

2018

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Workplace Safety and Industrial Relations)

Work Health and Safety Amendment Bill 2018

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Work Health and Safety Amendment Bill 2018

A Bill for

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

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

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

4 **2 Commencement**

5 This Act commences on 1 January 2019.

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

8 **3 Legislation amended**

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

Part 2 Work Health and Safety Act 2011

4 New subdivision 5.3.1A

before subdivision 5.3.1, insert

Subdivision 5.3.1A Definitions

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

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

(a) \$5 000 000; or

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

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

(3) In this section:

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

contract price, for a major construction project—

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

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

1 **49B Meaning of *principal contractor*—pt 5**

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

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

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

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

15 **49C Meaning of *eligible union*—div 5.3**

16 (1) In this division:

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

21 (2) In this section:

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

5 New sections 50A to 50C

in subdivision 5.3.1, insert

50A Consultation with eligible unions—major construction project

- (1) This section applies in relation to a major construction project.
- (2) The principal contractor for the major construction project must, before work on the project commences, consult with each eligible union for the project about the following:
 - (a) the number and composition of work groups to be represented by health and safety representatives on the major construction project;
 - (b) the number of health and safety representatives and deputy health and safety representatives (if any) to be elected;
 - (c) anything else prescribed by regulation.

Maximum penalty:

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

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

- (3) Subsection (2) does not apply if the regulator has, under section 50B, exempted the principal contractor from complying with this section.
- (4) For the purposes of subsection (2), the principal contractor must give each eligible union written notice of the major construction project and the requirement to consult with the union about the matters mentioned in subsection (2).

Note For how documents may be given, see the [Legislation Act](#), pt 19.5.

- 1 (5) The notice must include a statement that, if the eligible union wants
2 to participate in the consultation, the union must respond, in writing,
3 to the notice not later than 14 days after receiving the notice.
- 4 (6) The principal contractor is taken to have consulted with an eligible
5 union if—
- 6 (a) the principal contractor gives the eligible union a notice under
7 subsection (3); and
- 8 (b) the union fails to respond to the notice within the time
9 mentioned in subsection (4).
- 10 (7) To remove any doubt, this section does not give an eligible union a
11 right of entry to the workplace.

12 **50B Exemption from certain requirements under this part**

- 13 (1) On application by the principal contractor for a major construction
14 project, the regulator may, by written notice, exempt the principal
15 contractor from complying with 1 or more of the following sections:
- 16 (a) section 50A;
- 17 (b) section 50C;
- 18 (c) section 52 (2) (a) (Negotiations for agreement for work group);
- 19 (d) section 72A (Obligation to train health and safety
20 representatives—major construction project);
- 21 (e) a regulation under section 75 (Health and safety committees)
22 requiring the principal contractor to establish a health and
23 safety committee;
- 24 (f) section 79A (Obligation to train health and safety committee
25 members—major construction project).
- 26 (2) The exemption is subject to the conditions stated in the notice of
27 exemption.

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

5 (4) A guideline is a notifiable instrument.

6 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

7 **50C Election of health and safety representatives—major**
8 **construction project**

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

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

14 **6 Determination of work groups**
15 **Section 51 (1)**

16 *substitute*

17 (1) This section applies if—

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

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

23 (1A) The person conducting the business or undertaking, or the principal
24 contractor, must facilitate the determination of 1 or more work
25 groups of workers.

1 **7 Negotiations for agreement for work group**
2 **Section 52 (2)**

3 *substitute*

- 4 (2) The person conducting the business or undertaking must take all
5 reasonable steps to commence negotiations with the workers—
6 (a) for a major construction project—when work on the project
7 commences; or
8 (b) in any other case—within 14 days after the day a request is
9 made under section 50 (Request for election of health and
10 safety representative).

11 **8 New section 52 (7)**

12 *insert*

- 13 (7) In this section:

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

16 **9 Failure of negotiations**
17 **Section 54 (3) (a)**

18 *substitute*

- 19 (a) the person conducting the business or undertaking has not
20 taken all reasonable steps to commence negotiations with the
21 workers and negotiations have not commenced—
22 (i) for a major construction project—when work on the
23 project commences; or
24 (ii) within 14 days after the day a request is made under
25 section 50 (Request for election of health and safety
26 representative); or

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

3 **10 New section 54 (5)**

4 *insert*

- 5 (5) In this section:

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

8 **11 Determination of work groups of multiple businesses**
9 **Section 55 (1), new note**

10 *insert*

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

14 **12 Obligation to train health and safety representatives**
15 **New section 72 (8)**

16 *insert*

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

19 **13 New section 72A**

20 *insert*

21 **72A Obligation to train health and safety representatives—**
22 **major construction project**

