WHS commissioner and Ministerial directions

(1) Subject to subsection (2), the WHS commissioner is not subject to the direction of anyone else, and must act independently, in relation to the exercise of a function under this Act or another territory law under which the WHS commissioner performs a function.

(2) However, the Minister may, in writing, give directions to the WHS commissioner in relation to the exercise of the WHS commissioner's functions.

(3) A direction given under subsection (2) must be of a general nature and not direct the WHS commissioner in relation to a particular investigation or particular regulatory action.

(4) The Minister must present a copy of any direction under subsection (2) to the Legislative Assembly within 5 sitting days after the day it is given to the commissioner.

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2.24 Duty of good conduct

(1) In exercising functions in relation to the office of the work health and safety commissioner, the WHS commissioner must exercise the degree of honesty, care and diligence required to be exercised by a director of a corporation in relation to the affairs of the corporation.

(2) The WHS commissioner also has a duty to the office—

(a) to act in good faith; and

(b) not to pursue personal interests at the expense of the office's interests; and

(c) not to use the office to gain personal advantage; and

(d) not to cause detriment to the office or undermine the reputation of the office.

2.25 Disclosure of interests

(1) The WHS commissioner must give the Executive a written statement of the WHS commissioner's personal and financial interests within 7 days after—

(a) the day the WHS commissioner is appointed; and

(b) the first day of each financial year; and

(c) the day there is a change in the interest.

(2) If the WHS commissioner has a personal or financial interest that conflicts or may conflict, or may be perceived to conflict, with the WHS commissioner's functions, the WHS commissioner must disclose to the Executive, in writing, the nature of the interest and the conflict or potential conflict.

Note The WHS commissioner must disclose a conflict of interest as soon as possible and as often as needed (see Legislation Act, s 151B).

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2.26 Outside employment

The WHS commissioner must not, without the Minister's approval, engage in paid employment outside the functions of the office.

2.27 Ending appointment—generally

(1) The Executive may end a person's appointment as the WHS commissioner—

(a) for misbehaviour; or

(b) if the person becomes bankrupt or personally insolvent; or

Note ***Bankrupt or personally insolvent***—see the Legislation Act, dict, pt 1.

(c) if the person fails to take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the WHS commissioner's functions; or

(d) if the person is convicted, in the ACT, of an offence punishable by imprisonment for at least 1 year; or

(e) if the person is convicted outside the ACT, in Australia or elsewhere, of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year; or

(f) under section 2.28; or

(g) if the person is absent, other than on leave approved under section 2.29, for 14 consecutive days or for 28 days in any 12-month period.

(2) The Executive must end the WHS commissioner's appointment for physical or mental incapacity, if the incapacity substantially affects the exercise of the WHS commissioner's functions.

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

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2.28 Ending appointment—council no-confidence resolution

(1) This section applies if the council passes a resolution of no-confidence in the WHS commissioner by a majority of at least 2/3 of the appointed members.

(2) The Executive must give the WHS commissioner written notice of the resolution stating—

(a) the grounds for the resolution; and

(b) that the WHS commissioner may, within 14 days after the date of the notice (the ***show cause period***), give a written submission to the Executive showing cause why the WHS commissioner's appointment should not be ended.

(3) The Executive must, within 21 days after the end of the show cause period—

(a) consider any submissions received under subsection (2) (b); and

(b) decide whether to end the WHS commissioner's appointment.

2.29 Leave of absence

The Minister may approve leave of absence for the WHS commissioner on the terms the Minister decides.

Division 2.2.4 Office—staff

2.30 Meaning of *staff of the office*—pt 2.2

In this part:

staff of the office means—

(a) the deputy WHS commissioner appointed under section 2.31; and

(b) the staff employed under section 2.32; and

(c) consultants and contractors engaged under section 2.33.

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2.31 Appointment of deputy WHS commissioner

(1) The WHS commissioner must appoint a public servant to be the deputy WHS 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).

(2) However, the WHS commissioner must not appoint a person as the deputy WHS commissioner unless satisfied that the person has the experience or expertise necessary to exercise the WHS commissioner's functions.

(3) If the appointment of the WHS commissioner has ended, or the commissioner is absent or cannot for any reason exercise the commissioner's functions, the deputy WHS commissioner must act as the WHS commissioner.

Note The Legislation Act, div 19.3.2A deals with standing acting arrangements.

(4) However, the deputy WHS commissioner must not act as the WHS commissioner for a continuous period of more than 6 months.

2.32 Employment of staff

(1) The WHS commissioner may employ staff on behalf of the Territory.

(2) The staff must be employed under the *Public Sector Management Act 1994*.

Note The *Public Sector Management Act 1994*, div 8.2 applies to the WHS commissioner in relation to the employment of staff (see *Public Sector Management Act 1994*, s 152).

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2.33 Engagement of consultants and contractors

(1) The WHS commissioner may engage the consultants and contractors that may be necessary or convenient to exercise the WHS commissioner's functions.

(2) The conditions of a consultant's or contractor's engagement are the conditions agreed between the WHS commissioner and the consultant or contractor.

(3) However, this section does not give the WHS commissioner the power to enter into a contract of employment with a consultant or contractor.

2.34 Independence of staff of the office

A member of the staff of the office is, in relation to the exercise of a function under this Act or another territory law under which the office performs a function, not subject to the direction of anyone except—

(a) the WHS commissioner; or

(b) another member of staff of the office who is authorised by the WHS commissioner to give directions.

2.35 Delegation of functions

The WHS commissioner may delegate the commissioner's functions under this Act or another territory law under which the commissioner performs a function to a member of the staff of the office.

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

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2.36 Other arrangements for staff and facilities

The WHS commissioner may arrange with the head of service to use the services of a public servant or Territory facilities.

Note The head of service may delegate powers in relation to the management of public servants to a public servant or another person (see *Public Sector Management Act 1994*, s 18).

Division 2.2.5 Office—policy and reporting framework

2.37 Compliance and enforcement policy

(1) The WHS commissioner must, for every period of 4 years, make a policy (a ***compliance and enforcement policy***) that includes the following:

(a) the aims of compliance and enforcement activity for the office;

(b) the key principles underpinning compliance and enforcement activity to be carried out by the office;

(c) the approach the office must take in relation to monitoring and compliance;

(d) the compliance and enforcement tools to be used by the office;

(e) guidance material about enforcement, investigation and prosecution recommendation criteria to be applied by the office;

(f) any other matter relating to the compliance and enforcement functions of the office, prescribed by regulation.

(2) In developing the compliance and enforcement policy, the WHS commissioner must—

(a) consult the Minister and the council; and

(b) consider any representation or advice given under paragraph (a).

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(3) The compliance and enforcement policy is a notifiable instrument.

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

(4) The WHS commissioner must give the compliance and enforcement policy to the Minister within 10 working days after notifying the policy.

(5) The Minister must present the compliance and enforcement policy to the Legislative Assembly within 6 sitting days after receiving the policy.

