

2011

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for Industrial Relations)

# Work Health and Safety Bill 2011

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2011

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for Industrial Relations)

## **Work Health and Safety Bill 2011**

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### **A Bill for**

An Act about work health and safety

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

1 **Part 1 Preliminary**

2 **Division 1.1 Introduction**

3 **1 Name of Act**

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

5 **2 Commencement**

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

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

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

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

16 **Division 1.2 Object**

17 **3 Object**

18 (1) The main object of this Act is to provide for a balanced and  
19 nationally consistent framework to secure the health and safety of  
20 workers and workplaces by—

21 (a) protecting workers and other persons against harm to their  
22 health, safety and welfare through the elimination or  
23 minimisation of risks arising from work or from specified  
24 types of substances or plant; and

- 1 (b) providing for fair and effective workplace representation,  
2 consultation, cooperation and issue resolution in relation to  
3 work health and safety; and
- 4 (c) encouraging unions and employer organisations to take a  
5 constructive role in promoting improvements in work health  
6 and safety practices, and assisting persons conducting  
7 businesses or undertakings and workers to achieve a healthier  
8 and safer working environment; and
- 9 (d) promoting the provision of advice, information, education and  
10 training in relation to work health and safety; and
- 11 (e) securing compliance with this Act through effective and  
12 appropriate compliance and enforcement measures; and
- 13 (f) ensuring appropriate scrutiny and review of actions taken by  
14 persons exercising powers and performing functions under this  
15 Act; and
- 16 (g) providing a framework for continuous improvement and  
17 progressively higher standards of work health and safety; and
- 18 (h) maintaining and strengthening the national harmonisation of  
19 laws relating to work health and safety and to facilitate a  
20 consistent national approach to work health and safety in the  
21 ACT.
- 22 *Note* A reference to an Act includes a reference to statutory instruments made  
23 or in force under the Act, including a regulation and any law or  
24 instrument applied, adopted or incorporated by the Act (see Legislation  
25 Act, s 104).
- 26 (2) In furthering subsection (1) (a), regard must be had to the principle  
27 that workers and other persons should be given the highest level of  
28 protection against harm to their health, safety and welfare from  
29 hazards and risks arising from work or from specified types of  
30 substances or plant as is reasonably practicable.

1 **Division 1.3 Interpretation**

2 **Subdivision 1.3.1 Definitions**

3 **4 Definitions**

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

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

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

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

16 **Subdivision 1.3.2 Other important terms**

17 **5 Meaning of *person conducting a business or undertaking***

18 (1) For the purposes of this Act, a person *conducts a business or*  
19 *undertaking*—

20 (a) whether the person conducts the business or undertaking alone  
21 or with others; and

22 (b) whether or not the business or undertaking is conducted for  
23 profit or gain.

24 (2) A business or undertaking conducted by a person includes a  
25 business or undertaking conducted by a partnership or an  
26 unincorporated association.

- 1 (3) If a business or undertaking is conducted by a partnership (other  
2 than an incorporated partnership), a reference in this Act to a person  
3 conducting the business or undertaking is to be read as a reference  
4 to each partner in the partnership.
- 5 (4) A person does not conduct a business or undertaking to the extent  
6 that the person is engaged solely as a worker in, or as an officer of,  
7 that business or undertaking.
- 8 (6) A regulation may specify the circumstances in which a person may  
9 be taken not to be a person who conducts a business or undertaking  
10 for the purposes of this Act or any provision of this Act.
- 11 (7) A volunteer association does not conduct a business or undertaking  
12 for the purposes of this Act.
- 13 (8) In this section:
- 14 *volunteer association* means a group of volunteers working together  
15 for 1 or more community purposes where none of the volunteers,  
16 whether alone or jointly with any other volunteers, employs any  
17 person to carry out work for the volunteer association.

18 **6 Meaning of *supply***

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

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

15 **7 Meaning of *worker***

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

1 (i) a person of a prescribed class.

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

4 (2) For the purposes of this Act, a police officer is—

5 (a) a worker; and

6 (b) at work throughout the time when the officer is on duty or  
7 lawfully performing the functions of a police officer, but not  
8 otherwise.

9 (3) The person conducting the business or undertaking is also a *worker*  
10 if the person is an individual who carries out work in that business  
11 or undertaking.

## 12 **8 Meaning of *workplace***

13 (1) A *workplace* is a place where work is carried out for a business or  
14 undertaking and includes any place where a worker goes, or is likely  
15 to be, while at work.

16 (2) In this section:

17 *place* includes—

18 (a) a vehicle, vessel, aircraft or other mobile structure; and

19 (b) any waters and any installation on land, on the bed of any  
20 waters or floating on any waters.

## 21 **9 Examples and notes**

22 (1) An example at the foot of a provision forms part of this Act.

23 *Note* The Legislation Act, s 126 and s 132, deals with examples.

24 (2) A note at the foot of a provision forms part of this Act.

25 (3) Subsection (1) displaces the *Legislation Act 2001*, section 127  
26 (Material that is not part of Act or statutory instrument).

1 **Division 1.4 Application of Act**

2 **10 Act binds the Crown**

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

9 **11 Extraterritorial application**

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

14 **12 Scope**

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

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

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



1 **12A Offences are offences of strict liability**

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

5 **12B Offences against Act—application of Criminal Code etc**

6 Other legislation applies in relation to offences against this Act.

7 *Note Criminal Code*

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

10 The chapter sets out the general principles of criminal responsibility  
11 (including burdens of proof and general defences), and defines terms  
12 used for offences to which the Code applies (eg *conduct*, *intention*,  
13 *recklessness* and *strict liability*).

1 **Part 2 Health and safety duties**

2 **Division 2.1 Introductory**

3 **Subdivision 2.1.1 Principles that apply to duties**

4 **13 Principles that apply to duties**

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

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

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

13 **14 Duties not transferrable**

14 A duty cannot be transferred to another person.

15 **15 Person may have more than 1 duty**

16 A person can have more than 1 duty by virtue of being in more than  
17 1 class of duty-holder.

18 **16 More than 1 person can have a duty**

19 (1) More than 1 person can concurrently have the same duty.

20 (2) Each duty-holder must comply with that duty to the standard  
21 required by this Act even if another duty-holder has the same duty.

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

- 1           (3) If more than 1 person has a duty for the same matter, each person—  
2                 (a) retains responsibility for the person’s duty in relation to the  
3                     matter; and  
4                 (b) must discharge the person’s duty to the extent to which the  
5                     person has the capacity to influence and control the matter or  
6                     would have had that capacity but for an agreement or  
7                     arrangement purporting to limit or remove that capacity.

8   **17           Management of risks**

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

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

16   **Subdivision 2.1.2    What is *reasonably practicable***

17   **18           What is *reasonably practicable* in ensuring health and**  
18           **safety**

19           In this Act:

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

- 24                 (a) the likelihood of the hazard or the risk concerned occurring;  
25                     and  
26                 (b) the degree of harm that might result from the hazard or the  
27                     risk; and

- 1 (c) what the person concerned knows, or ought reasonably to  
2 know, about—
- 3 (i) the hazard or the risk; and
- 4 (ii) ways of eliminating or minimising the risk; and
- 5 (d) the availability and suitability of ways to eliminate or minimise  
6 the risk; and
- 7 (e) after assessing the extent of the risk and the available ways of  
8 eliminating or minimising the risk—the cost associated with  
9 available ways of eliminating or minimising the risk, including  
10 whether the cost is grossly disproportionate to the risk.

## 11 **Division 2.2 Primary duty of care**

### 12 **19 Primary duty of care**

- 13 (1) A person conducting a business or undertaking must ensure, so far  
14 as is reasonably practicable, the health and safety of—
- 15 (a) workers engaged, or caused to be engaged, by the person; and
- 16 (b) workers whose activities in carrying out work are influenced or  
17 directed by the person,
- 18 while the workers are at work in the business or undertaking.
- 19 (2) A person conducting a business or undertaking must ensure, so far  
20 as is reasonably practicable, that the health and safety of other  
21 persons is not put at risk from work carried out as part of the  
22 conduct of the business or undertaking.
- 23 (3) Without limiting subsections (1) and (2), a person conducting a  
24 business or undertaking must ensure, so far as is reasonably  
25 practicable—
- 26 (a) the provision and maintenance of a work environment without  
27 risks to health and safety; and

- 1 (b) the provision and maintenance of safe plant and structures; and  
2 (c) the provision and maintenance of safe systems of work; and  
3 (d) the safe use, handling, storage and transport of plant, structures  
4 and substances; and  
5 (e) the provision of adequate facilities for the welfare at work of  
6 workers in carrying out work for the business or undertaking,  
7 including ensuring access to those facilities; and  
8 (f) the provision of any information, training, instruction or  
9 supervision that is necessary to protect all persons from risks to  
10 their health and safety arising from work carried out as part of  
11 the conduct of the business or undertaking; and  
12 (g) that the health of workers and the conditions at the workplace  
13 are monitored for the purpose of preventing illness or injury of  
14 workers arising from the conduct of the business or  
15 undertaking.
- 16 (4) If:
- 17 (a) a worker occupies accommodation that is owned by or under  
18 the management or control of the person conducting the  
19 business or undertaking; and  
20 (b) the occupancy is necessary for the purposes of the worker's  
21 engagement because other accommodation is not reasonably  
22 available,
- 23 the person conducting the business or undertaking must, so far as is  
24 reasonably practicable, maintain the premises so that the worker  
25 occupying the premises is not exposed to risks to health and safety.
- 26 (5) A self-employed person must ensure, so far as is reasonably  
27 practicable, his or her own health and safety while at work.
- 28 *Note* A self-employed person is also a person conducting a business or  
29 undertaking for the purposes of this section.

1 **Division 2.3 Further duties of persons conducting**  
2 **businesses or undertakings**

3 **20 Duty of persons conducting businesses or undertakings**  
4 **involving management or control of workplaces**

5 (1) In this section:

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

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

13 (b) a prescribed person.

14 (2) The person with management or control of a workplace must ensure,  
15 so far as is reasonably practicable, that the workplace, the means of  
16 entering and exiting the workplace and anything arising from the  
17 workplace are without risks to the health and safety of any person.

18 **21 Duty of persons conducting businesses or undertakings**  
19 **involving management or control of fixtures, fittings or**  
20 **plant at workplaces**

21 (1) In this section:

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

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

1 (b) a prescribed person.

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

6 **22 Duties of persons conducting businesses or**  
7 **undertakings that design plant, substances or structures**

8 (1) This section applies to a person (the *designer*) who conducts a  
9 business or undertaking that designs—

10 (a) plant that is to be used, or could reasonably be expected to be  
11 used, as, or at, a workplace; or

12 (b) a substance that is to be used, or could reasonably be expected  
13 to be used, at a workplace; or

14 (c) a structure that is to be used, or could reasonably be expected  
15 to be used, as, or at, a workplace.

16 (2) The designer must ensure, so far as is reasonably practicable, that  
17 the plant, substance or structure is designed to be without risks to  
18 the health and safety of persons—

19 (a) who, at a workplace, use the plant, substance or structure for a  
20 purpose for which it was designed; or

21 (b) who handle the substance at a workplace; or

22 (c) who store the plant or substance at a workplace; or

23 (d) who construct the structure at a workplace; or

24 (e) who carry out any reasonably foreseeable activity at a  
25 workplace in relation to—

26 (i) the manufacture, assembly or use of the plant for a  
27 purpose for which it was designed, or the proper storage,  
28 decommissioning, dismantling or disposal of the plant; or

- 1 (ii) the manufacture or use of the substance for a purpose for  
2 which it was designed or the proper handling, storage or  
3 disposal of the substance; or
- 4 (iii) the manufacture, assembly or use of the structure for a  
5 purpose for which it was designed or the proper  
6 demolition or disposal of the structure; or
- 7 (f) who are at or in the vicinity of a workplace and who are  
8 exposed to the plant, substance or structure at the workplace or  
9 whose health or safety may be affected by a use or activity  
10 referred to in paragraph (a), (b), (c), (d) or (e).
- 11 **Example—par (e)**  
12 inspection, operation, cleaning, maintenance or repair of plant
- 13 *Note* An example is part of the Act, is not exhaustive and may extend,  
14 but does not limit, the meaning of the provision in which it  
15 appears (see Legislation Act, s 126 and s 132).
- 16 (3) The designer must carry out, or arrange the carrying out of, any  
17 calculations, analysis, testing or examination that may be necessary  
18 for the performance of the duty imposed by subsection (2).
- 19 (4) The designer must give adequate information to each person who is  
20 provided with the design for the purpose of giving effect to it  
21 concerning—
- 22 (a) each purpose for which the plant, substance or structure was  
23 designed; and
- 24 (b) the results of any calculations, analysis, testing or examination  
25 referred to in subsection (3), including, in relation to a  
26 substance, any hazardous properties of the substance identified  
27 by testing; and
- 28 (c) any conditions necessary to ensure that the plant, substance or  
29 structure is without risks to health and safety when used for a  
30 purpose for which it was designed or when carrying out any  
31 activity referred to in subsection (2) (a) to (e).



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

5 **23 Duties of persons conducting businesses or**  
6 **undertakings that manufacture plant, substances or**  
7 **structures**

- 8 (1) This section applies to a person (the *manufacturer*) who conducts a  
9 business or undertaking that manufactures—  
10 (a) plant that is to be used, or could reasonably be expected to be  
11 used, as, or at, a workplace; or  
12 (b) a substance that is to be used, or could reasonably be expected  
13 to be used, at a workplace; or  
14 (c) a structure that is to be used, or could reasonably be expected  
15 to be used, as, or at, a workplace.  
16 (2) The manufacturer must ensure, so far as is reasonably practicable,  
17 that the plant, substance or structure is manufactured to be without  
18 risks to the health and safety of persons—  
19 (a) who, at a workplace, use the plant, substance or structure for a  
20 purpose for which it was designed or manufactured; or  
21 (b) who handle the substance at a workplace; or  
22 (c) who store the plant or substance at a workplace; or  
23 (d) who construct the structure at a workplace; or  
24 (e) who carry out any reasonably foreseeable activity at a  
25 workplace in relation to—  
26 (i) the assembly or use of the plant for a purpose for which it  
27 was designed or manufactured or the proper storage,  
28 decommissioning, dismantling or disposal of the plant; or

- 1 (ii) the use of the substance for a purpose for which it was  
2 designed or manufactured or the proper handling, storage  
3 or disposal of the substance; or
- 4 (iii) the assembly or use of the structure for a purpose for  
5 which it was designed or manufactured or the proper  
6 demolition or disposal of the structure; or
- 7 (f) who are at or in the vicinity of a workplace and who are  
8 exposed to the plant, substance or structure at the workplace or  
9 whose health or safety may be affected by a use or activity  
10 referred to in paragraph (a), (b), (c), (d) or (e).
- 11 **Example—par (e)**  
12 inspection, operation, cleaning, maintenance or repair of plant
- 13 *Note* An example is part of the Act, is not exhaustive and may extend,  
14 but does not limit, the meaning of the provision in which it  
15 appears (see Legislation Act, s 126 and s 132).
- 16 (3) The manufacturer must carry out, or arrange the carrying out of, any  
17 calculations, analysis, testing or examination that may be necessary  
18 for the performance of the duty imposed by subsection (2).
- 19 (4) The manufacturer must give adequate information to each person to  
20 whom the manufacturer provides the plant, substance or structure  
21 concerning—
- 22 (a) each purpose for which the plant, substance or structure was  
23 designed or manufactured; and
- 24 (b) the results of any calculations, analysis, testing or examination  
25 referred to in subsection (3), including, in relation to a  
26 substance, any hazardous properties of the substance identified  
27 by testing; and
- 28 (c) any conditions necessary to ensure that the plant, substance or  
29 structure is without risks to health and safety when used for a  
30 purpose for which it was designed or manufactured or when  
31 carrying out any activity referred to in subsection (2) (a) to (e).

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

5 **24 Duties of persons conducting businesses or**  
6 **undertakings that import plant, substances or structures**

- 7 (1) This section applies to a person (the *importer*) who conducts a  
8 business or undertaking that imports—
- 9 (a) plant that is to be used, or could reasonably be expected to be  
10 used, as, or at, a workplace; or
- 11 (b) a substance that is to be used, or could reasonably be expected  
12 to be used, at a workplace; or
- 13 (c) a structure that is to be used, or could reasonably be expected  
14 to be used, as, or at, a workplace.
- 15 (2) The importer must ensure, so far as is reasonably practicable, that  
16 the plant, substance or structure is without risks to the health and  
17 safety of persons—
- 18 (a) who, at a workplace, use the plant, substance or structure for a  
19 purpose for which it was designed or manufactured; or
- 20 (b) who handle the substance at a workplace; or
- 21 (c) who store the plant or substance at a workplace; or
- 22 (d) who construct the structure at a workplace; or
- 23 (e) who carry out any reasonably foreseeable activity at a  
24 workplace in relation to—
- 25 (i) the assembly or use of the plant for a purpose for which it  
26 was designed or manufactured or the proper storage,  
27 decommissioning, dismantling or disposal of the plant; or

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

11 **Example—par (e)**

12 inspection, operation, cleaning, maintenance or repair of plant

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

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

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

9 **25 Duties of persons conducting businesses or**  
10 **undertakings that supply plant, substances or structures**

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

- 1 (e) who carry out any reasonably foreseeable activity at a  
2 workplace in relation to—
- 3 (i) the assembly or use of the plant for a purpose for which it  
4 was designed or manufactured or the proper storage,  
5 decommissioning, dismantling or disposal of the plant; or
- 6 (ii) the use of the substance for a purpose for which it was  
7 designed or manufactured or the proper handling, storage  
8 or disposal of the substance; or
- 9 (iii) the assembly or use of the structure for a purpose for  
10 which it was designed or manufactured or the proper  
11 demolition or disposal of the structure; or
- 12 (f) who are at or in the vicinity of a workplace and who are  
13 exposed to the plant, substance or structure at the workplace or  
14 whose health or safety may be affected by a use or activity  
15 referred to in paragraph (a), (b), (c), (d) or (e).
- 16 **Example—par (e)**  
17 inspection, operation, cleaning, maintenance or repair of plant
- 18 *Note* An example is part of the Act, is not exhaustive and may extend,  
19 but does not limit, the meaning of the provision in which it  
20 appears (see Legislation Act, s 126 and s 132).
- 21 (3) The supplier must—
- 22 (a) carry out, or arrange the carrying out of, any calculations,  
23 analysis, testing or examination that may be necessary for the  
24 performance of the duty imposed by subsection (2); or
- 25 (b) ensure that the calculations, analysis, testing or examination  
26 have been carried out.

