



Australian Capital Territory

# Work Health and Safety Amendment Act 2018

A2018-26

## Contents

---

	Page
<b>Part 1</b>	<b>Preliminary</b>
1	Name of Act 2
2	Commencement 2
3	Legislation amended 2
<b>Part 2</b>	<b>Work Health and Safety Act 2011</b>
4	New subdivision 5.3.1A 3
5	New sections 50A to 50C 5
6	Determination of work groups Section 51 (1) 7

---

J2017-495

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

## Contents

---

	Page	
7	Negotiations for agreement for work group Section 52 (2)	8
8	New section 52 (7)	8
9	Failure of negotiations Section 54 (3) (a)	8
10	New section 54 (5)	9
11	Determination of work groups of multiple businesses Section 55 (1), new note	9
12	Obligation to train health and safety representatives New section 72 (8)	9
13	New section 72A	9
14	Obligation to share costs if multiple businesses or undertakings Section 73 (1) (b)	11
15	Constitution of committee Section 76 (1)	11
16	New section 76 (4A)	12
17	New section 79A	12
18	Sections 85 (6) (a) and 90 (4) (a)	13
19	Which decisions are reviewable Table 223, new item 2A	14
20	Table 223, new item 3A	14
21	Dictionary, new definitions	14
<b>Part 3</b>	<b>Work Health and Safety Regulation 2011</b>	
22	Section 21 heading	15
23	Section 21 (1)	15
24	Section 21 (2)	15
25	New sections 21A and 21B	15



Australian Capital Territory

# Work Health and Safety Amendment Act 2018

A2018-26

---

An Act to amend the *Work Health and Safety Act 2011* and the *Work Health and Safety Regulation 2011* in relation to the regulation of health and safety representatives on major construction projects

---

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

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Work Health and Safety Amendment Act 2018*.

### 2 Commencement

This Act commences on 1 January 2019.

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

### 3 Legislation amended

This Act amends the *Work Health and Safety Act 2011* and the *Work Health and Safety Regulation 2011*.

---

## Part 2 Work Health and Safety Act 2011

### 4 New subdivision 5.3.1A

*before subdivision 5.3.1, insert*

#### 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.

*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.

**5 New sections 50A to 50C**

*in subdivision 5.3.1, insert*

**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:

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

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

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

## **6 Determination of work groups**

### **Section 51 (1)**

*substitute*

- (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.

**7 Negotiations for agreement for work group  
Section 52 (2)**

*substitute*

- (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).

**8 New section 52 (7)**

*insert*

- (7) In this section:

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

**9 Failure of negotiations  
Section 54 (3) (a)**

*substitute*

- (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

- (iii) within 14 days after the day a party to the agreement requests the variation of the agreement; or

**10 New section 54 (5)**

*insert*

- (5) In this section:

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

**11 Determination of work groups of multiple businesses  
Section 55 (1), new note**

*insert*

*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)).

**12 Obligation to train health and safety representatives  
New section 72 (8)**

*insert*

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

**13 New section 72A**

*insert*

**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.
- (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:

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

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

- (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.

**14** **Obligation to share costs if multiple businesses or undertakings**  
**Section 73 (1) (b)**

*after*

section 72 (2) (b)

*insert*

or section 72A (3) (b)

**15** **Constitution of committee**  
**Section 76 (1)**

*omit*

(4)

*substitute*

(4A)

**16 New section 76 (4A)**

*insert*

- (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.

**17 New section 79A**

*in division 5.4, insert*

**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.

- (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:

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

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

- (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.

## **18 Sections 85 (6) (a) and 90 (4) (a)**

*after*

section 72 (1) (b) (Obligation to train health and safety representatives)

*insert*

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

**19 Which decisions are reviewable  
Table 223, new item 2A**

*insert*

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.
----	---	--

**20 Table 223, new item 3A**

*insert*

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.
----	---	--

**21 Dictionary, new definitions**

*insert*

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

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

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

## Part 3                      Work Health and Safety    Regulation 2011

### **22            Section 21 heading**

*substitute*

### **21            Training for health and safety representatives—Act,    s 72 (1) and s 72A (2)**

### **23            Section 21 (1)**

*after*

(Obligation to train health and safety representatives)

*insert*

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

### **24            Section 21 (2)**

*omit*

(Obligation to train health and safety representatives)

*substitute*

and section 72A (2)

### **25            New sections 21A and 21B**

*in division 2.1.2, insert*

### **21A           Establishing a health and safety committee—major    construction project—Act, s 75 (1) (b)**

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

- (2) The principal contractor for the major construction project must establish a health and safety committee for the project.
- (3) The health and safety committee must be established within 2 months after the day work on the major construction project commences.

**21B Training for health and safety committee members—  
major construction project—Act, s 79A (2)**

- (1) For the purposes of the [Act](#), section 79A (2) (Obligation to train health and safety committee members—major construction project), members of the health and safety committee are entitled to attend a course of training in work health and safety that is not less than 4 hours of training.
- (2) In approving a course of training in work health and safety for the purposes of the [Act](#), section 79A (2) (a), the regulator may have regard to any relevant matters, including—
  - (a) the content and quality of the curriculum, including its relevance to the powers and functions of a health and safety committee; and
  - (b) the qualifications, knowledge and experience of the person who is to provide the course.

*Note* This section prescribes a course of training to which a health and safety committee member is entitled. In addition to the course, the health and safety committee member and the principal contractor for the major construction project may agree that the member will attend or receive further training.

---

## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 7 June 2018.

**2 Notification**

Notified under the [Legislation Act](#) on 15 August 2018.

**3 Republications of amended laws**

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

---

I certify that the above is a true copy of the Work Health and Safety Amendment Bill 2018, which was passed by the Legislative Assembly on 31 July 2018.

Clerk of the Legislative Assembly

© Australian Capital Territory 2018