(6) The WHS commissioner must review the policy at least once in the 4 years during which the policy is in effect.

2.38 Strategic plan

(1) The WHS commissioner must, for every period of 4 financial years, make a plan (a ***strategic plan***) that includes the following:

(a) the purpose and objectives of the office;

(b) the outcomes to be achieved by the office;

(c) strategies to be used by the office to achieve the matters mentioned in paragraphs (a) and (b);

(d) the strategic enforcement priorities for the office;

(e) a description of the operating environment of the office;

(f) the performance criteria for the office;

(g) strategies to improve the capability of the office;

(h) procedures for the oversight and management of risk within the office;

(i) any other matter related to strategic planning for the office prescribed by regulation.

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(2) In developing the strategic plan the WHS commissioner must—

(a) consult the Minister and the council; and

(b) consider any representation or advice given under paragraph (a).

(3) The strategic plan is a notifiable instrument.

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

(4) The WHS commissioner must give the strategic plan to the Minister within 10 working days after notifying the plan.

(5) The Minister must present the strategic plan to the Legislative Assembly within 6 sitting days after receiving the plan.

2.39 Ministerial statement of expectations

(1) The Minister must, at least once every 12 months—

(a) make a statement setting out the priority activities and initiatives for the office (a ***statement of expectations***); and

(b) give the statement of expectations to the WHS commissioner.

(2) Before making a statement of expectations, the Minister must consult the council about the priority activities and initiatives for the office in the next 12 months.

(3) The statement of expectations—

(a) must not include specific direction about the exercise of a regulatory function under the Act; but

(b) may include—

(i) general directions about the priority activities and initiatives for the office; and

(ii) any information the Minister believes will assist the office to implement the statement of expectations.

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(4) A statement of expectations is a notifiable instrument.

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

2.40 Statement of operational intent

(1) Within 60 days after the day the Minister gives the statement of expectations to the WHS commissioner, the commissioner must give the Minister a draft statement setting out how the office will give effect to the statement of expectations (a ***statement of operational intent***).

(2) The Minister must, within 60 days after the day the Minister receives a draft statement of operational intent—

(a) approve the draft statement; or

(b) reject the draft statement; or

(c) approve the draft statement with conditions.

(3) An approved statement of operational intent is a notifiable instrument.

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

2.41 Annual report

(1) The WHS commissioner must prepare an annual report about the operation of the office under the *Annual Reports (Government Agencies) Act 2004*.

(2) The report must include—

(a) a statement from the chair of the council about the following:

(i) the performance of the office during the reporting year;

(ii) the effectiveness of compliance and enforcement activities undertaken by the office during the reporting year taking into account the compliance and enforcement policy;

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(iii) the implementation by the office of the strategic plan during the reporting year; and

(b) any statement of expectations and statement of operational intent in effect during the reporting year; and

(c) information about the extent to which any statement of operational intent in effect during the reporting year was met during the reporting year; and

(d) if the statement of operational intent was not met in whole or in part during the reporting year—reasons why the statement of operational intent was not met; and

(e) any other matter prescribed by regulation.

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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.

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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.

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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; 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.

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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.

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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.

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Schedule 4 Penalty amounts

4.1 Monetary penalties—categories 1 to 3

In this Act:

category 1 monetary penalty means the following amounts as indexed under section 4.4 and rounded under section 4.5:

(a) for 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—the amount mentioned in table 4.1, item 1, column 3; or

(b) for an offence committed by any other individual—the amount mentioned in table 4.1, item 1, column 4,; or

(c) for an offence committed by a body corporate—the amount mentioned in table 4.1, item 1, column 5.

category 2 monetary penalty means the following amounts as indexed under section 4.4 and rounded under section 4.5:

(a) for 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—the amount mentioned in table 4.1, item 2, column 3; or

(b) for an offence committed by any other individual—the amount mentioned in table 4.1, item 2, column 4; or

(c) for an offence committed by a body corporate—the amount mentioned in table 4.1, item 2, column 5.

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category 3 monetary penalty means the following amounts as indexed under section 4.4 and rounded under section 4.5:

(a) for 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—the amount mentioned in table 4.1, item 3, column 3; or

(b) for an offence committed by any other individual—the amount mentioned in table 4.1, item 3, column 4; or

(c) for an offence committed by a body corporate—the amount mentioned in table 4.1, item 3, column 5.

Table 4.1 Monetary penalties—categories 1 to 3

column 1 item	column 2 monetary penalty category	column 3 monetary penalty—individual conducting business or undertaking etc	column 4 monetary penalty—other individual	column 5 monetary penalty—body corporate
1	category 1	$2 085 000	$1 042 000	$10 425 000
2	category 2	$418 000	$209 000	$2 090 000
3	category 3	$140 000	$70 000	$700 000

4.1A Monetary penalties—industrial manslaughter

In this Act:

industrial manslaughter monetary penalty means $18 000 000.

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4.2 Monetary penalties—tiers A to I

In this Act:

tier A monetary penalty means the following amounts as indexed under section 4.4 and rounded under section 4.5:

(a) for an offence committed by an individual—the amount mentioned in table 4.2, item 1, column 3; or

(b) for an offence committed by a body corporate—the amount mentioned in table 4.2, item 1, column 4.

tier B monetary penalty means the following amounts as indexed under section 4.4 and rounded under section 4.5:

(a) for an offence committed by an individual—the amount mentioned in table 4.2, item 2, column 3; or

(b) for an offence committed by a body corporate—the amount mentioned in table 4.2, item 2, column 4.

tier C monetary penalty means the following amounts as indexed under section 4.4 and rounded under section 4.5:

(a) for an offence committed by an individual—the amount mentioned in table 4.2, item 3, column 3; or

(b) for an offence committed by a body corporate—the amount mentioned in table 4.2, item 3, column 4.

tier D monetary penalty means the following amounts as indexed under section 4.4 and rounded under section 4.5:

(a) for an offence committed by an individual—the amount mentioned in table 4.2, item 4, column 3; or

(b) for an offence committed by a body corporate—the amount mentioned in table 4.2, item 4, column 4.

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tier E monetary penalty means the following amounts as indexed under section 4.4 and rounded under section 4.5:

(a) for an offence committed by an individual—the amount mentioned in table 4.2, item 5, column 3; or

(b) for an offence committed by a body corporate—the amount mentioned in table 4.2, item 5, column 4.

tier F monetary penalty means the following amounts as indexed under section 4.4 and rounded under section 4.5:

(a) for an offence committed by an individual—the amount mentioned in table 4.2, item 6, column 3; or

(b) for an offence committed by a body corporate—the amount mentioned in table 4.2, item 6, column 4.

tier G monetary penalty means the following amounts as indexed under section 4.4 and rounded under section 4.5:

(a) for an offence committed by an individual—the amount mentioned in table 4.2, item 7, column 3; or

(b) for an offence committed by a body corporate—the amount mentioned in table 4.2, item 7, column 4.

tier H monetary penalty means the following amounts as indexed under section 4.4 and rounded under section 4.5:

(a) for an offence committed by an individual—the amount mentioned in table 4.2, item 8, column 3; or

(b) for an offence committed by a body corporate—the amount mentioned in table 4.2, item 8, column 4.

tier I monetary penalty means the following amounts as indexed under section 4.4 and rounded under section 4.5:

(a) for an offence committed by an individual—the amount mentioned in table 4.2, item 9, column 3; or

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(b) for an offence committed by a body corporate—the amount mentioned in table 4.2, item 9, column 4.