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

18 **26 Duty of persons conducting businesses or undertakings**  
19 **that install, construct or commission plant or structures**

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

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

8 **Division 2.4 Duty of officers, workers and other**  
9 **persons**

10 **27 Duty of officers**

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

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

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

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

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



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

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

7 **Examples—par (e)**

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

- 10 • reporting notifiable incidents  
11 • consulting with workers  
12 • ensuring compliance with notices issued under this Act  
13 • ensuring the provision of training and instruction to workers about work  
14 health and safety  
15 • ensuring that health and safety representatives receive their entitlements to  
16 training

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

20 **28 Duties of workers**

21 While at work, a worker must—

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

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

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

5 **29 Duties of other persons at the workplace**

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

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

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

19 **Division 2.5 Offences and penalties**

20 **30 Health and safety duty**

21 In this division:

22 *health and safety duty* means a duty imposed under—

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

1 **31 Reckless conduct—category 1**

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

9 Maximum penalty:

- 10 (a) in the case of an offence committed by an individual (other
- 11 than as a person conducting a business or undertaking or as an
- 12 officer of a person conducting a business or undertaking)—
- 13 \$300 000, imprisonment for 5 years or both; or
- 14 (b) in the case of an offence committed by an individual as a
- 15 person conducting a business or undertaking or as an officer of
- 16 a person conducting a business or undertaking—\$600 000,
- 17 imprisonment for 5 years or both; or
- 18 (c) in the case of an offence committed by a body corporate—
- 19 \$3 000 000.

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

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

23 **32 Failure to comply with health and safety duty—category 2**

24 A person commits a category 2 offence if—

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

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

3 Maximum penalty:

4 (a) in the case of an offence committed by an individual (other  
5 than as a person conducting a business or undertaking or as an  
6 officer of a person conducting a business or undertaking)—  
7 \$150 000; or

8 (b) in the case of an offence committed by an individual as a  
9 person conducting a business or undertaking or as an officer of  
10 a person conducting a business or undertaking—\$300 000; or

11 (c) in the case of an offence committed by a body corporate—  
12 \$1 500 000.

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

15 **33 Failure to comply with health and safety duty—category 3**

16 A person commits a category 3 offence if—

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

18 (b) the person fails to comply with that duty.

19 Maximum penalty:

20 (a) in the case of an offence committed by an individual (other  
21 than as a person conducting a business or undertaking or as an  
22 officer of a person conducting a business or undertaking)—  
23 \$50 000; or

24 (b) in the case of an offence committed by an individual as a  
25 person conducting a business or undertaking or as an officer of  
26 a person conducting a business or undertaking—\$100 000; or

27 (c) in the case of an offence committed by a body corporate—  
28 \$500 000.

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

1 **34 Exceptions**

2 (1) A volunteer does not commit an offence under this division for a  
3 failure to comply with a health and safety duty, except a duty under  
4 section 28 (Duties of workers) or section 29 (Duties of other persons  
5 at the workplace).

6 (2) An unincorporated association does not commit an offence under  
7 this Act, and is not liable for a civil penalty under this Act, for a  
8 failure to comply with a duty or obligation imposed on the  
9 unincorporated association under this Act.

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

14 (3) However—

15 (a) an officer of an unincorporated association (other than a  
16 volunteer) may be liable for a failure to comply with a duty  
17 under section 27 (Duties of officers); and

18 (b) a member of an unincorporated association may be liable for  
19 failure to comply with a duty under section 28 or 29.



- 1 (vii) the loss of a bodily function; or  
2 (viii) serious lacerations; or  
3 (c) medical treatment within 48 hours of exposure to a substance,  
4 and includes any other injury or illness prescribed by regulation but  
5 does not include an illness or injury of a prescribed kind.  
6 *Note* Power to make a regulation includes power to make different provision  
7 for different classes (see Legislation Act, s 48).

8 **37 What is a *dangerous incident*—pt 3**

9 In this part:

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

- 14 (a) an uncontrolled escape, spillage or leakage of a substance; or  
15 (b) an uncontrolled implosion, explosion or fire; or  
16 (c) an uncontrolled escape of gas or steam; or  
17 (d) an uncontrolled escape of a pressurised substance; or  
18 (e) electric shock; or  
19 (f) the fall or release from a height of any plant, substance or  
20 thing; or  
21 (g) the collapse, overturning, failure or malfunction of, or damage  
22 to, any plant that is required to be authorised for use in  
23 accordance with the regulation; or  
24 (h) the collapse or partial collapse of a structure; or  
25 (i) the collapse or failure of an excavation or of any shoring  
26 supporting an excavation; or



- 1 (j) the inrush of water, mud or gas in workings, in an underground  
2 excavation or tunnel; or
- 3 (k) the interruption of the main system of ventilation in an  
4 underground excavation or tunnel; or
- 5 (l) any other event prescribed by regulation,  
6 but does not include an incident of a prescribed kind.

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

9 **38 Duty to notify of notifiable incidents**

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

14 Maximum penalty:

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

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

- 19 (2) The notice must be given in accordance with this section and by the  
20 fastest possible means.

- 21 (3) The notice must be given—

- 22 (a) by telephone; or  
23 (b) in writing.

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

- 26 (4) A person giving notice by telephone must—

- 27 (a) give the details of the incident requested by the regulator; and

- 1 (b) if required by the regulator, give a written notice of the  
2 incident within 48 hours of that requirement being made.
- 3 (5) A written notice must be in a form, or contain the details, approved  
4 by the regulator.
- 5 *Note* If a form is approved under s 277 for a written notice, the form must be  
6 used.
- 7 (6) If the regulator receives a notice by telephone and a written notice is  
8 not required, the regulator must give the person conducting the  
9 business or undertaking—
- 10 (a) details of the information received; or  
11 (b) an acknowledgement of receiving the notice.
- 12 (7) A person conducting a business or undertaking must keep a record  
13 of each notifiable incident for at least 5 years from the day that  
14 notice of the incident is given to the regulator under this section.
- 15 **Maximum penalty:**
- 16 (a) in the case of an individual—\$5 000; or  
17 (b) in the case of a body corporate—\$25 000.
- 18 *Note* Strict liability applies to each physical element of this offence  
19 (see s 12A).
- 20 (8) Despite anything else in this section, if a notifiable incident for  
21 which notice is required to be given is reported in accordance with  
22 the *Dangerous Substances Act 2004*, the reporting under that Act is  
23 taken to be adequate notice of the incident for the purposes of this  
24 Act.

1    **39           Duty to preserve incident sites**

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

7           Maximum penalty:

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

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

12          (2) In subsection (1) a reference to a site includes any plant, substance,  
13          structure or thing associated with the notifiable incident.

14          (3) Subsection (1) does not prevent any action—

- 15           (a) to assist an injured person; or  
16           (b) to remove a deceased person; or  
17           (c) that is essential to make the site safe or to minimise the risk of  
18           a further notifiable incident; or  
19           (d) that is associated with a police investigation; or  
20           (e) for which an inspector or the regulator has given permission.

1 **Part 4 Authorisations**

2 **40 Meaning of *authorised*—pt 4**

3 In this part:

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

6 **41 Requirements for authorisation of workplaces**

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

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

13 Maximum penalty:

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

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

18 **42 Requirements for authorisation of plant or substance**

19 (1) A person must not use plant or a substance at a workplace if—

- 20 (a) a regulation requires the plant or substance or its design to be  
21 authorised; and  
22 (b) the plant or substance or its design is not authorised in  
23 accordance with the regulation.

24 Maximum penalty:

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

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

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

4 (2) A person who conducts a business or undertaking must not direct or  
5 allow a worker to use the plant or substance at a workplace if—

6 (a) a regulation requires the plant or substance or its design to be  
7 authorised; and

8 (b) the plant or substance or its design is not authorised in  
9 accordance with the regulation.

10 **Maximum penalty:**

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

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

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

### 15 **43 Requirements for authorisation of work**

16 (1) A person must not carry out work at a workplace if—

17 (a) a regulation requires the work, or class of work, to be carried  
18 out by, or on behalf of, a person who is authorised; and

19 (b) the person, or the person on whose behalf the work is carried  
20 out, is not authorised in accordance with the regulation.

21 **Maximum penalty:**

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

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

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

- 1 (2) A person who conducts a business or undertaking must not direct or  
2 allow a worker to carry out work at a workplace if—
- 3 (a) a regulation requires the work, or class of work, to be carried  
4 out by, or on behalf of, a person who is authorised; and
- 5 (b) the person, or the person on whose behalf the work is to be  
6 carried out, is not authorised in accordance with the regulation.
- 7 Maximum penalty:
- 8 (a) in the case of an individual—\$20 000; or  
9 (b) in the case of a body corporate—\$100 000.
- 10 *Note* Strict liability applies to each physical element of this offence  
11 (see s 12A).

12 **44 Requirements for prescribed qualifications or experience**

- 13 (1) A person must not carry out work at a workplace if—
- 14 (a) a regulation requires the work, or class of work, to be carried  
15 out by, or under the supervision of, a person who has  
16 prescribed qualifications or experience; and
- 17 (b) the person does not have the prescribed qualifications or  
18 experience or the work is not carried out under the supervision  
19 of a person who has the prescribed qualifications or  
20 experience.
- 21 Maximum penalty:
- 22 (a) in the case of an individual—\$20 000; or  
23 (b) in the case of a body corporate—\$100 000.
- 24 *Note* Strict liability applies to each physical element of this offence  
25 (see s 12A).

- 1 (2) A person who conducts a business or undertaking must not direct or  
2 allow a worker to carry out work at a workplace if—
- 3 (a) a regulation requires the work, or class of work, to be carried  
4 out by, or under the supervision of, a person who has  
5 prescribed qualifications or experience; and
- 6 (b) the worker does not have the prescribed qualifications or  
7 experience or the work is not carried out under the supervision  
8 of a person who has the prescribed qualifications or  
9 experience.
- 10 Maximum penalty:
- 11 (a) in the case of an individual—\$20 000; or  
12 (b) in the case of a body corporate—\$100 000.
- 13 *Note* Strict liability applies to each physical element of this offence  
14 (see s 12A).

15 **45 Requirement to comply with conditions of authorisation**

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

- 18 Maximum penalty:
- 19 (a) in the case of an individual—\$20 000; or  
20 (b) in the case of a body corporate—\$100 000.
- 21 *Note* Strict liability applies to each physical element of this offence  
22 (see s 12A).

1 **Part 5** **Consultation, representation and**  
2 **participation**

3 **Division 5.1** **Consultation, cooperation and**  
4 **coordination between duty-holders**

5 **46** **Duty to consult with other duty-holders**

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

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

15 **Maximum penalty:**

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

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



1 **Division 5.2** **Consultation with workers**

2 **47** **Duty to consult workers**

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

8 Maximum penalty:

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

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

- 13 (2) If the person conducting the business or undertaking and the  
14 workers have agreed to procedures for consultation, the consultation  
15 must be in accordance with those procedures.

- 16 (3) The agreed procedures must not be inconsistent with section 48.

17 **48** **Nature of consultation**

- 18 (1) Consultation under this division requires—  
19 (a) that relevant information about the matter is shared with  
20 workers; and  
21 (b) that workers be given a reasonable opportunity—  
22 (i) to express their views and to raise work health or safety  
23 issues in relation to the matter; and  
24 (ii) to contribute to the decision-making process relating to  
25 the matter; and  
26 (c) that the views of workers are taken into account by the person  
27 conducting the business or undertaking; and

- 1 (d) that the workers consulted are advised of the outcome of the  
2 consultation in a timely manner.
- 3 (2) If the workers are represented by a health and safety representative,  
4 the consultation must involve that representative.
- 5 **49 When consultation is required**
- 6 Consultation under this division is required in relation to the  
7 following health and safety matters:
- 8 (a) when identifying hazards and assessing risks to health and  
9 safety arising from the work carried out or to be carried out by  
10 the business or undertaking;
- 11 (b) when making decisions about ways to eliminate or minimise  
12 those risks;
- 13 (c) when making decisions about the adequacy of facilities for the  
14 welfare of workers;
- 15 (d) when proposing changes that may affect the health or safety of  
16 workers;
- 17 (e) when making decisions about the procedures for—
- 18 (i) consulting with workers; or
- 19 (ii) resolving work health or safety issues at the workplace; or
- 20 (iii) monitoring the health of workers; or
- 21 (iv) monitoring the conditions at any workplace under the  
22 management or control of the person conducting the  
23 business or undertaking; or
- 24 (v) providing information and training for workers;
- 25 (f) when carrying out any other activity prescribed by regulation  
26 for the purposes of this section.

1 **Division 5.3 Health and safety representatives**

2 **Subdivision 5.3.1 Request for election of health and safety**  
3 **representatives**

4 **50 Request for election of health and safety representative**

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

10 **Subdivision 5.3.2 Determination of work groups**

11 **51 Determination of work groups**

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

20 **52 Negotiations for agreement for work group**

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

- 1 (2) The person conducting the business or undertaking must take all  
2 reasonable steps to commence negotiations with the workers within  
3 14 days after a request is made under section 50.
- 4 (3) The purpose of the negotiations is to determine—
- 5 (a) the number and composition of work groups to be represented  
6 by health and safety representatives; and
- 7 (b) the number of health and safety representatives and deputy  
8 health and safety representatives (if any) to be elected; and
- 9 (c) the workplace or workplaces to which the work groups will  
10 apply; and
- 11 (d) the businesses or undertakings to which the work groups will  
12 apply.
- 13 (4) The parties to an agreement concerning the determination of a work  
14 group or groups may, at any time, negotiate a variation of the  
15 agreement.
- 16 (5) The person conducting the business or undertaking must, if asked by  
17 a worker, negotiate with the worker's representative in negotiations  
18 under this section (including negotiations for a variation of an  
19 agreement) and must not exclude the representative from those  
20 negotiations.
- 21 Maximum penalty:
- 22 (a) in the case of an individual—\$10 000; or  
23 (b) in the case of a body corporate—\$50 000.
- 24 *Note* Strict liability applies to each physical element of this offence  
25 (see s 12A).
- 26 (6) A regulation may prescribe the matters that must be taken into  
27 account in negotiations for, and determination of, work groups and  
28 variations of agreements concerning work groups.

1     **53           Notice to workers**

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

7           Maximum penalty:

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

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

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

18          Maximum penalty:

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

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

23     **54           Failure of negotiations**

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

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

1 **Subdivision 5.3.3 Multiple-business work groups**

2 **55 Determination of work groups of multiple businesses**

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

20 **56 Negotiation of agreement for work groups of multiple**  
21 **businesses**

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

- 1 (c) the workplace or workplaces to which the work groups will  
2 apply;
- 3 (d) the businesses or undertakings to which the work groups will  
4 apply.
- 5 (2) A person conducting a business or undertaking must, if asked by a  
6 worker, negotiate with the worker's representative in negotiations  
7 under this section (including negotiations for a variation of an  
8 agreement) and must not exclude the representative from those  
9 negotiations.
- 10 Maximum penalty:
- 11 (a) in the case of an individual—\$10 000; or  
12 (b) in the case of a body corporate—\$50 000.
- 13 *Note* Strict liability applies to each physical element of this offence  
14 (see s 12A).
- 15 (3) If agreement cannot be reached on a matter relating to the  
16 determination of a work group (or a variation of an agreement)  
17 within a reasonable time after negotiations commence under this  
18 subdivision, any party to the negotiations may ask the regulator to  
19 appoint an inspector to assist the negotiations in relation to that  
20 matter.
- 21 (4) A regulation may prescribe the matters that must be taken into  
22 account in negotiations for and determination of work groups and  
23 variations of agreements.



1     **57           Notice to workers**

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

7           Maximum penalty:

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

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

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

18          Maximum penalty:

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

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

23     **58           Withdrawal from negotiations or agreement involving**  
24     **multiple businesses**

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

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

8 **59 Effect of subdivision on other arrangements**

9 To avoid doubt, nothing in this subdivision affects the capacity of  
10 2 or more persons conducting businesses or undertakings and their  
11 workers to enter into other agreements or make other arrangements,  
12 in addition to complying with this part, concerning the  
13 representation of those workers.

14 **Subdivision 5.3.4 Election of health and safety**  
15 **representatives**

16 **60 Eligibility to be elected**

- 17 A worker is—
- 18 (a) eligible to be elected as a health and safety representative for a  
19 work group only if he or she is a member of that work group;  
20 and
- 21 (b) not eligible to be elected as a health and safety representative if  
22 he or she is disqualified under section 65 (Disqualification of  
23 health and safety representatives) from being a health and  
24 safety representative.

1     **61**            **Procedure for election of health and safety**  
2                    **representatives**

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

15           Maximum penalty:

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

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

20     **62**            **Eligibility to vote**

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

1 **63 When election not required**

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

7 **64 Term of office of health and safety representative**

8 (1) A health and safety representative for a work group holds office for  
9 3 years.

10 (2) However, a person ceases to hold office as a health and safety  
11 representative for a work group if—

12 (a) the person resigns as a health and safety representative for the  
13 work group by written notice given to the person conducting  
14 the relevant business or undertaking; or

15 (b) the person ceases to be a worker in the work group for which  
16 he or she was elected as a health and safety representative; or

17 (c) the person is disqualified under section 65 (Disqualification of  
18 health and safety representatives) from acting as a health and  
19 safety representative; or

20 (d) the person is removed from that position by a majority of the  
21 members of the work group in accordance with the regulation.

22 (3) A health and safety representative is eligible for re-election.

23 **65 Disqualification of health and safety representatives**

24 (1) An application may be made to the Magistrates Court to disqualify a  
25 health and safety representative on the ground that the representative  
26 has—

27 (a) exercised a power or performed a function as a health and  
28 safety representative for an improper purpose; or

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

14 **66 Immunity of health and safety representatives**

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

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

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

- 1     **67 Deputy health and safety representatives**
- 2           (1) Each deputy health and safety representative for a work group is to
- 3           be elected in the same way as a health and safety representative for
- 4           the work group.
- 5           (2) If the health and safety representative for a work group ceases to
- 6           hold office or is unable (because of absence or any other reason) to
- 7           exercise the powers or perform the functions of a health and safety
- 8           representative under this Act—
- 9                 (a) the powers and functions may be exercised or performed by a
- 10                deputy health and safety representative for the work group; and
- 11                (b) this Act applies in relation to the deputy health and safety
- 12                representative as if he or she were the health and safety
- 13                representative.
- 14           *Note*     A reference to an Act includes a reference to statutory instruments made
- 15                    or in force under the Act, including a regulation and any law or
- 16                    instrument applied, adopted or incorporated by the Act (see Legislation
- 17                    Act, s 104).
- 18           (3) Section 64 (Term of office of health and safety representative),
- 19           section 65 (Disqualification of health and safety representatives),
- 20           section 66 (Immunity of health and safety representatives) and
- 21           section 72 (Obligation to train health and safety representatives)
- 22           apply to deputy health and safety representatives in the same way as
- 23           they apply to health and safety representatives.

1     **Subdivision 5.3.5     Powers and functions of health and**  
2                                   **safety representatives**

3     **68             Powers and functions of health and safety**  
4                                   **representatives**

5             (1) The powers and functions of a health and safety representative for a  
6                 work group are—

7                     (a) to represent the workers in the work group in matters relating  
8                         to work health and safety; and

9                     (b) to monitor the measures taken by the person conducting the  
10                         relevant business or undertaking, or that person's  
11                         representative, in compliance with this Act in relation to  
12                         workers in the work group; and

13                    (c) to investigate complaints from members of the work group  
14                         relating to work health and safety; and

15                    (d) to inquire into anything that appears to be a risk to the health or  
16                         safety of workers in the work group, arising from the conduct  
17                         of the business or undertaking.