Table 4.2 Monetary penalties—tiers A to I

column 1 item	column 2 monetary penalty tier	column 3 monetary penalty—individual	column 4 monetary penalty—body corporate
1	tier A	$139 000	$695 000
2	tier B	$70 000	$350 000
3	tier C	$28 000	$140 000
4	tier D	$14 000	$70 000
5	tier E	$8 400	$42 000
6	tier F	$7 000	$35 000
7	tier G	$5 000	$25 000
8	tier H	$2 800	$14 000
9	tier I	$1 700	$8 500

4.3 Monetary penalties—WHS civil penalty tiers 1 to 4

In this Act:

WHS civil penalty provision tier 1 means the following amounts as indexed under section 4.4 and rounded under section 4.5:

(a) for an offence committed by an individual—the amount mentioned in table 4.3, item 1, column 3; or

(b) for an offence committed by a body corporate—the amount mentioned in table 4.3, item 1, column 4.

WHS civil penalty provision tier 2 means the following amounts as indexed under section 4.4 and rounded under section 4.5:

(a) for an offence committed by an individual—the amount mentioned in table 4.3, item 2, column 3; or

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(b) for an offence committed by a body corporate—the amount mentioned in table 4.3, item 2, column 4.

WHS civil penalty provision tier 3 means the following amounts as indexed under section 4.4 and rounded under section 4.5:

(a) for an offence committed by an individual—the amount mentioned in table 4.3, item 3, column 3; or

(b) for an offence committed by a body corporate—the amount mentioned in table 4.3, item 3, column 4.

WHS civil penalty provision tier 4 means the following amounts as indexed under section 4.4 and rounded under section 4.5:

(a) for an offence committed by an individual—the amount mentioned in table 4.3, item 4, column 3; or

(b) for an offence committed by a body corporate—the amount mentioned in table 4.3, item 4, column 4.

Table 4.3 WHS civil penalty provision—tiers 1 to 4

column 1 item	column 2 monetary penalty tier	column 3 monetary penalty—individual	column 4 monetary penalty—body corporate
1	tier 1	$28 000	$140 000
2	tier 2	$14 000	$70 000
3	tier 3	$7 000	$35 000
4	tier 4	$2 800	$14 000

4.4 Indexation of penalty amounts

(1) The amount of each monetary penalty set out in sections 4.1 to 4.3 must be indexed for the year starting on 1 July 2024, and for each subsequent year, in accordance with this section.

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(2) The amount of a monetary penalty applying in a year is worked out as follows:

$$A \times \frac{B}{C}$$

A means the amount of a monetary penalty set out in sections 4.1 to 4.3.

B means the CPI number for the March quarter in the year immediately preceding the year for which the amount is worked out.

C means the CPI number for the March quarter of 2022.

(3) If the amount of a monetary penalty worked out for a year is less than the amount that applied in the previous year, then the amount for the previous year continues to apply.

(4) In this section:

CPI number means the All Groups Consumer Price Index number, that is, the weighted average of the 8 Australian capital cities, published by the Australian statistician.

year means 12 months starting on 1 July.

4.5 Rounding of maximum penalty amounts

If, after indexation under section 4.4, the amount of a monetary penalty is—

(a) less than $10 000 and not a multiple of $100—

(i) the amount must be rounded to the nearest $100; and

(ii) an amount of $50 is rounded down; or

(b) more than $10 000 and not a multiple of $1 000—

(i) the amount must be rounded to the nearest $1 000; and

(ii) an amount of $500 is rounded down.

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4.6 Notification of adjusted maximum penalty amounts

(1) As soon as practicable after publication by the Australian statistician of the CPI number for the March quarter each year, the regulator must give notice of the amount of each monetary penalty worked out under this schedule.

(2) A notice is a notifiable instrument.

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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
- Corporations Act
- emergency service
- found guilty (of an offence)
- function
- home address
- medical practitioner
- police officer
- the Territory
- working day.

appointed member, of the council, for schedule 2, division 2.1.2 (Constitution and meetings)—see section 2.3A.

approved code of practice means a code of practice approved under division 14.2 (Codes of practice).

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.

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

authorised person, for a body corporate, for division 13.4 (Offences by bodies corporate)—see section 244.

board of directors, for a body corporate, for division 13.4 (Offences by bodies corporate)—see section 244.

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category 1 monetary penalty—see schedule 4, section 4.1.

category 2 monetary penalty—see schedule 4, section 4.1.

category 3 monetary penalty—see schedule 4, section 4.1.

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.

commissioner—see ***work health and safety commissioner***.

compliance and enforcement policy, for schedule 2, part 2.2 (Office of the Work Health and Safety Commissioner)—see section 2.37.

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.

council means the Work Health and Safety Council established under schedule 2, section 2.1.

dangerous incident, for part 3 (Incident notification)—see section 37.

demolition includes deconstruction.

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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.

eligible union, for a major construction project, for division 5.3 (Health and safety representatives)—see section 49C.

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).

fault element—see the Criminal Code, section 17.

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.

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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.

industrial manslaughter monetary penalty—see schedule 4, section 4.1A.

industrial manslaughter offence means an offence against section 34A (Industrial manslaughter).

infringement notice—see the *Magistrates Court Act 1930*, dictionary.

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

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.

major construction project, for part 5 (Consultation, representation and participation)—see section 49A.

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.

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office—see ***office of the work health and safety commissioner***.

office of the work health and safety commissioner, for schedule 2 (The regulator and local tripartite consultation arrangements and other local arrangements)—means the Office of the Work Health and Safety Commissioner established under section 2.18.

officer means—

(a) an officer within the meaning of the Corporations Act, section 9, 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.

physical element—see the Criminal Code, section 14.

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).

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principal contractor, for a major construction project, for part 5 (Consultation, representation and participation)—see section 49B.

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

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 WHS Commissioner.

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

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.

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serious injury or illness, for part 3 (Incident notification)—see section 36.

sexual assault incident, for part 3 (Incident notification)—see section 37A.

staff of the office, for schedule 2, part 2.2 (Office of the Work Health and Safety Commissioner)—see section 2.30.

State includes Territory.

statement of expectations, for schedule 2, part 2.2 (Office of the Work Health and Safety Commissioner)—see section 2.39.

statement of operational intent, for schedule 2, part 2.2 (Office of the Work Health and Safety Commissioner)—see section 2.40.

State or Territory industrial law—see the Fair Work Act, section 26 (2).

strategic plan, for schedule 2, part 2.2 (Office of the Work Health and Safety Commissioner)—see section 2.38.

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.

tier A monetary penalty—see schedule 4, section 4.2.

tier B monetary penalty—see schedule 4, section 4.2.

tier C monetary penalty—see schedule 4, section 4.2.

tier D monetary penalty—see schedule 4, section 4.2.

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tier E monetary penalty—see schedule 4, section 4.2.

tier F monetary penalty—see schedule 4, section 4.2.

tier G monetary penalty—see schedule 4, section 4.2.

tier H monetary penalty—see schedule 4, section 4.2.

tier I monetary penalty—see schedule 4, section 4.2.

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 civil penalty provision tier 1—see schedule 4, section 4.3.

WHS civil penalty provision tier 2—see schedule 4, section 4.3.

WHS civil penalty provision tier 3—see schedule 4, section 4.3.

WHS civil penalty provision tier 4—see schedule 4, section 4.3.

WHS commissioner—see ***work health and safety commissioner***.

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).

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worker—see section 7.

work group means a work group determined under part 5 (Consultation, representation and participation).

work health and safety commissioner means the Work Health and Safety Commissioner appointed under schedule 2, section 2.21.

workplace—see section 8.

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Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

A = Act
AF = Approved form
am = amended
amdt = amendment
AR = Assembly resolution
ch = chapter
CN = Commencement notice
def = definition
DI = Disallowable instrument
dict = dictionary
disallowed = disallowed by the Legislative Assembly
div = division
exp = expires/expired
Gaz = gazette
hdg = heading
IA = Interpretation Act 1967
ins = inserted/added
LA = Legislation Act 2001
LR = legislation register
LRA = Legislation (Republication) Act 1996
mod = modified/modification
NI = Notifiable instrument
o = order
om = omitted/repealed
ord = ordinance
orig = original
par = paragraph/subparagraph
pres = present
prev = previous
(prev...) = previously
pt = part
r = rule/subrule
reloc = relocated
renum = renumbered
R[X] = Republication No
RI = reissue
s = section/subsection
sch = schedule
sdiv = subdivision
SL = Subordinate law
sub = substituted
underlining = whole or part not commenced or to be expired

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3 Legislation history

Work Health and Safety Act 2011 A2011-35
notified LR 29 September 2011
s 1, s 2 commenced 29 September 2011 (LA s 75 (1))
remainder commenced 1 January 2012 (s 2 and CN2011-12)

as amended by

Statute Law Amendment Act 2011 (No 3) A2011-52 sch 3 pt 3.55
notified LR 28 November 2011
s 1, s 2 commenced 28 November 2011 (LA s 75 (1))
sch 3 pt 3.55 commenced 1 January 2012 (LA s 79A and see A2011-35))

as modified by

Work Health and Safety Regulation 2011 SL2011-36 pt 20.4A (as am by SL2012-9 s 4, SL2012-31 s 4)
notified LR 19 December 2011
s 1, s 2 commenced 19 December 2011 (LA s 75 (1))
pt 20.4A commenced 1 January 2012 (s 2 (1) and see Work Health and Safety Act 2011 A2011-35, s 2 and CN2011-12)

Work Health and Safety Amendment Regulation 2012 (No 1) SL2012-9
notified LR 19 March 2012
s 1, s 2 taken to have commenced 1 January 2012 (LA s 75 (2))
remainder taken to have commenced 1 January 2012 (s 2)

Note This regulation only amends the Work Health and Safety Regulation 2011 SL2011-36.

as amended by

Work Health and Safety (Bullying) Amendment Act 2012 A2012-6
notified LR 1 March 2012
s 1, s 2 commenced 1 March 2012 (LA s 75 (1))
remainder commenced 1 June 2012 (s 2 and CN2012-10)

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Statute Law Amendment Act 2012 A2012-21 sch 3 pt 3.58

notified LR 22 May 2012
s 1, s 2 commenced 22 May 2012 (LA s 75 (1))
amdt 3.222 commenced 5 June 2012 (s 2 (2))
sch 3 pt 3.58 remainder commenced 5 June 2012 (s 2 (1))

Work Health and Safety Amendment Regulation 2012 (No 2) SL2012-31

notified LR 5 July 2012
s 1, s 2 taken to have commenced 1 January 2012 (LA s 75 (2))
remainder taken to have commenced 1 January 2012 (s 2)

Note This regulation only amends the Work Health and Safety Regulation 2011 SL2011-36.

Statute Law Amendment Act 2013 A2013-19 sch 3 pt 3.54

notified LR 24 May 2013
s 1, s 2 commenced 24 May 2013 (LA s 75 (1))
sch 3 pt 3.54 commenced 14 June 2013 (s 2)

Statute Law Amendment Act 2013 (No 2) A2013-44 sch 3 pt 3.24

notified LR 11 November 2013
s 1, s 2 commenced 11 November 2013 (LA s 75 (1))
sch 3 pt 3.24 commenced 25 November 2013 (s 2)

Statute Law Amendment Act 2014 A2014-18 sch 3 pt 3.25

notified LR 20 May 2014
s 1, s 2 commenced 20 May 2014 (LA s 75 (1))
sch 3 pt 3.25 commenced 10 June 2014 (s 2 (1))

Dangerous Substances (Asbestos Safety Reform) Legislation Amendment Act 2014 A2014-53 pt 8

notified LR 3 December 2014
s 1, s 2 commenced 3 December 2014 (LA s 75 (1))
pt 8 commenced 1 January 2015 (s 2)

Red Tape Reduction Legislation Amendment Act 2015 A2015-33 sch 1 pt 1.78

notified LR 30 September 2015
s 1, s 2 commenced 30 September 2015 (LA s 75 (1))
sch 1 pt 1.78 commenced 14 October 2015 (s 2)

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Red Tape Reduction Legislation Amendment Act 2016 A2016-18 sch 3 pt 3.50

notified LR 13 April 2016
s 1, s 2 commenced 13 April 2016 (LA s 75 (1))
sch 3 pt 3.50 commenced 27 April 2016 (s 2)

Workplace Privacy Amendment Act 2016 A2016-22 s 22

notified LR 14 April 2016
s 1, s 2 commenced 14 April 2016 (LA s 75 (1))
s 22 commenced 14 October 2016 (s 2 (1) (as am by A2016-37 amdt 1.44) and LA s 79)

Emergencies Amendment Act 2016 A2016-33 sch 1 pt 1.24

notified LR 20 June 2016
s 1, s 2 commenced 20 June 2016 (LA s 75 (1))
sch 1 pt 1.24 commenced 21 June 2016 (s 2)

Justice and Community Safety Legislation Amendment Act 2016 A2016-37 amdt 1.44

s 1, s 2 commenced 22 June 2016 (LA s 75 (1))
amdt 1.44 commenced 29 June 2016 (s 2)

Note This Act only amends the Workplace Privacy Amendment Act 2016 A2016-22.