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

21             (2) In exercising a power or performing a function, the health and safety  
22                 representative may—

23                     (a) inspect the workplace or any part of the workplace at which a  
24                         worker in the work group works—

25                         (i) at any time after giving reasonable notice to the person  
26                             conducting the business or undertaking at that workplace;  
27                             and

- 1 (ii) at any time, without notice, in the event of an incident, or  
2 any situation involving a serious risk to the health or  
3 safety of a person emanating from an immediate or  
4 imminent exposure to a hazard; and
- 5 (b) accompany an inspector during an inspection of the workplace,  
6 or part of the workplace, at which a worker in the work group  
7 works; and
- 8 (c) with the consent of a worker that the health and safety  
9 representative represents, be present at an interview concerning  
10 work health and safety between the worker and—
- 11 (i) an inspector; or
- 12 (ii) the person conducting the business or undertaking at that  
13 workplace or the person's representative; and
- 14 (d) with the consent of 1 or more workers that the health and  
15 safety representative represents, be present at an interview  
16 concerning work health and safety between a group of workers,  
17 which includes the workers who gave the consent, and—
- 18 (i) an inspector; or
- 19 (ii) the person conducting the business or undertaking at that  
20 workplace or the person's representative; and
- 21 (e) request the establishment of a health and safety committee; and
- 22 (f) receive information concerning the work health and safety of  
23 workers in the work group; and
- 24 (g) whenever necessary, request the assistance of any person.

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



- 1 (3) Despite subsection (2) (f), a health and safety representative is not  
2 entitled to have access to any personal or medical information  
3 concerning a worker without the worker's consent unless the  
4 information is in a form that—
- 5 (a) does not identify the worker; and  
6 (b) could not reasonably be expected to lead to the identification of  
7 the worker.
- 8 (4) Nothing in this Act imposes, or is taken to impose, a duty on a  
9 health and safety representative in that capacity.
- 10 *Note* A reference to an Act includes a reference to statutory instruments made  
11 or in force under the Act, including a regulation and any law or  
12 instrument applied, adopted or incorporated by the Act (see Legislation  
13 Act, s 104).

14 **69 Powers and functions generally limited to the particular**  
15 **work group**

- 16 (1) A health and safety representative for a work group may exercise  
17 powers and perform functions under this Act only in relation to  
18 matters that affect, or may affect, workers in that group.
- 19 (2) Subsection (1) does not apply if—
- 20 (a) there is a serious risk to health or safety emanating from an  
21 immediate or imminent exposure to a hazard that affects or  
22 may affect a member of another work group; or
- 23 (b) a member of another work group asks for the representative's  
24 assistance,
- 25 and the health and safety representative (and any deputy health and  
26 safety representative) for that other work group is found, after  
27 reasonable inquiry, to be unavailable.

1 (3) In this section:

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

5 **Subdivision 5.3.6 Obligations of person conducting**  
6 **business or undertaking to health and**  
7 **safety representatives**

8 **70 General obligations of person conducting business or**  
9 **undertaking**

- 10 (1) The person conducting a business or undertaking must—
- 11 (a) consult, so far as is reasonably practicable, on work health and  
12 safety matters with any health and safety representative for a  
13 work group of workers carrying out work for the business or  
14 undertaking; and
- 15 (b) confer with a health and safety representative for a work group,  
16 whenever reasonably requested by the representative, for the  
17 purpose of ensuring the health and safety of the workers in the  
18 work group; and
- 19 (c) allow any health and safety representative for the work group  
20 to have access to information that the person has relating to—
- 21 (i) hazards (including associated risks) at the workplace  
22 affecting workers in the work group; and
- 23 (ii) the health and safety of the workers in the work group;  
24 and
- 25 (d) with the consent of a worker that the health and safety  
26 representative represents, allow the health and safety  
27 representative to be present at an interview concerning work  
28 health and safety between the worker and—
- 29 (i) an inspector; or

- 1 (ii) the person conducting the business or undertaking at that  
2 workplace or the person's representative; and
- 3 (e) with the consent of 1 or more workers that the health and  
4 safety representative represents, allow the health and safety  
5 representative to be present at an interview concerning work  
6 health and safety between a group of workers, which includes  
7 the workers who gave the consent, and—
- 8 (i) an inspector; or
- 9 (ii) the person conducting the business or undertaking at that  
10 workplace or the person's representative; and
- 11 (f) provide any resources, facilities and assistance to a health and  
12 safety representative for the work group that are reasonably  
13 necessary or prescribed by regulation to enable the  
14 representative to exercise his or her powers or perform his or  
15 her functions under this Act; and
- 16 *Note* A reference to an Act includes a reference to statutory  
17 instruments made or in force under the Act, including a regulation  
18 and any law or instrument applied, adopted or incorporated by the  
19 Act (see Legislation Act, s 104).
- 20 (g) allow a person assisting a health and safety representative for  
21 the work group to have access to the workplace if that is  
22 necessary to enable the assistance to be provided; and
- 23 (h) permit a health and safety representative for the work group to  
24 accompany an inspector during an inspection of any part of the  
25 workplace where a worker in the work group works; and
- 26 (i) provide any other assistance to the health and safety  
27 representative for the work group that may be required by  
28 regulation.

29 Maximum penalty:

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

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

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

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

8 Maximum penalty:

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

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

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

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

## 18 **71 Exceptions from obligations under s 70 (1)**

19 (1) This section applies despite section 70 (1).

20 (2) The person conducting a business or undertaking must not allow a  
21 health and safety representative to have access to any personal or  
22 medical information concerning a worker without the worker's  
23 consent unless the information is in a form that—

24 (a) does not identify the worker; and

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

27 Maximum penalty:

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

- 1 (b) in the case of a body corporate—\$50 000.
- 2 *Note* Strict liability applies to each physical element of this offence  
3 (see s 12A).
- 4 (3) The person conducting a business or undertaking is not required to  
5 give financial assistance to a health and safety representative for the  
6 purpose of the assistance referred to in section 70 (1) (g).
- 7 (4) The person conducting a business or undertaking is not required to  
8 allow a person assisting a health and safety representative for a work  
9 group to have access to the workplace—
- 10 (a) if the assistant has had his or her WHS entry permit revoked;  
11 or
- 12 (b) during any period that—
- 13 (i) the assistant’s WHS entry permit is suspended; or  
14 (ii) the assistant is disqualified from holding a WHS entry  
15 permit.
- 16 (5) The person conducting a business or undertaking may refuse on  
17 reasonable grounds to grant access to the workplace to a person  
18 assisting a health and safety representative for a work group.
- 19 (6) If access is refused to a person assisting a health and safety  
20 representative under subsection (5), the health and safety  
21 representative may ask the regulator to appoint an inspector to assist  
22 in resolving the matter.

23 **72 Obligation to train health and safety representatives**

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

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

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

4 Maximum penalty:

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

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

9 **73** **Obligation to share costs if multiple businesses or**  
10 **undertakings**

- 11 (1) If a health and safety representative, or deputy health and safety  
12 representative (if any), represents a work group of workers carrying  
13 out work for 2 or more persons conducting businesses or  
14 undertakings—

15 (a) the costs of the representative exercising powers and  
16 performing functions under this Act; and

17 (b) the costs referred to in section 72 (2) (b),

18 for which any of the persons conducting those businesses or  
19 undertakings are liable must be apportioned equally between each of  
20 those persons unless they agree otherwise.

- 21 (2) An agreement to apportion the costs in another way may be varied  
22 at any time by negotiation and agreement between each of the  
23 persons conducting the businesses or undertakings.

24 **74** **List of health and safety representatives**

- 25 (1) A person conducting a business or undertaking must ensure that—

26 (a) a list of each health and safety representative and deputy health  
27 and safety representative (if any) for each work group of  
28 workers carrying out work for the business or undertaking is  
29 prepared and kept up to date; and

- 1 (b) a copy of the up-to-date list is displayed—
- 2 (i) at the principal place of business of the business or
- 3 undertaking; and
- 4 (ii) at any other workplace that is appropriate taking into
- 5 account the constitution of the relevant work group or
- 6 work groups,
- 7 in a manner that is readily accessible to workers in the relevant
- 8 work group or work groups.
- 9 Maximum penalty:
- 10 (a) in the case of an individual—\$2 000; or
- 11 (b) in the case of a body corporate—\$10 000.
- 12 *Note* Strict liability applies to each physical element of this offence
- 13 (see s 12A).
- 14 (2) A person conducting a business or undertaking must provide a copy
- 15 of the up-to-date list prepared under subsection (1) to the regulator
- 16 as soon as practicable after it is prepared.

17 **Division 5.4 Health and safety committees**

18 **75 Health and safety committees**

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



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

3 **Maximum penalty:**

4 (a) in the case of an individual—\$5 000; or

5 (b) in the case of a body corporate—\$25 000.

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

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

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

## 14 **76 Constitution of committee**

15 (1) Subject to subsections (2) to (4), the constitution of a health and  
16 safety committee may be agreed between the person conducting the  
17 business or undertaking and the workers at the workplace.

18 (2) If there is a health and safety representative at a workplace, that  
19 representative, if he or she consents, is a member of the committee.

20 (3) If there are 2 or more health and safety representatives at a  
21 workplace, those representatives may choose 1 or more of their  
22 number (who consent) to be members of the committee.

23 (4) At least half of the members of the committee must be workers who  
24 are not nominated by the person conducting the business or  
25 undertaking.

26 (5) If agreement is not reached under this section within a reasonable  
27 time, any party may ask the regulator to appoint an inspector to  
28 decide the matter.

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

6 **77 Functions of committee**

7 The functions of a health and safety committee are—

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

18 **78 Meetings of committee**

19 A health and safety committee must meet—

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

- 1     **79           Duties of person conducting business or undertaking**
- 2           (1) A person conducting a business or undertaking must allow each
- 3           member of the health and safety committee to spend the time that is
- 4           reasonably necessary to attend meetings of the committee or to carry
- 5           out functions as a member of the committee.
- 6           Maximum penalty:
- 7           (a) in the case of an individual—\$10 000; or
- 8           (b) in the case of a body corporate—\$50 000.
- 9           *Note*     Strict liability applies to each physical element of this offence
- 10           (see s 12A).
- 11          (2) Any time that a member of a health and safety committee spends for
- 12          the purposes set out in subsection (1) must be with such pay as he or
- 13          she would otherwise be entitled to receive for performing his or her
- 14          normal duties during that period.
- 15          (3) A person conducting a business or undertaking must allow the
- 16          health and safety committee for a workplace to have access to
- 17          information that the person has relating to—
- 18          (a) hazards (including associated risks) at the workplace; and
- 19          (b) the health and safety of the workers at the workplace.
- 20          Maximum penalty:
- 21          (a) in the case of an individual—\$10 000; or
- 22          (b) in the case of a body corporate—\$50 000.
- 23          *Note*     Strict liability applies to each physical element of this offence
- 24          (see s 12A).
- 25          (4) Despite subsection (3), a person conducting a business or
- 26          undertaking must not allow the health and safety committee to have
- 27          access to any personal or medical information concerning a worker
- 28          without the worker’s consent unless the information is in a form
- 29          that—
- 30          (a) does not identify the worker; and

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

3 Maximum penalty:

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

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

## 8 **Division 5.5 Issue resolution**

### 9 **80 Parties to an issue**

10 (1) In this division:

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

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

1     **81           Resolution of health and safety issues**

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

13     **82           Referral of issue to regulator for resolution by inspector**

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

1 **Division 5.6 Right to cease or direct cessation of**  
2 **unsafe work**

3 **83 Definition of *cease work under this division***

4 In this division:

5 *cease work under this division* means—

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

9 **84 Right of worker to cease unsafe work**

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

14 **85 Health and safety representative may direct that unsafe**  
15 **work cease**

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

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

22 **86 Worker to notify if ceases work**

23 A worker who ceases work under this division must—

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

1 **87 Alternative work**

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

7 **88 Continuity of engagement of worker**

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

12 (a) at the same or another workplace; and

13 (b) that was safe and appropriate for the worker to carry out.

14 **89 Request to regulator to appoint inspector to assist**

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

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



1 **Division 5.7** **Provisional improvement notices**

2 **90** **Provisional improvement notices**

3 (1) This section applies if a health and safety representative reasonably  
4 believes that a person—

5 (a) is contravening a provision of this Act; or

6 (b) has contravened a provision of this Act in circumstances that  
7 make it likely that the contravention will continue or be  
8 repeated.

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

13 (2) The health and safety representative may issue a provisional  
14 improvement notice requiring the person to—

15 (a) remedy the contravention; or

16 (b) prevent a likely contravention from occurring; or

17 (c) remedy the things or operations causing the contravention or  
18 likely contravention.

19 (3) However, the health and safety representative must not issue a  
20 provisional improvement notice to a person unless he or she has first  
21 consulted the person.

22 (4) A health and safety representative cannot issue a provisional  
23 improvement notice unless the representative has—

24 (a) completed initial training prescribed by regulation referred to  
25 in section 72 (1) (b) (Obligation to train health and safety  
26 representatives); or

27 (b) previously completed that training when acting as a health and  
28 safety representative for another work group; or

1 (c) completed training equivalent to that training under a  
2 corresponding WHS law.

3 (5) A health and safety representative cannot issue a provisional  
4 improvement notice in relation to a matter if an inspector has  
5 already issued (or decided not to issue) an improvement notice or  
6 prohibition notice in relation to the same matter.

7 **91 Provisional improvement notice to be in writing**

8 A provisional improvement notice must be in writing.

9 **92 Contents of provisional improvement notice**

10 A provisional improvement notice must state—

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

- 1     **93**           **Provisional improvement notice may give directions to**  
2                   **remedy contravention**
- 3           (1) A provisional improvement notice may include directions  
4               concerning the measures to be taken to remedy the contravention or  
5               prevent the likely contravention or the matters or activities causing  
6               the contravention or likely contravention to which the notice relates.
- 7           (2) A direction included in a provisional improvement notice may—
- 8               (a) refer to a code of practice; and
- 9               (b) offer the person to whom it is issued a choice of ways in which  
10               to remedy the contravention.
- 11     **94**           **Minor changes to provisional improvement notice**
- 12           A health and safety representative may make minor changes to a  
13           provisional improvement notice—
- 14               (a) for clarification; or
- 15               (b) to correct errors or references; or
- 16               (c) to reflect changes of address or other circumstances.
- 17     **95**           **Issue of provisional improvement notice**
- 18           A provisional improvement notice may be issued to a person in  
19           accordance with section 209 (Issue and giving of notice).
- 20     **96**           **Health and safety representative may cancel notice**
- 21           The health and safety representative may, at any time, cancel a  
22           provisional improvement notice issued to a person by written notice  
23           given to that person.

1 **97 Display of provisional improvement notice**

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

6 Maximum penalty:

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

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

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

14 Maximum penalty:

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

17 **98 Formal irregularities or defects in notice**

18 A provisional improvement notice is not invalid only because of—

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

23 **99 Offence to contravene a provisional improvement notice**

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

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

3 Maximum penalty:

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

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

8 **100 Request for review of provisional improvement notice**

- 9 (1) Within 7 days after a provisional improvement notice is issued to a  
10 person—

- 11 (a) the person to whom it was issued; or  
12 (b) if the person is a worker—the person conducting the business  
13 or undertaking at the workplace at which the worker carries out  
14 work,

15 may ask the regulator to appoint an inspector to review the notice.

- 16 (2) If a request is made under subsection (1), the operation of the  
17 provisional improvement notice is stayed until the inspector makes a  
18 decision on the review.

19 **101 Regulator to appoint inspector to review notice**

- 20 (1) The regulator must ensure that an inspector attends the workplace as  
21 soon as practicable after a request is made under section 100.

22 (2) The inspector must review the provisional improvement notice and  
23 inquire into the circumstances that are the subject of the provisional  
24 improvement notice.

- 25 (3) An inspector may review a provisional improvement notice even if  
26 the period for compliance with the notice has expired.

- 1 **102 Decision of inspector on review of provisional**  
2 **improvement notice**
- 3 (1) After reviewing the provisional improvement notice, the inspector  
4 must—
- 5 (a) confirm the provisional improvement notice; or  
6 (b) confirm the provisional improvement notice with changes; or  
7 (c) cancel the provisional improvement notice.
- 8 (2) The inspector must give a copy of his or her decision to—
- 9 (a) the applicant for the review of the provisional improvement  
10 notice; and  
11 (b) the health and safety representative who issued the notice.
- 12 (3) A provisional improvement notice that is confirmed (with or without  
13 changes) by an inspector is taken to be an improvement notice  
14 issued by the inspector under this Act.

15 **Division 5.8 Part not to apply to prisoners**

16 **103 Part does not apply to prisoners**

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

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

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

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

5 **104** **Prohibition of discriminatory conduct**

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

8 Maximum penalty:

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

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

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

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

19 **105** **What is *discriminatory conduct***

20 (1) For the purposes of this part, a person engages in *discriminatory*  
21 *conduct* if—

22 (a) the person—

23 (i) dismisses a worker; or

24 (ii) terminates a contract for services with a worker; or

- 1 (iii) puts a worker to his or her detriment in the engagement of  
2 the worker; or
- 3 (iv) alters the position of a worker to the worker's detriment;  
4 or
- 5 (b) the person—
- 6 (i) refuses or fails to offer to engage a prospective worker; or  
7 (ii) treats a prospective worker less favourably than another  
8 prospective worker would be treated in offering terms of  
9 engagement; or
- 10 (c) the person terminates a commercial arrangement with another  
11 person; or
- 12 (d) the person refuses or fails to enter into a commercial  
13 arrangement with another person.
- 14 (2) For the purposes of this part, a person also engages in  
15 *discriminatory conduct* if the person organises to take any action  
16 referred to in subsection (1) or threatens to organise or take that  
17 action.