Public Sector Management Amendment Act 2016 A2016-52 sch 1 pt 1.65

notified LR 25 August 2016
s 1, s 2 commenced 25 August 2016 (LA s 75 (1))
sch 1 pt 1.65 commenced 1 September 2016 (s 2)

Work Health and Safety Legislation Amendment Act 2018 A2018-8 pt 3

notified LR 5 March 2018
s 1, s 2 commenced 5 March 2018 (LA s 75 (1))
pt 3 commenced 29 March 2018 (s 2)

Work Health and Safety Amendment Act 2018 A2018-26 pt 2

notified LR 15 August 2018
s 1, s 2 commenced 15 August 2018 (LA s 75 (1))
pt 2 commenced 1 January 2019 (s 2)

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Red Tape Reduction Legislation Amendment Act 2018 A2018-33 sch 1 pt 1.42

notified LR 25 September 2018
s 1, s 2 commenced 25 September 2018 (LA s 75 (1))
sch 1 pt 1.42 commenced 23 October 2018 (s 2 (4))

Courts (Fair Work and Work Safety) Legislation Amendment Act 2019 A2019-32 pt 6

notified LR 9 October 2019
s 1, s 2 commenced 9 October 2019 (LA s 75 (1))
s 3, pt 6 commenced 10 October 2019 (s 2 (1))

Work Health and Safety Amendment Act 2019 A2019-38

notified LR 31 October 2019
s 1, s 2 commenced 31 October 2019 (LA s 75 (1))
ss 3-21, s 23, s 24 and s 27 commenced 5 December 2019 (s 2 (1) and CN2019-20)
remainder commenced 30 April 2020 (s 2 (1) and LA s 79)

Employment and Workplace Safety Legislation Amendment Act 2020 A2020-30 pt 4 (as am by A2020-42 s 70)

notified LR 9 July 2020
s 1, s 2 commenced 9 July 2020 (LA s 75 (1))
ss 105-108 commenced 7 September 2020 (s 2 (2) (as am by A2020-42 s 70) and CN2020-20)
pt 4 remainder commenced 10 July 2020 (s 2 (1))

Justice Legislation Amendment Act 2020 A2020-42 s 70

notified LR 27 August 2020
s 1, s 2 commenced 27 August 2020 (LA s 75 (1))
s 70 commenced 28 August 2020 (s 2 (9))

Note This Act only amends the Employment and Workplace Safety Legislation Amendment Act 2020 A2020-30.

Work Health and Safety Amendment Act 2021 A2021-19

notified LR 11 August 2021
s 1, s 2 commenced 11 August 2021 (LA s 75 (1))
remainder commenced 11 November 2021 (s 2)

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Legislation (Legislative Assembly Committees) Amendment Act 2022 A2022-4 sch 1 pt 1.23

notified LR 30 March 2022
s 1, s 2 commenced 30 March 2022 (LA s 75 (1))
sch 1 pt 1.23 commenced 6 April 2022 (s 2)

Workplace Legislation Amendment Act 2022 A2022-23 pt 4

notified LR 9 December 2022
s 1, s 2 commenced 9 December 2022 (LA s 75 (1))
pt 4 commenced 9 June 2023 (s 2 (2))

Work Health and Safety Amendment Act 2023 A2023-31

notified LR 7 July 2023
s 1, s 2 taken to have commenced 20 October 2022 (LA s 75 (2))
remainder taken to have commenced 20 October 2022 (s 2)

Workplace Legislation Amendment Act 2024 A2024-15 pt 4

notified LR 19 April 2024
s 1, s 2 commenced 19 April 2024 (LA s 75 (1))
pt 4 commenced 19 August 2024 (s 2 (2))

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4 Amendment history

Long title
long title — am A2018-8 s 27

Commencement
s 2 — om LA s 89 (4)

Scope
s 12 — am A2018-8 s 28, s 29

Application of Act to dangerous goods and high risk plant—sch 1
s 12AA — ins A2018-8 s 30

Offences against Act—application of Criminal Code etc
s 12B — am A2024-15 s 7

Duty of officers
s 27 — am A2021-19 s 4

Negligence or reckless conduct—category 1
s 31 hdg — sub A2022-23 s 19
s 31 — am A2012-21 amdt 3.220; A2019-32 s 17; A2022-23 s 20; A2024-15 s 8, s 9

Failure to comply with health and safety duty—category 2
s 32 — am A2024-15 s 10

Failure to comply with health and safety duty—category 3
s 33 — am A2024-15 s 11

Industrial manslaughter
div 2.6 hdg — ins A2021-19 s 5

Industrial manslaughter
s 34A — ins A2021-19 s 5
am A2024-15 s 12

Alternative verdict for industrial manslaughter
s 34B — ins A2021-19 s 5

What is a *notifiable incident*
s 35 — am A2022-23 s 21

What is a *serious injury or illness*—pt 3
s 36 — am A2012-21 amdt 3.221

What is a *sexual assault incident*—pt 3
s 37A — ins A2022-23 s 22

Duty to notify of notifiable incidents
s 38 — am A2022-23 s 23; A2024-15 s 31, s 32

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Duty to preserve incident sites
s 39 am A2022-23 s 24; A2024-15 s 31

Requirements for authorisation of workplaces
s 41 am A2024-15 s 29

Requirements for authorisation of plant or substance
s 42 am A2024-15 s 30

Requirements for authorisation of work
s 43 am A2024-15 s 30

Requirements for prescribed qualifications or experience
s 44 am A2024-15 s 30

Requirement to comply with conditions of authorisation
s 45 am A2024-15 s 30

Duty to consult with other duty-holders
s 46 am A2024-15 s 30

Duty to consult workers
s 47 am A2024-15 s 30

Definitions
sdiv 5.3.1A hdg ins A2018-26 s 4

Meaning of *major construction project*—pt 5
s 49A ins A2018-26 s 4

Meaning of *principal contractor*—pt 5
s 49B ins A2018-26 s 4

Meaning of *eligible union*—div 5.3
s 49C ins A2018-26 s 4

Consultation with eligible unions—major construction project
s 50A ins A2018-26 s 5
am A2024-15 s 31

Exemption from certain requirements under this part
s 50B ins A2018-26 s 5

Election of health and safety representatives—major construction project
s 50C ins A2018-26 s 5

Determination of work groups
s 51 am A2018-26 s 6

Negotiations for agreement for work group
s 52 am A2011-52 amdt 3.202; A2018-26 s 7, s 8; A2022-23 s 25; A2024-15 s 31

Notice to workers
s 53 am A2024-15 s 33

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Failure of negotiations
s 54 am A2018-26 s 9, s 10

Determination of work groups of multiple businesses
s 55 am A2018-26 s 11

Negotiation of agreement for work groups of multiple businesses
s 56 am A2024-15 s 31

Notice to workers
s 57 am A2024-15 s 33

Procedure for election of health and safety representatives
s 61 am A2024-15 s 31

General obligations of person conducting business or undertaking
s 70 am A2024-15 s 31

Exceptions from obligations under s 70 (1)
s 71 am A2024-15 s 31

Obligation to train health and safety representatives
s 72 am A2018-26 s 12; A2022-23 s 26, s 27; A2024-15 s 31

Obligation to train health and safety representatives—major construction project
s 72A ins A2018-26 s 13
am A2024-15 s 31

Obligation to share costs if multiple businesses or undertakings
s 73 am A2018-26 s 14

List of health and safety representatives
s 74 am A2024-15 s 33

Health and safety committees
s 75 am A2024-15 s 32

Constitution of committee
s 76 am A2018-26 s 15, s 16

Duties of person conducting business or undertaking
s 79 am A2024-15 s 31

Obligation to train health and safety committee members—major construction project
s 79A ins A2018-26 s 17
am A2024-15 s 31

Health and safety representative may direct that unsafe work cease
s 85 am A2018-26 s 18

Provisional improvement notices
s 90 am A2018-26 s 18

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Display of provisional improvement notice
s 97 am A2024-15 s 32

Offence to contravene a provisional improvement notice
s 99 am A2024-15 s 29

Prohibition of discriminatory conduct
s 104 am A2024-15 s 28

Prohibition of requesting, instructing, inducing, encouraging, authorising or assisting discriminatory conduct
s 107 am A2024-15 s 28

Prohibition of coercion or inducement
s 108 am A2012-21 amdt 3.222; A2016-33 amdt 1.55; A2024-15 s 28

Misrepresentation
s 109 am A2024-15 s 28

Rights that may be exercised while at workplace
s 118 am A2020-30 ss 105-107; A2024-15 s 34

Notice of exercise of right under s 118 (1) (da)
s 118A ins A2020-30 s 108

Contravening WHS entry permit conditions
s 123 am A2024-15 s 13

WHS entry permit-holder must also hold permit under other law
s 124 am A2024-15 s 35

WHS entry permit to be available for inspection
s 125 am A2024-15 s 35

When right may be exercised
s 126 am A2024-15 s 35

Work health and safety requirements
s 128 am A2024-15 s 35

Residential premises
s 129 am A2024-15 s 35

Application for WHS entry permit
s 131 am A2012-21 amdt 3.223; A2016-18 amdt 3.225, amdt 3.226

Contravening order made to deal with dispute
s 143 am A2024-15 s 34

Person must not refuse or delay entry of WHS entry permit-holder
s 144 am A2024-15 s 34

Person must not hinder or obstruct WHS entry permit-holder
s 145 am A2024-15 s 34

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WHS entry permit-holder must not delay, hinder or obstruct any person or disrupt work at workplace
s 146 am A2024-15 s 35

Misrepresentations about things authorised by this part
s 147 am A2024-15 s 34

Unauthorised use or disclosure of information or documents
s 148 am A2024-15 s 14, s 34

Return of WHS entry permits
s 149 am A2024-15 s 15

Union to provide information to regulator
s 150 am A2024-15 s 16

Powers of regulator to obtain information
s 155 am A2014-18 amdt 3.126; A2022-23 ss 28-30; A2024-15 s 31

General powers on entry
s 165 am A2012-21 amdt 3.224; A2024-15 s 31

Search warrants
s 167 am A2016-18 amdt 3.227

Warrants—application made other than in person
s 167A am A2018-33 amdt 1.81, amdt 1.82

Power to require production of documents and answers to questions
s 171 am A2022-23 ss 31-34; A2024-15 s 31

Abrogation of privilege against self-incrimination
s 172 am A2022-23 s 35; A2024-15 s 17

Warning to be given
s 173 am A2022-23 ss 36-39

Powers supporting seizure
s 177 am A2024-15 s 31

Power to require name and address
s 185 am A2012-21 amdt 3.225; A2024-15 s 18

Offence to hinder or obstruct inspector
s 188 am A2024-15 s 31

Offence to impersonate inspector
s 189 am A2024-15 s 19

Offence to assault, threaten or intimidate inspector
s 190 am A2024-15 s 20

Compliance with improvement notice
s 193 am A2024-15 s 29

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Compliance with prohibition notice
s 197 am A2024-15 s 28

Prohibited asbestos notices
div 10.2A hdg ins A2020-30 s 109

Definitions—div 10.2A
s 197A ins A2020-30 s 109
def ***asbestos*** ins A2020-30 s 109
def ***asbestos containing material (ACM)*** ins A2020-30 s 109
def ***prohibited asbestos*** ins A2020-30 s 109
def ***relevant person*** ins A2020-30 s 109

Issue of prohibited asbestos notice
s 197B ins A2020-30 s 109

Contents of prohibited asbestos notice
s 197C ins A2020-30 s 109

Compliance with prohibited asbestos notice
s 197D ins A2020-30 s 109
am A2024-15 s 28

Extension of time for compliance with prohibited asbestos notice
s 197E ins A2020-30 s 109

Compliance with non-disturbance notice
s 200 am A2024-15 s 29

Application—div 10.4
s 202 am A2020-30 s 110

Directions in notices
s 204 am A2020-30 s 111, s 112

Recommendations in notice
s 205 am A2020-30 s 113

Changes to notice
s 206 sub A2020-30 s 114

Regulator may vary or cancel notice
s 207 am A2020-30 s 115

Display of notice
s 210 am A2024-15 s 32

When regulator may carry out action
s 211 am A2020-30 s 116

Power of the regulator to take other remedial action
s 212 am A2020-30 s 117, s 118

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Costs of remedial or other action
s 213 am A2020-30 s 119

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s 214 am A2020-30 s 120

Regulator may accept WHS undertakings
s 216 am A2021-19 s 6

Compliance with WHS undertaking
s 219 am A2024-15 s 29

Which decisions are reviewable
s 223 am A2018-26 s 19, s 20; A2020-30 s 121

Application for external review
s 229 am A2013-44 amdt 3.202

Procedure if prosecution is not brought
s 231 am A2021-19 s 7, s 8; A2022-23 ss 40-42

Limitation period for prosecutions
s 232 am A2021-19 s 9

Offence to fail to comply with order
s 242 am A2024-15 s 29

Offences by bodies corporate
div 13.4 hdg sub A2024-15 s 21

Definitions—div 13.4
s 244 sub A2024-15 s 21
def ***authorised person*** ins A2024-15 s 21
def ***board of directors*** ins A2024-15 s 21

Physical elements
s 244A ins A2024-15 s 21

Fault elements other than negligence
s 244B ins A2024-15 s 21

Negligence
s 244BA ins A2024-15 s 21

Mistake of fact
s 244C ins A2024-15 s 21

Failure to take reasonable precautions
s 244D ins A2024-15 s 21

How this division applies to public authorities
s 244E ins A2024-15 s 21

Officers
s 247 am A2011-52 amdt 3.203

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Responsible agency for the Territory
s 248 am A2012-21 amdt 3.226