18 **106 What is a *prohibited reason***

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

- 23 (a) is, has been or proposes to be a health and safety representative  
24 or a member of a health and safety committee; or
- 25 (b) undertakes, has undertaken or proposes to undertake another  
26 role under this Act; or



- 1 (c) exercises a power or performs a function or has exercised a  
2 power or performed a function or proposes to exercise a power  
3 or perform a function as a health and safety representative or as  
4 a member of a health and safety committee; or
- 5 (d) exercises, has exercised or proposes to exercise a power under  
6 this Act or exercises, has exercised or proposes to exercise a  
7 power under this Act in a particular way; or
- 8 (e) performs, has performed or proposes to perform a function  
9 under this Act or performs, has performed or proposes to  
10 perform a function under this Act in a particular way; or
- 11 (f) refrains from, has refrained from or proposes to refrain from  
12 exercising a power or performing a function under this Act or  
13 refrains from, has refrained from or proposes to refrain from  
14 exercising a power or performing a function under this Act in a  
15 particular way; or
- 16 (g) assists or has assisted or proposes to assist, or gives or has  
17 given or proposes to give any information to any person  
18 exercising a power or performing a function under this Act; or
- 19 (h) raises or has raised or proposes to raise an issue or concern  
20 about work health and safety with—
- 21 (i) the person conducting a business or undertaking; or  
22 (ii) an inspector; or  
23 (iii) a WHS entry permit-holder; or  
24 (iv) a health and safety representative; or  
25 (v) a member of a health and safety committee; or  
26 (vi) another worker; or  
27 (vii) any other person who has a duty under this Act in relation  
28 to the matter; or

1 (viii) any other person exercising a power or performing a  
2 function under this Act; or

3 (i) is involved in, has been involved in or proposes to be involved  
4 in resolving a work health and safety issue under this Act; or

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

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

12 **107 Prohibition of requesting, instructing, inducing,**  
13 **encouraging, authorising or assisting discriminatory**  
14 **conduct**

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

19 Maximum penalty:

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

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

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

1     **108     Prohibition of coercion or inducement**

2           (1) A person must not organise or take, or threaten to organise or take,  
3           any action against another person with intent to coerce or induce the  
4           other person, or a third person—

5                   (a) to exercise or not to exercise a power, or to propose to exercise  
6                   or not to exercise a power, under this Act; or

7                   (b) to perform or not to perform a function, or to propose to  
8                   perform or not to perform a function, under this Act; or

9                   (c) to exercise or not to exercise a power or perform a function, or  
10                  to propose to exercise or not to exercise a power or perform a  
11                  function, in a particular way; or

12                  (d) to refrain from seeking, or continuing to undertake, a role  
13                  under this Act.

14           Maximum penalty:

15                   (a) in the case of an individual—\$100 000; or

16                   (b) in the case of a body corporate—\$500 000.

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

19           (2) In this section, a reference to taking action or threatening to take  
20           action against a person includes a reference to not taking a particular  
21           action or threatening not to take a particular action in relation to that  
22           person.

23           (3) To avoid doubt, a reasonable direction given by an emergency  
24           services worker in an emergency is not an action with intent to  
25           coerce or induce a person.

26           (4) In this section:

27                   *emergency services worker* means—

28                   (a) a police officer; or

1 (b) a member of an emergency service.

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

4 **109 Misrepresentation**

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

8 (a) rights or obligations under this Act; or

9 (b) ability to initiate, or participate in, a process or proceeding  
10 under this Act; or

11 (c) ability to make a complaint or inquiry to a person or body  
12 empowered under this Act to seek compliance with this Act.

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

16 Maximum penalty:

17 (a) in the case of an individual—\$100 000; or

18 (b) in the case of a body corporate—\$500 000.

19 (2) Subsection (1) does not apply if the person to whom the  
20 representation is made would not be expected to rely on it.

21 **Division 6.2 Criminal proceedings in relation to**  
22 **discriminatory conduct**

23 **110 Proof of discriminatory conduct**

24 (1) This section applies if, in a proceeding for an offence against  
25 section 104 (Prohibition of discriminatory conduct) or section 107  
26 (Prohibition of requesting, instructing, inducing, encouraging,  
27 authorising or assisting discriminatory conduct), the prosecution—

28 (a) proves that the discriminatory conduct was engaged in; and

- 1 (b) proves that a circumstance referred to in section 106 (a) to (j)  
2 (What is a *prohibited reason*) existed at the time the  
3 discriminatory conduct was engaged in; and
- 4 (c) adduces evidence that the discriminatory conduct was engaged  
5 in for a prohibited reason.
- 6 (2) The reason alleged for the discriminatory conduct is presumed to be  
7 the dominant reason for that conduct unless the accused proves, on  
8 the balance of probabilities, that the reason was not the dominant  
9 reason for the conduct.
- 10 (3) To avoid doubt, the burden of proof on the accused under  
11 subsection (2) is a legal burden of proof.

12 **111 Order for compensation or reinstatement**

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

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

- 1 **Division 6.3** **Civil proceedings in relation to**  
2 **discriminatory or coercive conduct**
- 3 **112** **Civil proceedings in relation to engaging in or inducing**  
4 **discriminatory or coercive conduct**
- 5 (1) An eligible person may apply to—  
6 (a) the Supreme Court for an order under subsection (3) (a); or  
7 (b) a court of competent jurisdiction for an order under  
8 subsection (3) (b) to (d).
- 9 (2) The court may make 1 or more of the orders set out in subsection (3)  
10 in relation to a person who has—  
11 (a) engaged in discriminatory conduct for a prohibited reason; or  
12 (b) requested, instructed, induced, encouraged, authorised or  
13 assisted another person to engage in discriminatory conduct for  
14 a prohibited reason; or  
15 (c) contravened section 108 (Prohibition of coercion or  
16 inducement).
- 17 (3) For the purposes of subsection (2), the orders that the court may  
18 make are—  
19 (a) an injunction; or  
20 (b) for conduct referred to in subsection (2) (a) or (b)—an order  
21 that the person pay (within a specified period) the  
22 compensation to the person who was the subject of the  
23 discriminatory conduct that the court considers appropriate; or

- 1 (c) for conduct referred to in subsection (2) (a) in relation to a  
2 worker who was or is an employee or prospective employee—  
3 an order that—
- 4 (i) the worker be reinstated or re-employed in his or her  
5 former position or, if that position is not available, in a  
6 similar position; or
- 7 (ii) the prospective worker be employed in the position for  
8 which he or she had applied or a similar position; or
- 9 (d) any other order that the court considers appropriate.
- 10 (4) For the purposes of this section, a person may be found to have  
11 engaged in discriminatory conduct for a prohibited reason only if a  
12 reason referred to in section 106 (What is a *prohibited reason*) was a  
13 substantial reason for the conduct.
- 14 (5) Nothing in this section is to be construed as limiting any other  
15 power of the court.
- 16 (6) For the purposes of this section, each of the following is an *eligible*  
17 *person*:
- 18 (a) a person affected by the contravention;
- 19 (b) a person authorised as a representative by a person referred to  
20 in paragraph (a).

- 1 **113 Procedure for civil actions for discriminatory conduct**
- 2 (1) A proceeding brought under section 112 must be commenced not
- 3 more than 1 year after the date on which the applicant knew or
- 4 ought to have known that the cause of action accrued.
- 5 (2) In a proceeding under section 112 in relation to conduct referred to
- 6 in section 112 (2) (a) or (b), if a prohibited reason is alleged for
- 7 discriminatory conduct, that reason is presumed to be a substantial
- 8 reason for that conduct unless the defendant proves, on the balance
- 9 of probabilities, that the reason was not a substantial reason for the
- 10 conduct.
- 11 (3) It is a defence to a proceeding under section 112 in relation to
- 12 conduct referred to in section 112 (2) (a) or (b) if the defendant
- 13 proves that—
- 14 (a) the conduct was reasonable in the circumstances; and
- 15 (b) a substantial reason for the conduct was to comply with the
- 16 requirements of this Act or a corresponding WHS law.
- 17 *Note* A reference to an Act includes a reference to statutory instruments made
- 18 or in force under the Act, including a regulation and any law or
- 19 instrument applied, adopted or incorporated by the Act (see Legislation
- 20 Act, s 104).
- 21 (4) To avoid doubt, the burden of proof on the defendant under
- 22 subsections (2) and (3) is a legal burden of proof.



1 **Division 6.4**                      **General**

2 **114**                      **General provisions relating to orders**

3                      (1) The making of an order in a proceeding under section 112 (Civil  
4 proceedings in relation to engaging in or inducing discriminatory or  
5 coercive conduct) in relation to conduct referred to in  
6 section 112 (2) (a) or (b) does not prevent the bringing of a  
7 proceeding for an offence under section 104 (Prohibition of  
8 discriminatory conduct) or section 107 (Prohibition of requesting,  
9 instructing, inducing, encouraging, authorising or assisting  
10 discriminatory conduct) in relation to the same conduct.

11                      (2) If the court makes an order under section 112 in a proceeding in  
12 relation to conduct referred to in section 112 (2) (a) or (b), the court  
13 cannot make an order under section 111 (Order for compensation or  
14 reinstatement) in a proceeding for an offence under section 104 or  
15 section 107 in relation to the same conduct.

16                      (3) If the court makes an order under section 111 in a proceeding for an  
17 offence under section 104 or section 107, the court cannot make an  
18 order under section 112 in a proceeding in relation to conduct  
19 referred to in section 112 (2) (a) or (b) that is the same conduct.

20 **115**                      **Prohibition of multiple actions**

21 A person cannot—

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

28                      (b) recover any compensation under division 6.3 if the person has  
29 received compensation for the matter under a law of the  
30 Commonwealth or a State; or

- 1 (c) commence or continue an application under division 6.3 if the  
2 person has failed in a proceeding, application or complaint in  
3 relation to the same matter under a law of the Commonwealth  
4 or a State, other than a proceeding, application or complaint  
5 relating to workers' compensation.

1 **Part 7** **Workplace entry by WHS entry**  
2 **permit-holders**

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

5 **Division 7.1** **Introductory**

6 **116** **Definitions—pt 7**

7 In this part:

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

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

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

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

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

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

3 **117 Entry to inquire into suspected contraventions**

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

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

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

14 **118 Rights that may be exercised while at workplace**

- 15 (1) While at the workplace under this division, the WHS entry  
16 permit-holder may do 1 or more of the following in relation to the  
17 suspected contravention of this Act:

18 (a) inspect any work system, plant, substance, structure or other  
19 thing relevant to the suspected contravention;

20 (b) consult with the relevant workers in relation to the suspected  
21 contravention;

22 (c) consult with the relevant person conducting a business or  
23 undertaking about the suspected contravention;

24 (d) require the relevant person conducting a business or  
25 undertaking to allow the WHS entry permit-holder to inspect,  
26 and make copies of, any document that is directly relevant to  
27 the suspected contravention and that—

28 (i) is kept at the workplace; or

- 1 (ii) is accessible from a computer that is kept at the  
2 workplace;
- 3 (e) warn any person whom the WHS entry permit-holder  
4 reasonably believes to be exposed to a serious risk to his or her  
5 health or safety emanating from an immediate or imminent  
6 exposure to a hazard, of that risk.
- 7 (2) However, the relevant person conducting the business or  
8 undertaking is not required under subsection (1) (d) to allow the  
9 WHS entry permit-holder to inspect or make copies of a document if  
10 to do so would contravene a law of the Commonwealth or a law of a  
11 State.
- 12 (3) A relevant person conducting a business or undertaking must not,  
13 without reasonable excuse, refuse or fail to comply with a  
14 requirement under subsection (1) (d).
- 15 *WHS civil penalty provision.*
- 16 Maximum penalty:
- 17 (a) in the case of an individual—\$10 000; or  
18 (b) in the case of a body corporate—\$50 000.
- 19 (4) Subsection (3) places an evidential burden on the defendant to show  
20 a reasonable excuse.
- 21 *Note 1 Evidential burden*—see the Criminal Code, s 58.
- 22 *Note 2* At least 24 hours notice is required for an entry to a workplace to  
23 inspect employee records or other documents held by someone other  
24 than a person conducting a business or undertaking (see s 120).
- 25 *Note 3* The use or disclosure of personal information obtained under this  
26 section is regulated under the *Privacy Act 1988* (Cwlth).

1 **119 Notice of entry**

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

15 **120 Entry to inspect employee records or information held by**  
16 **another person**

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

- 1 (3) Before doing so, the WHS entry permit-holder must give notice of  
2 the proposed entry to the person from whom the documents are  
3 requested and the relevant person conducting a business or  
4 undertaking.
- 5 (4) The notice must comply with the regulation.
- 6 (5) The notice must be given during usual working hours at that  
7 workplace at least 24 hours, but not more than 14 days, before the  
8 entry.
- 9 *Note* The use or disclosure of personal information obtained under this  
10 section is regulated under the *Privacy Act 1988* (Cwlth).

## 11 **Division 7.3 Entry to consult and advise workers**

### 12 **121 Entry to consult and advise workers**

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

### 22 **122 Notice of entry**

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

1 **Division 7.4 Requirements for WHS entry**  
2 **permit-holders**

3 **123 Contravening WHS entry permit conditions**

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

6 *WHS civil penalty provision.*

7 Maximum penalty: \$10 000.

8 **124 WHS entry permit-holder must also hold permit under**  
9 **other law**

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

12 *WHS civil penalty provision.*

13 Maximum penalty: \$10 000.

14 **125 WHS entry permit to be available for inspection**

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

21 *WHS civil penalty provision.*

22 Maximum penalty: \$10 000.



1 **126** **When right may be exercised**

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

6 *WHS civil penalty provision.*

7 Maximum penalty: \$10 000.

8 **127** **Where the right may be exercised**

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

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

14 **128** **Work health and safety requirements**

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

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

26 *WHS civil penalty provision.*

27 Maximum penalty: \$10 000.

1 **129 Residential premises**

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

4 *WHS civil penalty provision.*

5 Maximum penalty: \$10 000.

6 **130 WHS entry permit-holder not required to disclose names  
7 of workers**

8 (1) A WHS entry permit-holder is not required to disclose to the  
9 relevant person conducting a business or undertaking, or the person  
10 with management or control of the workplace, the name of any  
11 worker at the workplace.

12 (2) A WHS entry permit-holder who wishes to disclose to the relevant  
13 person conducting a business or undertaking, or the person with  
14 management or control of the workplace, the name of any worker  
15 may only do so with the consent of the worker.

16 **Division 7.5 WHS entry permits**

17 **131 Application for WHS entry permit**

18 (1) A union may apply to the regulator for the issue of a WHS entry  
19 permit to a person who is an official of the union.

20 (2) The application must specify the person who is to hold the WHS  
21 entry permit and include a statutory declaration by that person  
22 declaring that he or she—

23 (a) is an official of the union; and

24 (b) has satisfactorily completed the prescribed training; and

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

1    **132**        **Consideration of application**

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

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

7    **133**        **Eligibility criteria**

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

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

13   **134**        **Issue of WHS entry permit**

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

18   **135**        **Conditions on WHS entry permit**

19               The regulator may impose conditions on a WHS entry permit.

20   **136**        **Term of WHS entry permit**

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

1 **137 Expiry of WHS entry permit**

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

14 **138 Application to revoke WHS entry permit**

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

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

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

- 1 **139 Regulator must permit WHS entry permit-holder to show**  
2 **cause**
- 3 (1) If, on an application under section 138, the regulator is satisfied that  
4 a ground may exist for the revocation of the WHS entry permit  
5 under section 138 (2) (a), the regulator must—
- 6 (a) give the WHS entry permit-holder written notice (a *show*  
7 *cause notice*); and
- 8 (b) if the regulator considers it appropriate—suspend the operation  
9 of the WHS entry permit until the regulator decides the  
10 application for revocation.
- 11 (2) The show cause notice must—
- 12 (a) contain a statement to the effect that the WHS entry  
13 permit-holder may, not later than 21 days after the day the  
14 WHS entry permit-holder is given the notice, give the regulator  
15 written reasons explaining why the WHS entry permit should  
16 not be revoked; and
- 17 (b) be accompanied by a summary of the reasons for the  
18 application; and
- 19 (c) if applicable, be accompanied by a notice of suspension of the  
20 permit.
- 21 **140 Determination of application**
- 22 (1) If the regulator is satisfied on the balance of probabilities about any  
23 of the matters in section 138 (2) (Application to revoke WHS entry  
24 permit), it may make 1 or more of the following orders:
- 25 (a) an order imposing conditions on the WHS entry permit;
- 26 (b) an order suspending the WHS entry permit;
- 27 (c) an order revoking the WHS entry permit;

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

## 10 **Division 7.6 Dealing with disputes**

### 11 **141 Application for assistance of inspector to resolve dispute**

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

### 16 **142 Regulator may deal with a dispute about a right of entry** 17 **under this Act**

- 18 (1) The regulator may deal with a dispute about the exercise or  
19 purported exercise by a WHS entry permit-holder of a right of entry  
20 under this Act (including a dispute about whether a request under  
21 section 128 (Work health and safety requirements) is reasonable).
- 22 (2) The regulator may deal with the dispute in any manner it thinks fit,  
23 including by means of mediation, conciliation or arbitration.
- 24 (3) If the regulator deals with the dispute by arbitration, it may make  
25 1 or more of the following orders:
- 26 (a) an order imposing conditions on a WHS entry permit;
- 27 (b) an order suspending a WHS entry permit;

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

22 **143 Contravening order made to deal with dispute**

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

24 *WHS civil penalty provision.*

25 Maximum penalty:

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



1 **Division 7.7** **Prohibitions**

2 **144** **Person must not refuse or delay entry of WHS entry**  
3 **permit-holder**

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

7 *WHS civil penalty provision.*

8 Maximum penalty:

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

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

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

14 **145** **Person must not hinder or obstruct WHS entry**  
15 **permit-holder**

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

19 *WHS civil penalty provision.*

20 Maximum penalty:

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

1 **146 WHS entry permit-holder must not delay, hinder or**  
2 **obstruct any person or disrupt work at workplace**

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

7 *WHS civil penalty provision.*

8 Maximum penalty: \$10 000.

9 **147 Misrepresentations about things authorised by this part**

10 (1) A person must not take action—

11 (a) with the intention of giving the impression; or

12 (b) reckless as to whether the impression is given,

13 that the doing of a thing is authorised by this part if it is not so  
14 authorised.

15 *WHS civil penalty provision.*

16 Maximum penalty:

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

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

19 (2) Subsection (1) does not apply if the person reasonably believes that  
20 the doing of the thing is authorised.

1 **148** **Unauthorised use or disclosure of information or**  
2 **documents**

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

8 (a) the person reasonably believes that the use or disclosure is  
9 necessary to lessen or prevent—

10 (i) a serious risk to a person's health or safety; or

11 (ii) a serious threat to public health or safety; or

12 (b) the person has reason to suspect that unlawful activity has  
13 been, is being or may be engaged in, and uses or discloses the  
14 information or document as a necessary part of an investigation  
15 of the matter or in reporting concerns to relevant persons or  
16 authorities; or

17 (c) the use or disclosure is required or authorised by or under law;  
18 or

19 (d) the person reasonably believes that the use or disclosure is  
20 reasonably necessary for 1 or more of the following by, or on  
21 behalf of, an enforcement body (within the meaning of the  
22 *Privacy Act 1988* (Cwlth):

23 (i) the prevention, detection, investigation, prosecution or  
24 punishment of criminal offences, breaches of a law  
25 imposing a penalty or sanction or breaches of a prescribed  
26 law;

27 (ii) the enforcement of laws relating to the confiscation of the  
28 proceeds of crime;

29 (iii) the protection of the public revenue;

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

9 *WHS civil penalty provision.*

10 Maximum penalty:

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

## 13 **Division 7.8 General**

### 14 **149 Return of WHS entry permits**

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

20 *WHS civil penalty provision.*

21 Maximum penalty: \$2000.

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

1 **150 Union to provide information to regulator**

2 The relevant union must advise the regulator if—

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

12 *WHS civil penalty provision.*

13 Maximum penalty:

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

16 **151 Register of WHS entry permit-holders**

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



1 (i) any other function given to the regulator by this Act or another  
2 territory law.

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

7 **153 Powers of regulator**

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

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

13 **154 Delegation by regulator**

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

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

1 **Division 8.2 Powers of regulator to obtain**  
2 **information**

3 **155 Powers of regulator to obtain information**

4 (1) This section applies if the regulator has reasonable grounds to  
5 believe that a person is capable of giving information, providing  
6 documents or giving evidence—

7 (a) in relation to a possible contravention of this Act; or

8 (b) that will assist the regulator to monitor or enforce compliance  
9 with this Act.

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

14 (2) The regulator may, by written notice served on the person, require  
15 the person to do 1 or more of the following:

16 (a) to give the regulator, in writing signed by the person (or in the  
17 case of a body corporate, by a competent officer of the body  
18 corporate) and within the time and in the manner specified in  
19 the notice, that information of which the person has  
20 knowledge;

21 (b) to produce to the regulator, in accordance with the notice, those  
22 documents;

23 (c) to appear before a person appointed by the regulator on a day,  
24 and at a time and place, specified in the notice (being a day,  
25 time and place that are reasonable in the circumstances) and  
26 give either orally or in writing that evidence and produce those  
27 documents.

28 (3) The notice must—

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



- 1 (b) contain a statement to the effect that a failure to comply with a  
2 requirement is an offence; and
- 3 (c) if the notice requires the person to provide information or  
4 documents or answer questions—
- 5 (i) contain a statement about the effect of—
- 6 (A) section 172 (Abrogation of privilege against  
7 self-incrimination); and
- 8 (B) section 269 (Act does not affect legal professional  
9 privilege); and
- 10 (ii) state that the person may attend with a legal practitioner.
- 11 (4) The regulator must not make a requirement under subsection (2) (c)  
12 unless the regulator has taken all reasonable steps to obtain the  
13 information under subsection (2) (a) and (b) and has been unable to  
14 do so.
- 15 (5) A person must not, without reasonable excuse, refuse or fail to  
16 comply with a requirement under this section.
- 17 Maximum penalty:
- 18 (a) in the case of an individual—\$10 000; or  
19 (b) in the case of a body corporate—\$50 000.
- 20 *Note* Strict liability applies to each physical element of this offence  
21 (see s 12A).
- 22 (6) Subsection (5) places an evidential burden on the accused to show a  
23 reasonable excuse.
- 24 *Note* **Evidential burden**—see the Criminal Code, s 58.
- 25 (7) Section 172 (with any necessary changes) applies to a requirement  
26 under this section.



1 (2) An inspector must produce his or her identity card for inspection on  
2 request when exercising compliance powers.

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

6 **158 Accountability of inspectors**

7 (1) An inspector must give written notice to the regulator of all  
8 interests, pecuniary or otherwise, that the inspector has, or acquires,  
9 and that conflict or could conflict with the proper performance of  
10 the inspector's functions.

11 (2) The regulator must give a direction to an inspector not to deal, or to  
12 no longer deal, with a matter if—

13 (a) the regulator becomes aware that the inspector has a potential  
14 conflict of interest in relation to a matter; and

15 (b) the regulator considers that the inspector should not deal, or  
16 should no longer deal, with the matter.

17 **159 Suspension and ending of appointment of inspectors**

18 (1) The regulator may suspend or end the appointment of an inspector.

19 (2) A person's appointment as an inspector ends when the person ceases  
20 to be eligible for appointment as an inspector.

1            **Division 9.2                    Functions and powers of inspectors**

2            **160            Functions and powers of inspectors**

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

- 4            (a) to provide information and advice about compliance with this  
5            Act;
- 6            (b) to assist in the resolution of—
- 7                    (i) work health and safety issues at workplaces; and
- 8                    (ii) issues related to access to a workplace by an assistant to a  
9                    health and safety representative; and
- 10            (iii) issues related to the exercise or purported exercise of a  
11            right of entry under part 7 (Workplace entry by WHS  
12            entry permit-holders);
- 13            (c) to review disputed provisional improvement notices;
- 14            (d) to require compliance with this Act through the issuing of  
15            notices;
- 16            (e) to investigate contraventions of this Act and assist in the  
17            prosecution of offences;
- 18            (f) to attend coronial inquests in relation to work-related deaths  
19            and examine witnesses.

20            **161            Conditions on inspectors' compliance powers**

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

1 **162 Inspectors subject to regulator's directions**

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

6 **Division 9.3 Powers relating to entry**

7 **Subdivision 9.3.1 General powers of entry**

8 **163 Powers of entry**

- 9 (1) An inspector may at any time enter a place that is, or that the  
10 inspector reasonably suspects is, a workplace.
- 11 (2) An entry may be made under subsection (1) with, or without, the  
12 consent of the person with management or control of the workplace.
- 13 (3) If an inspector enters a place under subsection (1) and it is not a  
14 workplace, the inspector must leave the place immediately.
- 15 (4) An inspector may enter any place if the entry is authorised by a  
16 search warrant.

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

19 **164 Notification of entry**

- 20 (1) An inspector may enter a place under section 163 without prior  
21 notice to any person.
- 22 (2) An inspector must, as soon as practicable after entry to a workplace  
23 or suspected workplace, take all reasonable steps to notify the  
24 following persons of the entry and the purpose of the entry:
- 25 (a) the relevant person conducting a business or undertaking at the  
26 workplace;

- 1                    (b) the person with management or control of the workplace;
- 2                    (c) any health and safety representative for workers carrying out
- 3                    work for that business or undertaking at the workplace.
- 4                    (3) However, an inspector is not required to notify any person if to do
- 5                    so would defeat the purpose for which the place was entered or
- 6                    cause unreasonable delay.
- 7                    (4) In this section:
- 8                    *relevant person conducting a business or undertaking* means the
- 9                    person conducting a business or undertaking in relation to which the
- 10                    inspector is exercising the powers of entry.

11                    **165                    General powers on entry**

- 12                    (1) An inspector who enters a workplace under section 163 may do all
- 13                    or any of the following:
- 14                    (a) inspect, examine and make inquiries at the workplace;
- 15                    (b) inspect and examine anything (including a document) at the
- 16                    workplace;
- 17                    (c) bring to the workplace and use any equipment or materials that
- 18                    may be required;
- 19                    (d) take measurements, conduct tests and make sketches or
- 20                    recordings (including photographs, films, audio, video, digital
- 21                    or other recordings);
- 22                    (e) take and remove for analysis a sample of any substance or
- 23                    thing without paying for it;
- 24                    (f) require a person at the workplace to give the inspector
- 25                    reasonable help to exercise the inspector's powers under
- 26                    paragraphs (a) to (e);

1 (g) exercise any compliance power or other power that is  
2 reasonably necessary to be exercised by the inspector for the  
3 purposes of this Act.

4 (2) A person required to give reasonable help under subsection (1) (f)  
5 must not, without reasonable excuse, refuse or fail to comply with  
6 the requirement.

7 Maximum penalty:

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

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

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

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

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

## 15 **166 Persons assisting inspectors**

16 (1) A person (the *assistant*), including an interpreter, may accompany  
17 the inspector entering a workplace under section 163 (Powers of  
18 entry) to assist the inspector if the inspector considers the assistance  
19 is necessary.

20 (2) The assistant—

21 (a) may do the things at the place and in the manner that the  
22 inspector reasonably requires to assist the inspector to exercise  
23 compliance powers; but

24 (b) must not do anything that the inspector does not have power to  
25 do, except as permitted under a search warrant.

26 (3) Anything done lawfully by the assistant is taken for all purposes to  
27 have been done by the inspector.

1        **Subdivision 9.3.2      Search warrants**

2        **167            Search warrants**

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

10           **Example**

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

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

- 16           (4) The magistrate may issue a search warrant only if the magistrate is  
17           satisfied there are reasonable grounds for suspecting—
- 18           (a) there is a particular thing or activity (the *evidence*) that may  
19           provide evidence of an offence against this Act; and

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

- 24           (b) the evidence is, or may be within the next 72 hours, at the  
25           place.
- 26           (5) The search warrant must state—
- 27           (a) that an inspector may, with any necessary and reasonable help  
28           and force, enter the place and exercise the inspector's  
29           compliance powers; and
- 30           (b) the offence for which the search warrant is issued; and



- 1 (c) the evidence that may be seized under the search warrant; and  
2 (d) the hours when the place may be entered; and  
3 (e) the date, within 7 days after the day of the search warrant's  
4 issue, the search warrant ends.

5 **167A Warrants—application made other than in person**

- 6 (1) An inspector may apply for a warrant by phone, fax, email, radio or  
7 other form of communication if the inspector considers it necessary  
8 because of—  
9 (a) urgent circumstances; or  
10 (b) other special circumstances.
- 11 (2) Before applying for the warrant, the inspector must prepare an  
12 application stating the grounds on which the warrant is sought.
- 13 (3) The inspector may apply for the warrant before the application is  
14 sworn.
- 15 (4) After issuing the warrant, the magistrate must immediately fax a  
16 copy to the inspector if it is practicable to do so.
- 17 (5) If it is not practicable to fax a copy to the inspector—  
18 (a) the magistrate must tell the inspector—  
19 (i) the terms of the warrant; and  
20 (ii) the date and time the warrant was issued; and  
21 (b) the inspector must complete a form of warrant (the *warrant*  
22 *form*) and write on it—  
23 (i) the magistrate's name; and  
24 (ii) the date and time the magistrate issued the warrant; and  
25 (iii) the warrant's terms.

- 1            (6) The faxed copy of the warrant, or the warrant form properly  
2            completed by the inspector, authorises the entry and the exercise of  
3            the inspector's powers under this part.
- 4            (7) The inspector must, at the first reasonable opportunity, send to the  
5            magistrate—
- 6                    (a) the sworn application; and  
7                    (b) if the inspector completed a warrant form—the completed  
8                    warrant form.
- 9            (8) On receiving the documents, the magistrate must attach them to the  
10            warrant.
- 11           (9) A court must find that a power exercised by the inspector was not  
12           authorised by a warrant under this section if—
- 13                    (a) the question arises in a proceeding in the court whether the  
14                    exercise of power was authorised by a warrant; and  
15                    (b) the warrant is not produced in evidence; and  
16                    (c) it is not proved that the exercise of power was authorised by a  
17                    warrant under this section.

18           **168            Announcement before entry on warrant**

- 19           (1) Before executing a search warrant, the inspector named in the  
20           warrant or an assistant to the inspector must—
- 21                    (a) announce that he or she is authorised by the warrant to enter  
22                    the place; and  
23                    (b) give any person at the place an opportunity to allow that entry  
24                    to the place.

1           (2) However, the inspector or an assistant to the inspector is not  
2           required to comply with subsection (1) if he or she believes on  
3           reasonable grounds that immediate entry to the place is needed to  
4           ensure—

5           (a) the safety of any person; or

6           (b) that the effective execution of the warrant is not frustrated.

7       **169           Copy of warrant to be given to person with management**  
8       **or control of place**

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

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

14          (b) give that person—

15                  (i) a copy of the warrant; and

16                  (ii) a document setting out the rights and obligations of the  
17                  person.

18       **169A          Occupier entitled to be present during search etc**

19          (1) If the occupier of premises, or someone else who apparently  
20          represents the occupier, is present at the premises while a search  
21          warrant is being executed, the person is entitled to observe the  
22          search being conducted.

23          (2) However, the person is not entitled to observe the search if—

24                  (a) to do so would impede the search; or

25                  (b) the person is under arrest, and allowing the person to observe  
26                  the search being conducted would interfere with the objectives  
27                  of the search.

- 1            (3) This section does not prevent 2 or more areas of the premises being  
2            searched at the same time.

3            **Subdivision 9.3.3      Limitation on entry powers**

4            **170            Places used for residential purposes**

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

- 9            (a) with the consent of the person with management or control of  
10           the place; or  
11           (b) under the authority conferred by a search warrant; or  
12           (c) for the purpose only of gaining access to a suspected  
13           workplace, but only—  
14                (i) if the inspector reasonably believes that no reasonable  
15                alternative access is available; and  
16                (ii) at a reasonable time having regard to the times at which  
17                the inspector believes work is being carried out at the  
18                place to which access is sought.

19           **Subdivision 9.3.4      Specific powers on entry**

20           **171            Power to require production of documents and answers**  
21           **to questions**

- 22           (1) An inspector who enters a workplace under this division may—  
23                (a) require a person to tell the inspector who has custody of, or  
24                access to, a document; or  
25                (b) require a person who has custody of, or access to, a document  
26                to produce that document to the inspector while the inspector is  
27                at that workplace or within a specified period; or

- 1 (c) require a person at the workplace to answer any questions put  
2 by the inspector.
- 3 (2) A requirement under subsection (1) (b) must be made by written  
4 notice unless the circumstances require the inspector to have  
5 immediate access to the document.
- 6 (3) An interview conducted by an inspector under subsection (1) (c)  
7 must be conducted in private if—
- 8 (a) the inspector considers it appropriate; or  
9 (b) the person being interviewed so requests.
- 10 (4) Subsection (3) does not—
- 11 (a) limit the operation of section 166 (Persons assisting  
12 inspectors); or
- 13 (b) prevent a representative of the person being interviewed from  
14 being present at the interview.
- 15 (5) Subsection (3) may be invoked during an interview by—
- 16 (a) the inspector; or  
17 (b) the person being interviewed,  
18 in which case the subsection applies to the remainder of the  
19 interview.
- 20 (6) A person must not, without reasonable excuse, refuse or fail to  
21 comply with a requirement under this section.
- 22 **Maximum penalty:**
- 23 (a) in the case of an individual—\$10 000; or  
24 (b) in the case of a body corporate—\$50 000.
- 25 *Note 1* See s 172 and s 173 in relation to self-incrimination and s 269 in  
26 relation to legal professional privilege.
- 27 *Note 2* Strict liability applies to each physical element of this offence  
28 (see s 12A).

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

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

4            **172            Abrogation of privilege against self-incrimination**

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

9            (2) However, any information, document or thing obtained, directly or  
10            indirectly, because of the giving of the answer or the production of  
11            the document is not admissible in evidence against the person in a  
12            civil or criminal proceeding, other than a proceeding for an offence  
13            arising out of the false or misleading nature of the answer,  
14            information or document.

15            **173            Warning to be given**

16            (1) Before requiring a person to answer a question or provide  
17            information or a document under this part, an inspector must—

18            (a) identify himself or herself to the person as an inspector by  
19            producing the inspector's identity card or in some other way;  
20            and

21            (b) warn the person that failure to comply with the requirement or  
22            to answer the question, without reasonable excuse, would  
23            constitute an offence; and

24            (c) warn the person about the effect of section 172; and

25            (d) advise the person about the effect of section 269 (Act does not  
26            affect legal professional privilege).

- 1 (2) It is not an offence for an individual to refuse to answer a question  
2 put by an inspector or provide information or a document to an  
3 inspector under this part on the ground that the question,  
4 information or document might tend to incriminate him or her,  
5 unless he or she was first given the warning in subsection (1) (c).
- 6 (3) Nothing in this section prevents an inspector from obtaining and  
7 using evidence given to the inspector voluntarily by any person.

8 **174 Powers to copy and retain documents**

- 9 (1) An inspector may—
- 10 (a) make copies of, or take extracts from, a document given to the  
11 inspector in accordance with a requirement under this Act; and
- 12 (b) keep that document for the period that the inspector considers  
13 necessary.
- 14 (2) While an inspector retains custody of a document, the inspector  
15 must permit the following persons to inspect or make copies of the  
16 document at all reasonable times:
- 17 (a) the person who produced the document;
- 18 (b) the owner of the document;
- 19 (c) a person authorised by a person referred to in paragraph (a) or  
20 (b).

21 **175 Power to seize evidence etc**

- 22 (1) An inspector who enters a workplace under section 163 (Powers of  
23 entry) may seize anything (including a document) at the place if the  
24 inspector reasonably believes the thing is evidence of an offence  
25 against this Act.

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

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

8            **176            Inspector’s power to seize dangerous workplaces and**  
9            **things**

- 10           (1) This section applies if an inspector who enters a workplace under  
11           this part reasonably believes that—
- 12           (a) the workplace or part of the workplace; or  
13           (b) plant at the workplace; or  
14           (c) a substance at the workplace or part of the workplace; or  
15           (d) a structure at a workplace,  
16           is defective or hazardous to a degree likely to cause serious injury or  
17           illness or a dangerous incident to occur.
- 18           (2) The inspector may seize the workplace or part, the plant, the  
19           substance or the structure.

20           **177           Powers supporting seizure**

- 21           (1) Having seized a thing, an inspector may—
- 22           (a) move the thing from the place where it was seized (the *place of*  
23           *seizure*); or  
24           (b) leave the thing at the place of seizure but take reasonable  
25           action to restrict access to it; or



1 (c) if the thing is plant or a structure—dismantle or cause to be  
2 dismantled the plant or structure.

3 **Examples—par (b)**

4 1 sealing a thing and marking it to show access to it is restricted

5 2 sealing the entrance to a room where a thing is situated and marking it to  
6 show access to it is restricted

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

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

13 Maximum penalty:

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

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

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

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

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

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

24 (4) The requirement—

25 (a) must be made by written notice; or

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

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

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

6            Maximum penalty:

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

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

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

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

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

14    **178            Receipt for seized things**

15           (1) As soon as practicable after an inspector seizes a thing, the inspector  
16           must give a receipt for it to the person from whom it was seized.

17           (2) However, if for any reason it is not practicable to comply with  
18           subsection (1), the inspector must leave the receipt in a conspicuous  
19           position and in a reasonably secure way at the place of seizure.

20           (3) The receipt must describe generally each thing seized and its  
21           condition.

22           (4) This section does not apply to a thing if it is impracticable or would  
23           be unreasonable to give the receipt required by this section (given  
24           the thing's nature, condition and value).

1 **179 Forfeiture of seized things**

- 2 (1) A seized thing is forfeited to the Territory if the regulator—
- 3 (a) cannot find the person entitled to the thing after making  
4 reasonable inquiries; or
- 5 (b) cannot return it to the person entitled to it, after making  
6 reasonable efforts; or
- 7 (c) reasonably believes it is necessary to forfeit the thing to  
8 prevent it being used to commit an offence against this Act.
- 9 (2) Subsection (1) (a) does not require the regulator to make inquiries if  
10 it would be unreasonable to make inquiries to find the person  
11 entitled to the thing.
- 12 (3) Subsection (1) (b) does not require the regulator to make efforts if it  
13 would be unreasonable to make efforts to return the thing to the  
14 person entitled to it.
- 15 (4) If the regulator decides to forfeit the thing under subsection (1) (c),  
16 the regulator must tell the person entitled to the thing of the decision  
17 by written notice.
- 18 (5) Subsection (4) does not apply if—
- 19 (a) the regulator cannot find the person entitled to the thing, after  
20 making reasonable inquiries; or
- 21 (b) it is impracticable or would be unreasonable to give the notice.
- 22 (6) The notice must state—
- 23 (a) the reasons for the decision; and
- 24 (b) that the person entitled to the thing may apply within 28 days  
25 after the date of the notice for the decision to be reviewed; and
- 26 (c) how the person may apply for the review; and
- 27 (d) that the person may apply for a stay of the decision if the  
28 person applies for a review.