When is a provision a *WHS civil penalty provision*
s 254 am A2024-15 s 22

Confidentiality of information
s 271 am A2022-23 s 43; A2024-15 s 31

Additional ways that regulator may use and share information
s 271A ins A2022-23 s 44
am A2024-15 s 23

No insurance or other indemnity against penalties
s 272A ins A2022-23 s 45
am A2024-15 s 29

Liability of officers for offences by body corporate under s 272A
s 272B ins A2022-23 s 45
am A2024-15 s 24

Person not to levy workers
s 273 am A2024-15 s 32

Relationship with Legislative Assembly
s 273A ins A2023-31 s 4

Approved codes of practice
s 274 am A2013-19 amdt 3.515; A2013-44 amdt 3.203, amdt 3.204; A2014-53 s 64; A2015-33 amdt 1.267

Regulation-making powers
s 276 am A2014-18 amdt 3.127; A2024-15 s 25

Approved forms
s 277 am A2012-21 amdt 3.227

Transitional
pt 20 hdg exp 1 January 2014 (s 307 (1) (LA s 88 declaration applies))

Definitions—pt 20
s 300 exp 1 January 2014 (s 307 (1) (LA s 88 declaration applies))
def ***commencement day*** exp 1 January 2014 (s 307 (1) (LA s 88 declaration applies))

Worker consultation units to be work groups
s 301 exp 1 January 2014 (s 307 (1) (LA s 88 declaration applies))

Work safety representatives to be health and safety representatives
s 302 exp 1 January 2014 (s 307 (1) (LA s 88 declaration applies))

Work safety committees to be health and safety committees
s 303 exp 1 January 2014 (s 307 (1) (LA s 88 declaration applies))

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Authorised representatives to be WHS entry permit-holders
s 304 exp 1 January 2014 (s 307 (1) (LA s 88 declaration applies))

Inspectors
s 305 exp 1 January 2014 (s 307 (1) (LA s 88 declaration applies))

Investigations under Work Safety Act 2008
s 305A ins as mod SL2011-36 s 816A (as ins by SL2012-9 s 4)
sub as mod SL2011-36 s 816A (as ins by SL2012-31 s 4)
exp 1 January 2014 (s 305A and see s 307 (1)

Functions under director-general's delegations
s 305B ins as mod SL2011-36 s 816A (as ins by SL2012-31 s 4)
exp 1 January 2014 (s 305B and see s 307 (1)

Membership of Work Safety Council
s 305C ins as mod SL2011-36 s 816A (as ins by SL2012-31 s 4)
exp 1 January 2014 (s 305C and see s 307 (1)

Transitional regulations
s 306 exp 1 January 2014 (s 307 (1) (LA s 88 declaration applies))

Expiry—pt 20
s 307 exp 1 January 2014 (s 307 (1) (LA s 88 declaration applies))

Transitional—investigations
pt 21 hdg ins A2014-18 amdt 3.128
exp 10 June 2019 (s 311)

Meaning of commencement day—pt 21
s 308 ins A2014-18 amdt 3.128
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Investigations under Work Safety Act 2008 (repealed)
s 309 ins A2014-18 amdt 3.128
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Functions under director-general's delegations
s 310 ins A2014-18 amdt 3.128
exp 10 June 2019 (s 311)

Expiry—pt 21
s 311 ins A2014-18 amdt 3.128
exp 10 June 2019 (s 311)

Application of Act to dangerous goods and high risk plant
sch 1 hdg am A2018-8 s 31
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Work health and safety council
sch 2 pt 2.1 hdg sub A2019-38 s 4

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Establishment
sch 2 s 2.1 am A2019-38 s 5

Functions
sch 2 s 2.2 am A2012-6 s 4, s 5; A2016-22 s 22; A2019-38 ss 6-8

Membership
sch 2 s 2.3 sub A2019-38 s 9

Meaning of *appointed member*—div 2.1.2
sch 2 s 2.3A ins A2019-38 s 10

Terms of appointment
sch 2 s 2.4 am A2019-38 ss 11-13

Chair and deputy chair
sch 2 s 2.5 sub A2019-38 s 14

Reporting of disclosed council interests to Minister
sch 2 s 2.8 am A2022-4 amdt 1.82, amdt 1.83

Ending appointment of council member
sch 2 s 2.9 am A2019-38 ss 15-18

Quorum at council meetings
sch 2 s 2.12 am A2019-38 s 19

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def ***compliance and enforcement policy*** ins A2019-38 s 22
def ***statement of expectations*** ins A2019-38 s 22
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def ***strategic plan*** ins A2019-38 s 22

Establishment and functions of office
sch 2 div 2.2.2 hdg ins A2019-38 s 22

Establishment of office
sch 2 s 2.18 am A2016-52 amdt 1.174
sub A2019-38 s 22

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Constitution of office
sch 2 s 2.19 sub A2019-38 s 22

Functions of office
sch 2 s 2.20 sub A2019-38 s 22

Work health and safety commissioner
sch 2 div 2.2.3 hdg ins A2019-38 s 22

Appointment of WHS commissioner
sch 2 s 2.21 sub A2019-38 s 22

Functions of WHS commissioner
sch 2 s 2.22 sub A2019-38 s 22

Independence of WHS commissioner and Ministerial directions
sch 2 s 2.23 om A2016-52 amdt 1.175
ins A2019-38 s 22

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sch 2 s 2.24 am A2016-52 amdt 1.176
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sch 2 s 2.25 ins A2019-38 s 22

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sch 2 s 2.26 ins A2019-38 s 22

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sch 2 s 2.27 ins A2019-38 s 22

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sch 2 s 2.28 ins A2019-38 s 22

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sch 2 div 2.2.4 hdg ins A2019-38 s 22

Meaning of *staff of the office*—pt 2.2
sch 2 s 2.30 ins A2019-38 s 22

Appointment of deputy WHS commissioner
sch 2 s 2.31 ins A2019-38 s 22

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sch 2 s 2.32 ins A2019-38 s 22

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sch 2 s 2.33 ins A2019-38 s 22

Independence of staff of the office
sch 2 s 2.34 ins A2019-38 s 22

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Delegation of functions
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sch 2 s 2.36 ins A2019-38 s 22

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Ministerial statement of expectations
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Statement of operational intent
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sch 3 s 7.1 am A2016-18 amdt 3.228

Penalty amounts
sch 4 hdg ins A2024-15 s 26

Monetary penalties—categories 1 to 3
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Dictionary