- 1            (7) In deciding whether and, if so, what inquiries and efforts are  
2            reasonable or whether it would be unreasonable to give notice about  
3            a thing, regard must be had to the thing's nature, condition and  
4            value.
- 5            (8) Any costs reasonably incurred by the Territory in storing or  
6            disposing of a thing forfeited under subsection (1) (c) may be  
7            recovered in a court of competent jurisdiction as a debt due to the  
8            Territory from that person.
- 9            (9) In this section:
- 10            *person entitled* to a thing means the person from whom it was  
11            seized unless that person is not entitled to possess it in which case it  
12            means the owner of the thing.

13    **180            Return of seized things**

- 14            (1) If a seized thing has not been forfeited, the person entitled to the  
15            thing may apply to the regulator for the return of the thing after the  
16            end of 6 months after it was seized.
- 17            (2) The regulator must return the thing to the applicant under  
18            subsection (1) unless the regulator has reasonable grounds to retain  
19            the thing.
- 20            (3) The regulator may impose any conditions on the return of the thing  
21            under this section that the regulator considers appropriate to  
22            eliminate or minimise any risk to work health or safety related to the  
23            thing.
- 24            (4) In this section:
- 25            *person entitled* to a thing means the person entitled to possess the  
26            thing or the owner of the thing.

- 1    **181       Access to seized things**
- 2       (1) Until a seized thing is forfeited or returned, the regulator must
- 3       permit the following persons to inspect it and, if it is a document, to
- 4       make copies of it at all reasonable times:
- 5           (a) the person from whom the thing was seized;
- 6           (b) the owner of the thing;
- 7           (c) a person authorised by a person referred to in paragraph (a) or
- 8           (b).
- 9       (2) Subsection (1) does not apply if it is impracticable or would be
- 10       unreasonable to allow inspection or copying.

11    **Division 9.4           Damage and compensation**

- 12    **182       Damage etc to be minimised**
- 13       In the exercise, or purported exercise, of a compliance power, an
- 14       inspector must take all reasonable steps to ensure that the inspector,
- 15       and any assistant to the inspector, cause as little inconvenience,
- 16       detriment and damage as is practicable.

- 17    **183       Inspector to give notice of damage**
- 18       (1) This section applies if an inspector, or an assistant to an inspector,
- 19       damages a thing when exercising, or purporting to exercise, a
- 20       compliance power.
- 21       (2) The inspector must, as soon as practicable, give written notice of the
- 22       damage to the person who the inspector believes on reasonable
- 23       grounds is the person in control of the thing.
- 24       (3) If the inspector believes the damage was caused by a latent defect in
- 25       the thing or circumstances beyond the inspector's or assistant's
- 26       control, the inspector may state it in the notice.

- 1            (4) If, for any reason, it is impracticable to comply with subsection (2),  
2            the inspector must leave the notice in a conspicuous position and in  
3            a reasonably secure way where the damage happened.
- 4            (5) This section does not apply to damage the inspector reasonably  
5            believes is trivial.

6            **184            Compensation**

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

19           **Division 9.5            Other matters**

20           **185            Power to require name and address**

- 21           (1) An inspector may require a person to provide the person's name and  
22           home address if—  
23           (a) the inspector finds the person committing an offence against  
24           this Act; or  
25           (b) the inspector finds the person in circumstances that lead, or has  
26           information that leads, the inspector to reasonably suspect the  
27           person has committed an offence against this Act; or

1 (c) the inspector reasonably believes that the person may be able  
2 to assist in the investigation of an offence against this Act.

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

7 (2) When asking a person to provide their name and home address, the  
8 inspector must—

9 (a) tell the person the reason for the requirement to provide his or  
10 her name and home address; and

11 (b) warn the person that it is an offence to fail to state his or her  
12 name and home address, unless the person has a reasonable  
13 excuse.

14 (3) If the inspector reasonably believes that the name or home address is  
15 false, the inspector may require the person to give evidence of its  
16 correctness.

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

19 Maximum penalty: \$10 000.

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

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

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

1    **186            Inspector may take affidavits**

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

4    **187            Attendance of inspector at coronial inquests**

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

8    **Division 9.6                    Offences in relation to inspectors**

9    **188            Offence to hinder or obstruct inspector**

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

13                   Maximum penalty:

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

16   **189            Offence to impersonate inspector**

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

19                   Maximum penalty: \$10 000.



- 1    **190       Offence to assault, threaten or intimidate inspector**
- 2       A person commits an offence if—
- 3       (a) the person engages in conduct; and
- 4       (b) the person intends, by engaging in that conduct, to directly or
- 5             indirectly assault, threaten or intimidate another person; and
- 6       (c) the other person is an inspector or a person assisting an
- 7             inspector.
- 8       Maximum penalty:
- 9       (a) in the case of an individual—\$50 000 or imprisonment for
- 10            2 years or both; or
- 11       (b) in the case of a body corporate—\$250 000.

1 **Part 10 Enforcement measures**

2 **Division 10.1 Improvement notices**

3 **191 Issue of improvement notices**

4 (1) This section applies if an inspector reasonably believes that a  
5 person—

6 (a) is contravening a provision of this Act; or

7 (b) has contravened a provision in circumstances that make it  
8 likely that the contravention will continue or be repeated.

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

13 (2) The inspector may issue an improvement notice requiring the person  
14 to—

15 (a) remedy the contravention; or

16 (b) prevent a likely contravention from occurring; or

17 (c) remedy the things or operations causing the contravention or  
18 likely contravention.

19 **192 Contents of improvement notices**

20 (1) An improvement notice must state—

21 (a) that the inspector believes the person—

22 (i) is contravening a provision of this Act; or

23 (ii) has contravened a provision in circumstances that make it  
24 likely that the contravention will continue or be repeated;

25 and

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

13 **193 Compliance with improvement notice**

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

16 Maximum penalty:

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

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

21 **194 Extension of time for compliance with improvement**  
22 **notices**

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

- 1 (4) In this section:  
2 *compliance period* means the period stated in the improvement  
3 notice under section 192 (Contents of improvement notices), and  
4 includes that period as extended under this section.

## 5 **Division 10.2 Prohibition notices**

### 6 **195 Power to issue prohibition notice**

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

### 24 **196 Contents of prohibition notice**

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

- 1 (b) briefly, the activity that the inspector believes involves or will  
2 involve the risk and the matters that give or will give rise to the  
3 risk; and
- 4 (c) the provision of this Act that the inspector believes is being, or  
5 is likely to be, contravened by that activity.
- 6 (2) A prohibition notice may include directions on the measures to be  
7 taken to remedy the risk, activities or matters to which the notice  
8 relates, or the contravention or likely contravention referred to in  
9 subsection (1) (c).
- 10 (3) Without limiting section 195, a prohibition notice that prohibits the  
11 carrying on of an activity in a specified way may do so by stating  
12 1 or more of the following:
- 13 (a) a workplace, or part of a workplace, at which the activity is not  
14 to be carried out;
- 15 (b) anything that is not to be used in connection with the activity;
- 16 (c) any procedure that is not to be followed in connection with the  
17 activity.

18 **197 Compliance with prohibition notice**

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

22 **Maximum penalty:**

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

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

1 **Division 10.3 Non-disturbance notices**

2 **198 Issue of non-disturbance notice**

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

7 **199 Contents of non-disturbance notice**

- 8 (1) A non-disturbance notice may require the person to—
- 9 (a) preserve the site at which a notifiable incident has occurred for  
10 a specified period; or
- 11 (b) prevent the disturbance of a particular site (including the  
12 operation of plant) in other circumstances for a specified  
13 period that is reasonable in the circumstances.
- 14 (2) A non-disturbance notice must specify the period (of not more than  
15 7 days) for which it applies and set out—
- 16 (a) the obligations of the person to whom the notice is issued; and  
17 (b) the measures to be taken to preserve a site or prevent  
18 disturbance of a site; and
- 19 (c) the penalty for contravening the notice.
- 20 (3) In subsection (1) a reference to a site includes any plant, substance,  
21 structure or thing associated with the site.
- 22 (4) A non-disturbance notice does not prevent any action—
- 23 (a) to assist an injured person; or  
24 (b) to remove a deceased person; or  
25 (c) that is essential to make the site safe or to prevent a further  
26 incident; or

1 (d) that is associated with a police investigation; or

2 (e) for which an inspector has given permission.

3 **200 Compliance with non-disturbance notice**

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

6 Maximum penalty:

7 (a) in the case of an individual—\$50 000; or

8 (b) in the case of a body corporate—\$250 000.

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

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

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

14 **201 Issue of subsequent notices**

15 If an inspector considers it necessary to do so, he or she may issue  
16 1 or more subsequent non-disturbance notices to a person, whether  
17 before or after the expiry of the previous notice, each of which must  
18 comply with section 199 (Contents of non-disturbance notice).

19 **Division 10.4 General requirements applying to**  
20 **notices**

21 **202 Application—div 10.4**

22 In this division:

23 *notice* means improvement notice, prohibition notice or  
24 non-disturbance notice.

25 **203 Notice to be in writing**

26 A notice must be in writing.

1 **204 Directions in notices**

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

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

7 **205 Recommendations in notice**

8 (1) An improvement notice or prohibition notice may include  
9 recommendations.

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

12 **206 Changes to notice by inspector**

13 (1) An inspector may make minor changes to a notice—

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

17 (2) An inspector may also, in accordance with section 194 (Extension of  
18 time for compliance with improvement notices), extend the  
19 compliance period for an improvement notice.

20 **207 Regulator may vary or cancel notice**

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



1 **208 Formal irregularities or defects in notice**

2 A notice is not invalid only because of—

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

9 **209 Issue and giving of notice**

10 (1) A notice may be issued or given to a person—

- 11 (a) by delivering it personally to the person or sending it by post or  
12 facsimile or electronic transmission to the person's usual or  
13 last known place of residence or business; or
- 14 (b) by leaving it for the person at the person's usual or last known  
15 place of residence or business with a person who appears to be  
16 over 16 years and who appears to reside or work there; or
- 17 (c) by leaving it for the person at the workplace to which the  
18 notice relates with a person who is or appears to be the person  
19 with management or control of the workplace; or
- 20 (d) in a prescribed manner.

21 (2) A regulation may prescribe—

- 22 (a) the manner of issuing a notice; and
- 23 (b) the steps a person to whom a notice is issued must take to bring  
24 it to the attention of other persons.

1 **210 Display of notice**

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

6 Maximum penalty:

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

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

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

13 Maximum penalty:

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

16 **Division 10.5 Remedial action**

17 **211 When regulator may carry out action**

- 18 (1) This section applies if a person to whom a prohibition notice is  
19 issued fails to take reasonable steps to comply with the notice.

- 20 (2) The regulator may take any remedial action the regulator believes  
21 reasonable to make the workplace or situation safe after giving  
22 written notice to the person to whom the prohibition notice was  
23 issued of—

- 24 (a) the regulator's intention to take that action; and  
25 (b) the owner's or person's liability for the costs of that action.

1    **212           Power of the regulator to take other remedial action**

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

10   **213           Costs of remedial or other action**

- 11           The regulator may recover the reasonable costs of any remedial
- 12           action taken under—
- 13               (a) section 211 (When regulator may carry out action) from the
- 14               person to whom the notice is issued; or
- 15               (b) section 212 from any person to whom the prohibition notice
- 16               could have been issued in relation to the matter,
- 17           as a debt due to the Territory.

18   **Division 10.6           Injunctions**

19   **214           Application—div 10.6**

20           In this division:

21           *notice* means improvement notice, prohibition notice or

22           non-disturbance notice.

- 1    **215**        **Injunction for noncompliance with notice**
- 2            (1) The regulator may apply to the Supreme Court for an injunction—
- 3               (a) compelling a person to comply with a notice; or
- 4               (b) restraining a person from contravening a notice.
- 5            (2) The regulator may do so—
- 6               (a) whether or not a proceeding has been brought for an offence
- 7               against this Act in connection with any matter in relation to
- 8               which the notice was issued; and
- 9               (b) whether any period for compliance with the notice has expired.

## 1      **Part 11**                                      **Enforceable undertakings**

### 2      **216**              **Regulator may accept WHS undertakings**

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

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

- 9              (2) However, a WHS undertaking cannot be accepted for a  
10                                      contravention or alleged contravention that is a category 1 offence.

- 11              (3) The giving of a WHS undertaking does not constitute an admission  
12                                      of guilt by the person giving it in relation to the contravention or  
13                                      alleged contravention to which the undertaking relates.

### 14      **217**              **Notice of decision and reasons for decision**

- 15              (1) The regulator must give a person seeking to make a  
16                                      WHS undertaking written notice of the regulator's decision to  
17                                      accept or reject the WHS undertaking and of the reasons for the  
18                                      decision.

- 19              (2) The regulator must publish, on the regulator's website, notice of a  
20                                      decision to accept a WHS undertaking and the reasons for that  
21                                      decision.

### 22      **218**              **When a WHS undertaking is enforceable**

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

1 **219 Compliance with WHS undertaking**

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

4 Maximum penalty:

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

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

9 **220 Contravention of WHS undertaking**

10 (1) The regulator may apply to a court for an order if a person  
11 contravenes a WHS undertaking.

12 (2) If the court is satisfied that the person who made the  
13 WHS undertaking has contravened the undertaking, the court, in  
14 addition to the imposition of any penalty, may make 1 or both of the  
15 following orders:

- 16 (a) an order directing the person to comply with the undertaking;  
17 (b) an order discharging the undertaking.

18 (3) In addition to the orders referred to in subsection (2), the court may  
19 make any other order that the court considers appropriate in the  
20 circumstances, including orders directing the person to pay to the  
21 Territory—

- 22 (a) the costs of the proceeding; and  
23 (b) the reasonable costs of the regulator in monitoring compliance  
24 with the WHS undertaking in the future.

25 (4) Nothing in this section prevents a proceeding being brought for the  
26 contravention or alleged contravention of this Act to which the  
27 WHS undertaking relates.

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

1    **221       Withdrawal or variation of WHS undertaking**

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

10   **222       Proceeding for alleged contravention**

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





1 (3) In this section:

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

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

7 **Table 223 Reviewable decisions and eligible persons**

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

**Part 12** Review of decisions  
**Division 12.1** Reviewable decisions

Section 223

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

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

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

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

1        **Division 12.2            Internal review**

2        **224            Application for internal review**

3            (1) An eligible person in relation to a reviewable decision, other than a  
4            decision made by the regulator or a delegate of the regulator, may  
5            apply to the regulator for review (an *internal review*) of the decision  
6            within—

7                    (a) the relevant time after the day on which the decision first came  
8                    to the eligible person's notice; or

9                    (b) such longer period that the regulator allows.

10          (2) The application must be made in the manner and form required by  
11          the regulator.

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

14          (3) For the purposes of this section:

15            *relevant time* means—

16                    (a) in the case of a decision to issue an improvement notice—the  
17                    period specified in the notice for compliance with the notice or  
18                    14 days, whichever is the lesser; and

19                    (b) in any other case—14 days.

20        **225            Internal reviewer**

21            (1) The regulator may appoint a person or body to review decisions on  
22            applications under this division.

23            (2) The person who made the decision cannot be an internal reviewer in  
24            relation to that decision.

1    **226        Decision of internal reviewer**

- 2           (1) The internal reviewer must review the reviewable decision and  
3           make a decision as soon as is reasonably practicable and within  
4           14 days after the application for internal review is received.
- 5           (2) The decision may be—
- 6               (a) to confirm or vary the reviewable decision; or
- 7               (b) to set aside the reviewable decision and substitute another  
8               decision that the internal reviewer considers appropriate.
- 9           (3) If the internal reviewer seeks further information from the applicant,  
10           the 14-day period ceases to run until the applicant provides the  
11           information to the internal reviewer.
- 12           (4) The applicant must provide the further information within the time  
13           (being not less than 7 days) specified by the internal reviewer in the  
14           request for information.
- 15           (5) If the applicant does not provide the further information within the  
16           required time, the decision is taken to have been confirmed by the  
17           internal reviewer at the end of the required time.
- 18           (6) If the reviewable decision is not varied or set aside within the  
19           14-day period, the decision is taken to have been confirmed by the  
20           internal reviewer.

21    **227        Decision on internal review**

- 22           As soon as practicable after reviewing the decision, the internal  
23           reviewer must give the applicant in writing—
- 24               (a) the decision on the internal review; and
- 25               (b) the reasons for the decision.

- 1    **228            Stays of reviewable decisions on internal review**
- 2            (1) An application for an internal review of a reviewable decision (other
- 3            than a decision to issue a prohibition notice or a non-disturbance
- 4            notice) stays the operation of the decision.
- 5            (2) If an application is made for an internal review of a decision to issue
- 6            a prohibition notice or a non-disturbance notice, the reviewer may
- 7            stay the operation of the decision.
- 8            (3) The reviewer may make the decision to stay the operation of a
- 9            decision on the reviewer's own initiative or on the application of the
- 10           applicant for review.
- 11           (4) The reviewer must make a decision on an application for a stay
- 12           within 1 working day after the reviewer receives the application.
- 13           (5) If the reviewer has not made a decision to stay a decision within the
- 14           time set out in subsection (4), the reviewer is taken to have made a
- 15           decision to grant a stay.
- 16           (6) A stay of the operation of a decision pending a decision on an
- 17           internal review continues until whichever of the following is earlier:
- 18           (a) the end of the prescribed period for applying for an external
- 19           review of the decision made on the internal review;
- 20           (b) an application for external review is made.



1 **Division 12.3 External review**

2 **229 Application for external review**

3 (1) An eligible person may apply to the ACAT for review (an *external*  
4 *review*) of—

5 (a) a reviewable decision made by the regulator; or

6 (b) a decision made, or taken to have been made, on an internal  
7 review.

8 (2) The application must be made—

9 (a) if the decision was to forfeit a thing (including a document)  
10 within 28 days after the day on which the decision first came to  
11 the applicant's notice; or

12 (b) in the case of any other decision—within 14 days after the day  
13 on which the decision first came to the applicant's notice; or

14 (c) if the regulator is required by the external review body to give  
15 the eligible person a statement of reasons, within 14 days after  
16 the day on which the statement is provided.



- 1     **231     Procedure if prosecution is not brought**
- 2             (1) A person (the *applicant*) may make a written request to the regulator  
3             that the regulator refer a matter to the DPP if—
- 4                     (a) the applicant reasonably considers that the occurrence of an  
5                     act, matter or thing constitutes a category 1 offence or a  
6                     category 2 offence; and
- 7                     (b) no prosecution has been brought in relation to the occurrence  
8                     of the act, matter or thing after 6 months but not later than  
9                     12 months after the occurrence.
- 10            (2) Within 3 months after the regulator receives a request the regulator  
11            must—
- 12                     (a) advise the applicant (in writing)—
- 13                             (i) whether the investigation is complete; and
- 14                             (ii) if the investigation is complete—
- 15                                     (A) whether the regulator has referred or will be  
16                                     referring the matter to the DPP; or
- 17                                     (B) the reasons why the regulator will not be referring  
18                                     the matter to the DPP; and
- 19                     (b) advise the person who the applicant believes committed the  
20                     offence of the application.
- 21            (3) If the regulator advises the person that the regulator will not be  
22            referring a matter concerning a category 1 or category 2 offence to  
23            the DPP, the regulator must—
- 24                     (a) advise the person that the person may ask the regulator to refer  
25                     the matter to the DPP for consideration; and
- 26                     (b) if the person makes a written request to the regulator to do so,  
27                     refer the matter to the DPP within 1 month of the request.