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def ***appointed member*** ins A2019-38 s 23
def ***asbestos*** ins A2020-30 s 122
def ***asbestos containing material (ACM)*** ins A2020-30 s 122
def ***authorised person*** ins A2024-15 s 27
def ***board of directors*** ins A2024-15 s 27
def ***category 1 monetary penalty*** ins A2024-15 s 27
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def ***compliance and enforcement policy*** ins A2019-38 s 23
def ***council*** ins A2013-19 amdt 3.516
am A2019-38 s 24
def ***eligible union*** ins A2018-26 s 21
def ***fault element*** ins A2024-15 s 27
def ***industrial manslaughter monetary penalty*** ins A2024-15 s 27
def ***industrial manslaughter offence*** ins A2021-19 s 10
def ***infringement notice*** ins A2012-21 amdt 3.230
def ***infringement notice offence*** ins A2012-21 amdt 3.230
def ***major construction project*** ins A2018-26 s 21
def ***medical treatment*** om A2012-21 amdt 3.231
def ***office*** ins A2019-38 s 25
def ***office of the work health and safety commissioner*** ins A2019-38 s 25
def ***officer*** am A2012-21 amdt 3.232
def ***physical element*** ins A2024-15 s 27
def ***principal contractor*** ins A2018-26 s 21
def ***prohibited asbestos*** ins A2020-30 s 122
def ***regulator*** sub A2019-38 s 26
def ***relevant person*** ins A2020-30 s 122
def ***sexual assault incident*** ins A2022-23 s 46
def ***staff of the office*** ins A2019-38 s 27
def ***statement of expectations*** ins A2019-38 s 27
def ***statement of operational intent*** ins A2019-38 s 27
def ***strategic plan*** ins A2019-38 s 27

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def ***tier A monetary penalty*** ins A2024-15 s 27
def ***tier B monetary penalty*** ins A2024-15 s 27
def ***tier C monetary penalty*** ins A2024-15 s 27
def ***tier D monetary penalty*** ins A2024-15 s 27
def ***tier E monetary penalty*** ins A2024-15 s 27
def ***tier F monetary penalty*** ins A2024-15 s 27
def ***tier G monetary penalty*** ins A2024-15 s 27
def ***tier H monetary penalty*** ins A2024-15 s 27
def ***tier I monetary penalty*** ins A2024-15 s 27
def ***WHS civil penalty provision tier 1*** ins A2024-15 s 27
def ***WHS civil penalty provision tier 2*** ins A2024-15 s 27
def ***WHS civil penalty provision tier 3*** ins A2024-15 s 27
def ***WHS civil penalty provision tier 4*** ins A2024-15 s 27
def ***WHS commissioner*** ins A2019-38 s 27
def ***work health and safety commissioner*** ins A2019-38 s 27
def ***work safety commissioner*** om A2019-38 s 28

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5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 1 Jan 2012	1 Jan 2012– 31 May 2012	A2011-52	new Act and amendments by A2011-52
R1 (RI) 19 Mar 2012	1 Jan 2012– 31 May 2012	A2011-52	reissue for retrospective modifications by SL2011-36 as amended by SL2012-9
R1 (RI No 2) 5 July 2012	1 Jan 2012– 31 May 2012	A2011-52	further reissue for retrospective modification by SL2011-36 as amended by SL2012-31
R2 1 June 2012	1 June 2012– 4 June 2012	A2012-6	amendments by A2012-6
R3 5 June 2012	5 June 2012– 13 June 2013	A2012-21	amendments by A2012-21
R3 (RI) 5 July 2012	5 June 2012– 13 June 2013	A2012-21	reissue for retrospective modification by SL2011-36 as amended by SL2012-31
R4 14 June 2013	14 June 2013– 24 Nov 2013	A2013-19	amendments by A2013-19

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5 Earlier republications

Republication No and date	Effective	Last amendment made by	Republication for
R5 25 Nov 2013	25 Nov 2013– 1 Jan 2014	A2013-44	amendments by A2013-44
R6 2 Jan 2014	2 Jan 2014– 9 June 2014	A2013-44	expiry of modifications and transitional provisions (pt 20)
R7 10 June 2014	10 June 2014– 31 Dec 2014	A2014-18	amendments by A2014-18
R8 1 Jan 2015	1 Jan 2015– 13 Oct 2015	A2014-53	amendments by A2014-53
R9 14 Oct 2015	14 Oct 2015– 26 Apr 2016	A2015-33	amendments by A2015-33
R10 27 Apr 2016	27 Apr 2016– 20 June 2016	A2016-18	amendments by A2016-18
R11 21 June 2016	21 June 2016– 28 June 2016	A2016-33	amendments by A2016-33
R12 29 June 2016	29 June 2016– 31 Aug 2016	A2016-37	updated endnotes as amended by A2016-37
R13 1 Sept 2016	1 Sept 2016– 13 Oct 2016	A2016-52	amendments by A2016-52
R14 14 Oct 2016	14 Oct 2016– 28 Mar 2018	A2016-37	amendments by A2016-22 as amended by A2016-37
R15 29 Mar 2018	29 Mar 2018– 22 Oct 2018	A2018-8	amendments by A2018-8
R16 23 Oct 2018	23 Oct 2018– 31 Dec 2018	A2018-33	amendments by A2018-33
R17 1 Jan 2019	1 Jan 2019– 10 June 2019	A2018-26	amendments by A2018-26

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Republication No and date	Effective	Last amendment made by	Republication for
R18 11 June 2019	11 June 2019– 9 Oct 2019	A2018-26	expiry of transitional provisions (pt 21)
R19 10 Oct 2019	10 Oct 2019– 4 Dec 2019	A2019-32	amendments by A2019-32
R20 5 Dec 2019	5 Dec 2019– 29 Apr 2020	A2019-38	amendments by A2019-38
R21 30 Apr 2020	30 Apr 2020– 9 July 2020	A2019-38	amendments by A2019-38
R22 10 July 2020	10 July 2020– 6 Sept 2020	A2020-30	amendments by A2020-30
R23 7 Sept 2020	7 Sept 2020– 10 Nov 2021	A2020-42	amendments by A2020-30 and A2020-42
R24 11 Nov 2021	11 Nov 2021– 5 Apr 2022	A2021-19	amendments by A2021-19
R25 6 Apr 2022	6 Apr 2022– 19 Oct 2022	A2022-4	amendments by A2022-4
R25A 7 July 2023	20 Oct 2022– 8 June 2023	A2023-31	retrospective amendment by A2023-31
R26 9 June 2023	9 June 2023– 18 Aug 2024	A2022-23	amendments by A2022-23 does not include retrospective amendment by A2023-31 (see reissued republication)
R26 (RI) 7 July 2023	9 June 2023– 18 Aug 2024	A2022-23	retrospective amendment by A2023-31

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6 Expired transitional or validating provisions

This Act may be affected by transitional or validating provisions that have expired. The expiry does not affect any continuing operation of the provisions (see *Legislation Act 2001*, s 88 (1)).

Expired provisions are removed from the republished law when the expiry takes effect and are listed in the amendment history using the abbreviation 'exp' followed by the date of the expiry.

To find the expired provisions see the version of this Act before the expiry took effect. The ACT legislation register has point-in-time versions of this Act.

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