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

16 **232 Limitation period for prosecutions**

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

1 (iii) the regulator has agreed under section 221 (Withdrawal or  
2 variation of WHS undertaking) to the withdrawal of the  
3 WHS undertaking.

4 (2) A proceeding for a category 1 offence may be brought after the end  
5 of the applicable limitation period in subsection (1) if fresh evidence  
6 relevant to the offence is discovered and the court is satisfied that  
7 the evidence could not reasonably have been discovered within the  
8 relevant limitation period.

9 **233 Multiple contraventions of health and safety duty**  
10 **provision**

11 (1) Two or more contraventions of a health and safety duty provision by  
12 a person that arise out of the same factual circumstances may be  
13 charged as a single offence or as separate offences.

14 (2) However, this section does not authorise contraventions of 2 or  
15 more health and safety duty provisions to be charged as a single  
16 offence.

17 (3) A single penalty only may be imposed in relation to 2 or more  
18 contraventions of a health and safety duty provision that are charged  
19 as a single offence.

20 (4) In this section:

21 *health and safety duty provision* means a provision of—

22 (a) division 2.2 (Primary duty of care); or

23 (b) division 2.3 (Further duties of persons conducting businesses  
24 or undertakings); or

25 (c) division 2.4 (Duty of officers, workers and other persons).

1 **Division 13.2 Sentencing for offences**

2 **234 Application—div 13.2**

3 This division applies if a court convicts a person, or finds a person  
4 guilty (the *offender*), of an offence against this Act.

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

9 **235 Orders generally**

10 (1) One or more orders may be made under this division against the  
11 offender.

12 (2) An order may be made under this division in addition to any penalty  
13 that may be imposed or any other action that may be taken in  
14 relation to the offence.

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

17 **236 Adverse publicity orders**

18 (1) The court may make an order (an *adverse publicity order*) in  
19 relation to the offender, requiring the offender—

20 (a) to take either or both of the following actions within the period  
21 specified in the order:

22 (i) to publicise, in the way specified in the order, the offence,  
23 its consequences, the penalty imposed and any other  
24 related matter;

25 (ii) to notify a specified person or specified class of persons,  
26 in the way specified in the order, of the offence, its  
27 consequences, the penalty imposed and any other related  
28 matter; and

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

25 **237 Orders for restoration**

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

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

5 **238 Work health and safety project orders**

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

11 **239 Release on the giving of a court-ordered WHS**  
12 **undertaking**

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



1           (4) An order under subsection (3) must be served on the offender not  
2           less than 4 days before the time specified in it for the appearance.

3           (5) If the court is satisfied at the time to which a further hearing of a  
4           proceeding is adjourned that the offender has observed the  
5           conditions of the court-ordered WHS undertaking, it must discharge  
6           the offender without any further hearing of the proceeding.

7      **240           Injunctions**

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

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

13      **241           Training orders**

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

17      **242           Offence to fail to comply with order**

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

20          Maximum penalty:

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

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

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

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

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

5 **Division 13.3 Infringement notices**

6 **243 Infringement notices**

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

9 **Division 13.4 Offences by bodies corporate**

10 **244 Imputing conduct to bodies corporate**

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

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

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

1     **Division 13.5                   The Territory**

2     **245                   Offences and the Territory**

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

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

10            (2) For the purposes of this Act, any conduct engaged in on behalf of  
11            the Territory by an employee, agent or officer of the Territory acting  
12            within the actual or apparent scope of his or her employment, or  
13            within his or her actual or apparent authority, is conduct also  
14            engaged in by the Territory.

15            (3) If an offence under this Act requires proof of knowledge, intention  
16            or recklessness, it is sufficient in a proceeding against the Territory  
17            for that offence to prove that the person referred to in subsection (2)  
18            had the relevant knowledge, intention or recklessness.

19            (4) If for an offence against this Act mistake of fact is relevant to  
20            determining liability, it is sufficient in a proceeding against the  
21            Territory for the offence if the person referred to in subsection (2)  
22            made that mistake of fact.

23     **246                   WHS civil penalty provisions and the Territory**

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

1 (2) For the purposes of a WHS civil penalty provision, any conduct  
2 engaged in on behalf of the Territory by an employee, agent or  
3 officer of the Territory acting within the actual or apparent scope of  
4 his or her employment, or within his or her actual or apparent  
5 authority, is conduct also engaged in by the Territory.

6 (3) If a WHS civil penalty provision requires proof of knowledge, it is  
7 sufficient in a proceeding against the Territory for a contravention  
8 of that provision to prove that the person referred to in  
9 subsection (2) had that knowledge.

10 **247 Officers**

11 (1) A person who makes, or participates in making, decisions that affect  
12 the whole, or a substantial part, of the business or undertaking of the  
13 Territory is taken to be an officer of the Territory for the purposes of  
14 this Act.

15 (2) A Minister of a State or the Commonwealth is not in that capacity  
16 an officer for the purposes of this Act.

17 **248 Responsible agency for the Territory**

18 (1) A provisional improvement notice, improvement notice, prohibition  
19 notice, non-disturbance notice, infringement notice or notice of  
20 entry under part 7 (Workplace entry by WHS entry permit-holders)  
21 to be given to or served on the Territory under this Act may be  
22 given to or served on the responsible agency.

23 (2) If an infringement notice is to be served on the Territory for an  
24 offence against this Act, the responsible agency may be specified in  
25 the infringement notice.

26 (3) If a proceeding is brought against the Territory for an offence  
27 against this Act or in relation to a contravention of this Act, the  
28 responsible agency in relation to the offence or contravention may  
29 be specified in any document initiating, or relating to, the  
30 proceeding.

- 1           (4) The responsible agency in relation to an offence or a contravention  
2           of this Act is entitled to act in a proceeding against the Territory for  
3           the offence or relating to the contravention and, subject to any  
4           relevant rules of court, the procedural rights and obligations of the  
5           Territory as the accused or defendant in the proceeding are  
6           conferred or imposed on the responsible agency.
- 7           (5) The person prosecuting the offence or bringing the proceeding may  
8           change the responsible agency during the proceeding with the  
9           court's leave.
- 10          (6) In this section:
- 11           ***responsible agency***—
- 12           (a) in relation to a notice referred to in subsection (1) means—
- 13               (i) in the case of a provisional improvement notice,  
14               improvement notice or infringement notice—the territory  
15               agency the acts or omissions of which are alleged to  
16               contravene this Act; and
- 17               (ii) in the case of a prohibition notice—the territory agency  
18               which has control over the activity referred to in  
19               section 195 (1) (a) or (b) (Power to issue prohibition  
20               notice); and
- 21               (iii) in the case of a non-disturbance notice—the territory  
22               agency with the management and control of the  
23               workplace; and
- 24               (iv) in the case of a notice of entry under part 7 (Workplace  
25               entry by WHS entry permit-holders)—the territory  
26               agency conducting the relevant business or undertaking or  
27               with the management and control of the workplace; and

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

10            **Division 13.6            Public authorities**

11            **249            Application to public authorities that are bodies**  
12            **corporate**

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

15            **250            Proceedings against public authorities**

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

20            **251            Imputing conduct to public authorities**

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

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

9 **252 Officer of public authority**

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

14 **253 Proceedings against successors to public authorities**

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

1 **Division 13.7 WHS civil penalty provisions**

2 **254 When is a provision a *WHS civil penalty provision***

3 (1) A subsection of part 7 (Workplace entry by WHS entry  
4 permit-holders) (or a section of part 7 that is not divided into  
5 subsections) is a *WHS civil penalty provision* if—

6 (a) the words ‘WHS civil penalty provision’ and 1 or more  
7 amounts by way of monetary penalty are set out at the foot of  
8 the subsection (or section); or

9 (b) another provision of part 7 specifies that the subsection (or  
10 section) is a WHS civil penalty provision.

11 (2) A subsection of a regulation (or a section of a regulation that is not  
12 divided into subsections) is a *WHS civil penalty provision* if—

13 (a) the words ‘WHS civil penalty provision’ and 1 or more  
14 amounts by way of monetary penalty are set out at the foot of  
15 the subsection (or section); or

16 (b) another provision of a regulation specifies that the subsection  
17 (or section) is a WHS civil penalty provision.

18 **255 Proceedings for contravention of WHS civil penalty  
19 provision**

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



- 1     **256**         **Involvement in contravention treated in same way as**  
2                    **actual contravention**
- 3             (1) A person who is involved in a contravention of a WHS civil penalty  
4                provision is taken to have contravened that provision.
- 5             (2) A person is *involved in* a contravention of a civil penalty provision  
6                if, and only if, the person—
- 7                (a) has aided, abetted, counselled or procured the contravention; or  
8                (b) has induced the contravention, whether by threats or promises  
9                or otherwise; or
- 10             (c) has been in any way, by act or omission, directly or indirectly,  
11                knowingly concerned in or party to the contravention; or
- 12             (d) has conspired with others to effect the contravention.
- 13     **257**         **Contravening a civil penalty provision is not an offence**
- 14                A contravention of a WHS civil penalty provision is not an offence.
- 15     **258**         **Civil proceeding rules and procedure to apply**
- 16                A court must apply the rules of evidence and procedure for a civil  
17                proceeding when hearing a proceeding for a contravention of a  
18                WHS civil penalty provision.
- 19     **259**         **Proceeding for a contravention of a WHS civil penalty**  
20                **provision**
- 21             (1) In a proceeding for a contravention of a WHS civil penalty  
22                provision, if the court is satisfied that a person has contravened a  
23                WHS civil penalty provision, the court may—
- 24                (a) order the person to pay a monetary penalty that the court  
25                considers appropriate; and
- 26                (b) make any other order that the court considers appropriate,  
27                including an injunction.

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

6 **260 Proceeding may be brought by the regulator or an**  
7 **inspector**

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

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

13 **261 Limitation period for WHS civil penalty proceedings**

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

17 **262 Recovery of a monetary penalty**

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

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

22 **263 Civil double jeopardy**

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

1    **264           Criminal proceedings during civil proceedings**

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

13    **265           Criminal proceedings after civil proceedings**

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

20    **266           Evidence given in proceedings for contravention of WHS**  
21    **civil penalty provision not admissible in criminal**  
22    **proceedings**

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

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

7 **Division 13.8 Civil liability not affected by this Act**

8 **267 Civil liability not affected by this Act**

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

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

1 **Part 14** **General**

2 **Division 14.1** **General provisions**

3 **268** **Offence to give false or misleading information**

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

6 **269** **Act does not affect legal professional privilege**

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

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

11 **270** **Immunity from liability**

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

1    **271           Confidentiality of information**

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

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

10          (2) The person must not do any of the following:

11           (a) disclose to anyone else—

12                     (i) the information; or

13                     (ii) the contents of or information contained in the document;

14           (b) give access to the document to anyone else;

15           (c) use the information or document for any purpose.

16           Maximum penalty:

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

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

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

21          (3) Subsection (2) does not apply to the disclosure of information, or  
22           the giving of access to a document or the use of information or a  
23           document—

24           (a) about a person, with the person's consent; or

25           (b) that is necessary for the exercise of a power or function under  
26           this Act; or

- 1                      (c) that is made or given by the regulator or a person authorised by  
2                      the regulator if the regulator reasonably believes the disclosure,  
3                      access or use—
- 4                      (i) is necessary for administering, or monitoring or enforcing  
5                      compliance with, this Act; or
- 6                      (ii) is necessary for the administration or enforcement of  
7                      another Act prescribed by regulation; or
- 8                      (iii) is necessary for the administration or enforcement of  
9                      another Act or law, if the disclosure, access or use is  
10                     necessary to lessen or prevent a serious risk to public  
11                     health or safety; or
- 12                     (iv) is necessary for the recognition of authorisations under a  
13                     corresponding WHS law; or
- 14                     (v) is required for the exercise of a power or function under a  
15                     corresponding WHS law; or
- 16                     (d) that is required by any court, tribunal, authority or person  
17                     having lawful authority to require the production of documents  
18                     or the answering of questions; or
- 19                     (e) that is required or authorised under a law; or
- 20                     (f) to a Minister.
- 21                     (4) A person commits an offence if—
- 22                     (a) the person (the *defendant*) intentionally discloses to another  
23                     person the name of an individual; and
- 24                     (b) the individual has made a complaint in relation to the person to  
25                     whom the individual's name is disclosed; and
- 26                     (c) the defendant knows or is reckless as to that fact.
- 27                     Maximum penalty:
- 28                     (a) in the case of an individual—\$10 000; or

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

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

5                    **272            No contracting out**

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

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

14                   **273            Person not to levy workers**

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

19                   Maximum penalty:

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

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



1        **Division 14.2                      Codes of practice**

2        **274                      Approved codes of practice**

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

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

9                      (2) The Minister may only approve a code of practice if the code of  
10                      practice was developed by a process that involved consultation  
11                      between—

12                      (a) the Governments of the Commonwealth and each State and  
13                      Territory; and

14                      (b) unions; and

15                      (c) employer organisations.

16                      (3) An approved code of practice may apply, adopt or incorporate an  
17                      instrument, as in force from time to time.

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

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

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

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

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

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

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

7    **275            Use of codes of practice in proceedings**

- 8            (1) This section applies in a proceeding for an offence against this Act.

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

- 13            (2) An approved code of practice is admissible in the proceeding as  
14                    evidence of whether or not a duty or obligation under this Act has  
15                    been complied with.

- 16            (3) The court may—

17                    (a) have regard to the code as evidence of what is known about a  
18                    hazard or risk, risk assessment or risk control to which the code  
19                    relates; and

20                    (b) rely on the code in determining what is reasonably practicable  
21                    in the circumstances to which the code relates.

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

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



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

15    **277        Approved forms**

- 16           (1) The Minister may, in writing, approve forms for this Act.
- 17           *Note*        For other provisions about forms, see the Legislation Act, s 255.
- 18           (2) If the Minister approves a form for a particular purpose, the  
19           approved form must be used for that purpose.
- 20           (3) An approved form is a notifiable instrument.
- 21           *Note*        A notifiable instrument must be notified under the Legislation Act.



1 **Part 20 Transitional**

2 **300 Definitions—pt 20**

3 In this part:

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

6 **301 Worker consultation units to be work groups**

7 (1) This section applies if a group of workers is a worker consultation  
8 unit under the *Work Safety Act 2008* immediately before the  
9 commencement day.

10 (2) The group is, on the commencement day, taken to be a work group.

11 **302 Work safety representatives to be health and safety**  
12 **representatives**

13 (1) This section applies if a person is a work safety representative for a  
14 worker consultation unit under the *Work Safety Act 2008*  
15 immediately before the commencement day.

16 (2) The person is, on the commencement day, taken to be a health and  
17 safety representative for the work group corresponding to the  
18 worker consultation unit.

19 **303 Work safety committees to be health and safety**  
20 **committees**

21 (1) This section applies if a work safety committee exists under the  
22 *Work Safety Act 2008* immediately before the commencement day.

23 (2) The committee is, on the commencement day, taken to be a health  
24 and safety committee.

1   **304        Authorized representatives to be WHS entry**  
2               **permit-holders**

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

8   **305        Inspectors**

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

12   **306        Transitional regulations**

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

21   **307        Expiry—pt 20**

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





- 1 (c) a reference in this Act to work health and safety (however  
2 expressed) includes a reference to public health and safety.
- 3 **5** The operation of this schedule is subject to any exclusions or  
4 modifications prescribed by regulation.
- 5 **6** In this schedule:
- 6 *dangerous goods* means anything prescribed by regulation as  
7 dangerous goods.
- 8 *high risk plant* means plant prescribed by regulation as high risk  
9 plant.

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

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1	<b>Schedule 2</b>	<b>The regulator and local</b>
2		<b>tripartite consultation</b>
3		<b>arrangements and other local</b>
4		<b>arrangements</b>
5	<b>Part 2.1</b>	<b>Work safety council</b>
6	<b>Division 2.1.1</b>	<b>Establishment, functions and powers</b>
7	<b>2.1</b>	<b>Establishment</b>
8		The Work Safety Council is established.
9	<b>2.2</b>	<b>Functions</b>
10	(1)	The council has the following functions:
11	(a)	to advise the Minister on matters relating to—
12	(i)	work safety; or
13	(ii)	workers compensation; or
14	(b)	to inquire into and report to the Minister on matters referred to
15		the council by the Minister in relation to—
16	(i)	work safety; or
17	(ii)	workers compensation; or
18	(c)	any other function prescribed by regulation.
19	<i>Note</i>	A provision of a law that gives an entity (including a person) a function
20		also gives the entity the powers necessary and convenient to exercise
21		the function (see Legislation Act, s 196 (1) and dict, pt 1, defs <i>entity</i> and
22		<i>function</i> ).

- 1 (2) Without limiting subsection (1) (a), the matters on which the council  
2 may advise the Minister include the following matters:
- 3 (a) the operation of this Act and the associated laws;
- 4 (b) the approval of codes of practice, and the variation of codes of  
5 practice, under section 274 (Approved codes of practice);
- 6 (c) the provision of education and training in relation to work  
7 safety;
- 8 (d) the promotion of work safety;
- 9 (e) the operation of the *Workers Compensation Act 1951*;
- 10 (f) the approval of a protocol or an amendment to a protocol under  
11 the *Workers Compensation Act 1951*;
- 12 (g) the provision of education and training in relation to workers'  
13 compensation;
- 14 (h) the operation of the *Dangerous Substances Act 2004*.
- 15 *Note* A reference to an Act includes a reference to the statutory instruments  
16 made or in force under the Act, including a regulation (see Legislation  
17 Act, s 104).

## 18 **Division 2.1.2 Constitution and meetings**

### 19 **2.3 Membership**

20 The council consists of—

- 21 (a) 4 members appointed by the Minister after consultation with  
22 the people or bodies that the Minister considers represent the  
23 interests of employees; and
- 24 (b) 4 members appointed by the Minister after consultation with  
25 the people or bodies that the Minister considers represent the  
26 interests of employers; and
- 27 (c) 4 other members appointed by the Minister; and

1 (d) the commissioner.

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

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

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

## 10 **2.4 Terms of appointment**

11 (1) The appointed members of the council must be appointed as  
12 part-time members.

13 (2) An appointed member of the council must be appointed for not  
14 longer than 3 years.

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

## 18 **2.5 Appointment of chair and deputy chair**

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

## 22 **2.6 Leave**

23 (1) The Minister may grant leave to the chair or deputy chair on the  
24 conditions (if any) about remuneration or other matters that the  
25 Minister decides.

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

1 **2.7 Disclosure of interest**

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

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

9 (2) A disclosure must be recorded in the council's minutes and, unless  
10 the council otherwise decides, the member must not—

11 (a) be present when the council considers the issue; or

12 (b) take part in a decision of the council on the issue.

13 (3) Any other council member who also has a material interest in the  
14 issue must not be present when the council is considering its  
15 decision under subsection (2).

16 (4) In this section:

17 **associate**, of a person, means—

18 (a) the person's business partner; or

19 (b) a close friend of the person; or

20 (c) a family member of the person.

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

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

28 (a) an associate of the person;

- 1 (b) a corporation if the corporation has not more than  
2 100 members and the person, or an associate of the person, is a  
3 member of the corporation;
- 4 (c) a subsidiary of a corporation mentioned in paragraph (b);
- 5 (d) a corporation if the person, or an associate of the person, is an  
6 executive officer of the corporation;
- 7 (e) the trustee of a trust if the person, or an associate of the person,  
8 is a beneficiary of the trust;
- 9 (f) a member of a firm or partnership if the person, or an associate  
10 of the person, is a member of the firm or partnership;
- 11 (g) someone else carrying on a business if the person, or an  
12 associate of the person, has a direct or indirect right to  
13 participate in the profits of the business.
- 14 ***material interest***—a council member has a ***material interest*** in an  
15 issue if the member has—
- 16 (a) a direct or indirect financial interest in the issue; or
- 17 (b) a direct or indirect interest of any other kind if the interest  
18 could conflict with the proper exercise of the member’s  
19 functions in relation to the council’s consideration of the issue.

20 **2.8 Reporting of disclosed council interests to Minister**

- 21 (1) Within 3 months after the day a material interest is disclosed under  
22 section 2.7 the chair must report to the Minister in writing about—
- 23 (a) the disclosure; and
- 24 (b) the nature of the interest disclosed; and
- 25 (c) any decision by the council under section 2.7.

- 1 (2) The chair must also give the Minister, not later than 31 days after  
2 the end of each financial year, a statement that sets out the  
3 information given to the Minister in reports under subsection (1)  
4 that relate to disclosures made during the previous financial year.
- 5 (3) The Minister must give a copy of the statement to the relevant  
6 committee of the Legislative Assembly within 31 days after the day  
7 the Minister receives the statement.
- 8 (4) In this section:
- 9 *relevant committee* means—
- 10 (a) a standing committee of the Legislative Assembly nominated  
11 by the Speaker for subsection (3); or
- 12 (b) if no nomination under paragraph (a) is in effect—the standing  
13 committee of the Legislative Assembly responsible for public  
14 accounts.

## 15 **2.9 Ending appointment of council member**

- 16 (1) This section applies to a member of the council other than the  
17 commissioner.
- 18 (2) The Minister must end the appointment of a member of the council  
19 if—
- 20 (a) the member has become bankrupt or personally insolvent; or
- 21 (b) the member was appointed under section 2.3 (a) and the  
22 Minister is satisfied that the member no longer represents the  
23 interests of employees; or
- 24 (c) the member was appointed under section 2.3 (b) and the  
25 Minister is satisfied that the member no longer represents the  
26 interests of employers; or
- 27 (d) the Minister becomes aware that the member has failed to  
28 comply with section 2.7 (Disclosure of interest) without  
29 reasonable excuse; or

- 1 (e) the Minister becomes aware that the member has at any time  
2 been convicted, in Australia, of an offence punishable by  
3 imprisonment for 1 year or longer; or
- 4 (f) the Minister becomes aware that the member has at any time  
5 been convicted, outside Australia, of an offence that, if it had  
6 been committed in the ACT, would be punishable by  
7 imprisonment for 1 year or longer.
- 8 (3) The Minister may end the appointment of a member of the  
9 council—
- 10 (a) if the member is absent from 3 consecutive meetings of the  
11 council, otherwise than on leave approved under section 2.6; or
- 12 (b) if the member contravenes a territory law; or
- 13 (c) for misbehaviour; or
- 14 (d) for physical or mental incapacity, if the incapacity substantially  
15 affects the exercise of the member’s functions.
- 16 *Note* A person’s appointment also ends if the person resigns (see Legislation  
17 Act, s 210).
- 18 (4) However, before ending the appointment of the member under  
19 subsection (2) (e) or (f) or (3) (b) the Minister must be satisfied that  
20 the conviction or contravention affects the person’s suitability as a  
21 member of the council.

## 22 **2.10 Calling meetings**

- 23 (1) The chair—
- 24 (a) may call the meetings of the council that the chair considers  
25 necessary for the efficient exercise of its functions; and
- 26 (b) must, on receiving a written request signed by not less than  
27 4 other members of the council, call a meeting of the council.



- 1 (2) If the chair proposes to call a meeting of the council, the chair must,  
2 not later than 5 days before the date of the proposed meeting, give  
3 each member of the council a written notice stating—  
4 (a) the date, time and place of the meeting; and  
5 (b) the matters to be considered at the meeting.  
6 (3) The Minister may call a meeting of the council by written notice  
7 given to each of the members.

8 **2.11 Presiding member at council meetings**

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

14 **2.12 Quorum at council meetings**

- 15 Business may be carried on at a meeting of the council only if the  
16 meeting is constituted by 7 members including—  
17 (a) 2 members, at least 1 of whom is not an acting member,  
18 mentioned in section 2.3 (a); and  
19 (b) 2 members, at least 1 of whom is not an acting member,  
20 mentioned in section 2.3 (b); and  
21 (c) 2 members, at least 1 of whom is not an acting member,  
22 mentioned in section 2.3 (c).

1 **2.13 Voting at council meetings**

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

7 **2.14 Conduct of council meetings etc**

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

14 **Examples**

15 a phone link, a satellite link

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

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

24 **Example—electronic communication**

25 email

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

1 **2.15 Protection of council members from liability**

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

9 **Division 2.1.3 Advisory committees**

10 **2.16 Establishment**

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

## 1 **Part 2.2** **Work safety commissioner**

### 2 **2.17** **Appointment of commissioner**

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

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

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

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

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

### 13 **2.18** **Functions**

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

16 (a) to promote an understanding and acceptance of, and  
17 compliance with, this Act and other laws relating to work  
18 safety;

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

21 (c) to advise the Minister on any matter relevant to the operation  
22 of this Act and other laws relating to work safety;

23 (d) the functions (if any) that are given to the commissioner under  
24 any other territory law.

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

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

4           **2.19       Retirement**

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

7           **2.20       Removal of commissioner**

- 8           (1) The Executive may remove the commissioner from office if—  
9           (a) an address praying for his or her removal on the ground of  
10           misbehaviour or physical or mental incapacity has been  
11           presented to the Executive by the Legislative Assembly; or  
12           (b) the commissioner is absent from duty, except on leave granted  
13           by the Minister, for 14 consecutive days or for 28 days in any  
14           12 months.  
15           (2) The Executive must remove the commissioner from office if the  
16           commissioner becomes bankrupt or personally insolvent.  
17           (3) The commissioner must not be removed from office except as  
18           provided by this section or section 2.21.

19           **2.21       Suspension and removal of commissioner**

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

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

Section 2.22

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

14 **2.22 Ministerial directions to commissioner**

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

23 **2.23 Staff**

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

1 **2.24 Delegation by commissioner**

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

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

1 **Schedule 3 Regulation-making powers**

2 (see s 276 (2))

3 **1 Duties**

4 1.1 Matters relating to the way in which duties imposed by this Act are  
5 to be performed.

6 1.2 Matters relating to the regulation or prohibition of specified  
7 activities or a specified class of activities—

8 (a) at workplaces or a specified class of workplaces; or

9 (b) by a specified class of persons on whom duties or obligations  
10 are imposed by this Act,

11 to eliminate or minimise risks to health and safety.

12 1.3 Imposing duties on persons in relation to any matter provided for by  
13 regulation.

14 **2 Incidents**

15 Matters relating to incidents at workplaces including—

16 (a) regulating or requiring the taking of any action to avoid an  
17 incident at a workplace or in the course of conducting a  
18 business or undertaking; and

19 (b) regulating, requiring or prohibiting the taking of any action in  
20 the event of an incident at a workplace or in the conduct of a  
21 business or undertaking.



- 1     **3           Plant, substances or structures**
- 2           Matters relating to plant, substances or structures including—
- 3           (a) regulating the storage and handling of plant, substances and
- 4                 structures; and
- 5           (b) regulating or requiring—
- 6                 (i) the examination, testing, labelling, maintenance or repair
- 7                     of plant and structures; or
- 8                 (ii) the examination, testing, analysis or labelling of a
- 9                     substance.
- 10    **4           Protection and welfare of workers**
- 11           Matters relating to the protection and welfare of workers
- 12           including—
- 13           (a) regulating or requiring the provision and use of protective
- 14                 clothing or equipment, or rescue equipment, in specified
- 15                 circumstances; and
- 16           (b) regulating or requiring the provision of specified facilities for
- 17                 the welfare of workers at the workplace; and
- 18           (c) health and safety in relation to accommodation provided to
- 19                 workers.
- 20    **5           Hazards and risks**
- 21           Matters relating to hazards and risks including—
- 22           (a) the prescribing of standards relating to the use of or exposure
- 23                 to any physical, biological, chemical or psychological hazard;
- 24                 and
- 25           (b) matters relating to safety cases, safety management plans and
- 26                 safety management systems (however described); and
- 27           (c) matters relating to measures to control risks.

- 1     **6**           **Records and notices**
- 2           6.1 The keeping and availability of records of health and safety  
3           representatives and deputy health and safety representatives.
- 4           6.2 The keeping of records in relation to incidents.
- 5           6.3 The keeping of records of specified activities, matters or things to be  
6           kept by specified persons.
- 7           6.4 The giving of notice of or information about specified activities,  
8           matters or things to the regulator, an inspector or other specified  
9           person.
- 10    **7**           **Authorisations**
- 11           7.1 Matters relating to authorisations (including licences, registrations  
12           and permits) and qualifications, and experience for the purposes of  
13           part 4 (Authorisations) or a regulation including providing for—
- 14           (a) applications for the grant, issue, renewal, variation, suspension  
15           and cancellation of authorisations, including the minimum age  
16           to be eligible for an authorisation; and
- 17           (b) the evidence and information to be provided in relation to  
18           applications including the provision of statutory declarations;  
19           and
- 20           (c) exemptions; and
- 21           (d) variations of authorisations by the regulator whether on  
22           application or otherwise; and
- 23           (e) authorisation of persons as trainers and assessors; and
- 24           (f) examination of applicants for authorisations; and
- 25           (g) conditions of authorisations.
- 26           7.2 The recognition of authorisations under corresponding WHS laws  
27           and exceptions to recognition.

1           7.3 The sharing of information with corresponding regulators relating to  
2 the grant, issue, renewal, variation, suspension or cancellation of  
3 authorisations.

4       **8           Work groups**

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

8       **9           Health and safety committees and health and safety  
9 representatives**

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

12       **10          Issue resolution**

13          Matters relating to issue resolution including—

14           (a) the minimum requirements for an agreed procedure for  
15 resolving an issue; and

16           (b) the requirements for a default issue resolution procedure where  
17 there is no agreed procedure.

18       **11          WHS entry permits**

19          Matters relating to WHS entry permits, including providing for—

20           (a) eligibility for WHS entry permits; and

21           (b) procedures for applications for WHS entry permits and  
22 objections to applications for WHS entry permits; and

23           (c) conditions of WHS entry permits; and

24           (d) the form of WHS entry permits; and

25           (e) requirements for training; and

26           (f) records of WHS entry permits.

- 1   **12**       **Identity cards**  
2               Matters relating to identity cards.
- 3   **13**       **Forfeiture**  
4               Matters relating to—  
5               (a) costs of forfeiture and disposal of forfeited things; and  
6               (b) disposal of seized things and forfeited things.
- 7   **14**       **Review of decisions**  
8               Matters relating to the review of decisions under a regulation  
9               including—  
10              (a) prescribing decisions as reviewable decisions for the purposes  
11              of part 12 (Review of decisions) or for the purposes of the  
12              regulation; and  
13              (b) prescribing procedures for internal and external review of  
14              decisions under the regulation; and  
15              (c) conferring jurisdiction on the ACAT to conduct reviews under  
16              the regulation.

## 1 Dictionary

2 (see s 3)

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

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

- 6 • ACAT
- 7 • Act
- 8 • corporation
- 9 • daily newspaper
- 10 • emergency service
- 11 • function
- 12 • home address
- 13 • medical practitioner
- 14 • police officer
- 15 • public employee
- 16 • the Territory
- 17 • working day.

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

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

21 *category 1 offence*—see section 31.

22 *category 2 offence*—see section 32.

23 *category 3 offence*—see section 33.

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

26 *compliance powers* means the functions and powers conferred on an  
27 inspector under this Act.

28 *condition* includes limitation and restriction.

- 1           **construct** includes assemble, erect, reconstruct, reassemble and  
2           re-erect.
- 3           **corresponding regulator** means the holder of a public office, or a  
4           public authority, of the Commonwealth, or of a State, who or which  
5           is responsible for administering a corresponding WHS law.
- 6           **corresponding WHS law** means a law prescribed by regulation as a  
7           corresponding WHS law.
- 8           **dangerous incident**, for part 3 (Incident notification)—  
9           see section 37.
- 10          **demolition** includes deconstruction.
- 11          **design**, in relation to plant, a substance or a structure includes—  
12          (a) design of part of the plant, substance or structure; and  
13          (b) redesign or modify a design.
- 14          **disclose**, in relation to information, includes divulge or  
15          communicate to any person or publish.
- 16          **discriminatory conduct**, for part 6 (Discriminatory, coercive and  
17          misleading conduct)—see section 105.
- 18          **document** includes record.
- 19          **eligible person**, for part 12 (Review of decisions)—see section 223.
- 20          **employee record**, in relation to an employee—see the *Privacy*  
21          *Act 1988* (Cwlth), section 6 (1).
- 22          **employer organisation** means an organisation of employers.
- 23          **engage in conduct** means doing an act or omitting to do an act.
- 24          **external review**—see section 229.
- 25          **Fair Work Act** means the *Fair Work Act 2009* (Cwlth).
- 26          **handling** includes transport.
- 27          **health** means physical and psychological health.

1           **health and safety committee**, for a business or undertaking—see  
2           division 5.4 (Health and safety committees).

3           **health and safety duty**, for division 2.5 (Offences and penalties)—  
4           see section 30.

5           **health and safety representative**, in relation to a worker, means the  
6           health and safety representative elected under part 5 (Consultation,  
7           representation and participation) for the work group of which the  
8           worker is a member.

9           **import** means to bring into the ACT from outside Australia.

10          **inspector** means an inspector appointed under part 9 (Securing  
11          compliance).

12          **internal review**—see section 224.

13          **internal reviewer** means—

14           (a) the regulator; or

15           (b) a person appointed by the regulator under section 225.

16          **medical treatment** means treatment by a medical practitioner.

17          **notice**—

18           (a) for division 10.4 (General requirements applying to notices)—  
19           see section 202; or

20           (b) for division 10.6 (Injunctions)—see section 214.

21          **notifiable incident**—see section 35.

22          **offender**, for division 13.2 (Sentencing for offences)—see  
23          section 234.

- 1           **officer** means—
- 2           (a) an officer within the meaning of section 9 of the *Corporations*
- 3                 *Act 2001* of the Commonwealth other than a partner in a
- 4                 partnership; or
- 5           (b) an officer of the Territory within the meaning of section 247;
- 6                 or
- 7           (c) an officer of a public authority within the meaning of
- 8                 section 252.
- 9           **official of a union**, for part 7 (Workplace entry by WHS entry
- 10           permit-holders)—see section 116.
- 11           **parties**, in relation to an issue, for division 5.5 (Issue resolution)—
- 12           see section 80.
- 13           **personal information**—see the *Privacy Act 1988* (Cwlth),
- 14           section 6 (1).
- 15           **person conducting a business or undertaking**—see section 5.
- 16           **plant** includes—
- 17           (a) any machinery, equipment, appliance, container, implement
- 18                 and tool; and
- 19           (b) any component of any of the things referred to in
- 20                 paragraph (a); and
- 21           (c) anything fitted or connected to any of the things referred to in
- 22                 paragraph (a).
- 23           **prohibited reason**, for part 6 (Discriminatory, coercive and
- 24           misleading conduct)—see section 106.
- 25           **prohibition notice**—see section 195.
- 26           **public authority** means a territory authority.
- 27           **reasonably practicable**, in relation to a duty to ensure health and
- 28           safety—see section 18.



- 1           **regulator** means the director-general.
- 2           **relevant person conducting a business or undertaking**, for part 7  
3           (Workplace entry by WHS entry permit-holders)—see section 116.
- 4           **relevant union**, for part 7 (Workplace entry by WHS entry  
5           permit-holders)—see section 116.
- 6           **relevant worker**, for part 7 (Workplace entry by WHS entry  
7           permit-holders)—see section 116.
- 8           **representative**, in relation to a worker, means—
- 9           (a) the health and safety representative for the worker; or
- 10           (b) a union representing the worker; or
- 11           (c) any other person the worker authorises to represent him or her.
- 12           **reviewable decisions**, for part 12 (Review of decisions)—see  
13           section 223.
- 14           **serious injury or illness**, for part 3 (Incident notification)—  
15           see section 36.
- 16           **State** includes Territory.
- 17           **State or Territory industrial law**—see the Fair Work Act,  
18           section 26 (2).
- 19           **structure** means anything that is constructed, whether fixed or  
20           moveable, temporary or permanent, and includes—
- 21           (a) buildings, masts, towers, framework, pipelines, transport  
22           infrastructure and underground works (shafts or tunnels); and
- 23           (b) any component of a structure; and
- 24           (c) part of a structure.
- 25           **substance** means any natural or artificial substance, whether in the  
26           form of a solid, liquid, gas or vapour.
- 27           **supply**, of a thing—see section 6.

- 1            **union** means—
- 2            (a) an employee organisation that is registered, or taken to be
- 3            registered, under the *Fair Work (Registered Organisations)*
- 4            *Act 2009* (Cwlth); or
- 5            (b) an association of employees or independent contractors, or
- 6            both, that is registered or recognised as such an association
- 7            (however described) under a State or Territory industrial law.
- 8            **volunteer** means a person who is acting on a voluntary basis
- 9            (whether or not the person receives out-of-pocket expenses).
- 10          **WHS civil penalty provision**—see section 254.
- 11          **WHS entry permit** means a WHS entry permit issued under part 7
- 12          (Workplace entry by WHS entry permit-holders).
- 13          **WHS entry permit-holder** means a person who holds a WHS entry
- 14          permit.
- 15          **WHS undertaking** means an undertaking given under
- 16          section 216 (1).
- 17          **worker**—see section 7.
- 18          **work group** means a work group determined under part 5
- 19          (Consultation, representation and participation).
- 20          **workplace**—see section 8.
- 21          **work safety commissioner**—means the Work Safety Commissioner
- 22          under Schedule 2, part 2.2.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2011.

**2 Notification**

Notified under the Legislation Act on 2011.

**3 Republications of amended laws**

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

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