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

- 1 (2) The principal contractor for the major construction project must
2 ensure the health and safety representative for the project attends a
3 course of training in work health and safety that is—
- 4 (a) approved by the regulator; and
- 5 (b) a course that the health and safety representative is entitled
6 under the regulation to attend; and
- 7 (c) subject to subsection (6), chosen by the health and safety
8 representative, in consultation with the principal contractor.
- 9 (3) The principal contractor must—
- 10 (a) as soon as practicable within the period of 3 months after the
11 day the health and safety representative is elected, ensure the
12 health and safety representative has time off work to attend the
13 course of training; and
- 14 (b) pay the course fees and any other reasonable costs associated
15 with the health and safety representative's attendance at the
16 course of training.
- 17 (4) Any time that a health and safety representative is given off work to
18 attend the course of training must be with the pay that he or she
19 would otherwise be entitled to receive for performing his or her
20 normal duties during that period.
- 21 (5) If agreement cannot be reached between the principal contractor for
22 the major construction project and the health and safety
23 representative within the time required by subsection (3) as to the
24 matters set out in subsections (2) (c) and (3), either party may ask
25 the regulator to appoint an inspector to decide the matter.
- 26 (6) The inspector may decide the matter in accordance with this section.

1 (7) The principal contractor for the major construction project must
2 ensure the health and safety representative attends a course decided
3 by the inspector and pay the costs decided by the inspector under
4 subsection (6).

5 Maximum penalty:

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

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

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

13 **14 Obligation to share costs if multiple businesses or**
14 **undertakings**
15 **Section 73 (1) (b)**

16 *after*

17 section 72 (2) (b)

18 *insert*

19 or section 72A (3) (b)

20 **15 Constitution of committee**
21 **Section 76 (1)**

22 *omit*

23 (4)

24 *substitute*

25 (4A)

16 New section 76 (4A)

insert

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

17 New section 79A

in division 5.4, insert

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

- (1) This section applies in relation to a major construction project.
- (2) The principal contractor for the major construction project must ensure the members of the health and safety committee for the major construction project attend a course of training in work health and safety that is—
- (a) approved by the regulator; and
 - (b) a course that the members are entitled under the regulation to attend; and
 - (c) subject to subsection (6), chosen by the health and safety committee, in consultation with the principal contractor.
- (3) The principal contractor for the major construction project must—
- (a) as soon as practicable within the period of 3 months after the day the health and safety committee is constituted, ensure members of the health and safety committee have time off work to attend the course of training; and
 - (b) pay the course fees and any other reasonable costs associated with each member's attendance at the course of training.

- 1 (4) Any time that a member of a health and safety committee is given
 2 off work to attend the course of training must be with the pay that he
 3 or she would otherwise be entitled to receive for performing his or
 4 her normal duties during that period.
- 5 (5) If agreement cannot be reached between the principal contractor for
 6 the major construction project and the health and safety committee
 7 within the time required by subsection (3) as to the matters set out in
 8 subsections (2) (c) and (3), either party may ask the regulator to
 9 appoint an inspector to decide the matter.
- 10 (6) The inspector may decide the matter in accordance with this section.
- 11 (7) The principal contractor for the major construction project must
 12 ensure the members of the health and safety committee attend a
 13 course decided by the inspector and pay the costs decided by the
 14 inspector under subsection (6).
- 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 (8) Subsection (7) does not apply if the regulator has, under section 50B
 21 (Exemption from certain requirements under this part), exempted
 22 the principal contractor from complying with this section.

23 **18 Sections 85 (6) (a) and 90 (4) (a)**

- 24 *after*
- 25 section 72 (1) (b) (Obligation to train health and safety
 26 representatives)
- 27 *insert*
- 28 or section 72A (2) (b) (Obligation to train health and safety
 29 representatives—major construction project)

1 **19 Which decisions are reviewable**
2 **Table 223, new item 2A**

3 *insert*

2A	s 72A (7) (decision in relation to training of health and safety representative)	(1) The principal contractor for a major construction project. (2) A health and safety representative whose interests are affected by the decision.
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4 **20 Table 223, new item 3A**

5 *insert*

3A	s 79A (7) (decision in relation to training of members of health and safety committee)	(1) The principal contractor for a major construction project. (2) A health and safety committee member whose interests are affected by the decision.
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6 **21 Dictionary, new definitions**

7 *insert*

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

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

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

1 **Part 3** **Work Health and Safety**
2 **Regulation 2011**

3 **22 Section 21 heading**

4 *substitute*

5 **21 Training for health and safety representatives—Act,**
6 **s 72 (1) and s 72A (2)**

7 **23 Section 21 (1)**

8 *after*

9 (Obligation to train health and safety representatives)

10 *insert*

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

13 **24 Section 21 (2)**

14 *omit*

15 (Obligation to train health and safety representatives)

16 *substitute*

17 and section 72A (2)

18 **25 New sections 21A and 21B**

19 *in division 2.1.2, insert*

20 **21A Establishing a health and safety committee—major**
21 **construction project—Act, s 75 (1) (b)**

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

- 1 (2) The principal contractor for the major construction project must
2 establish a health and safety committee for the project.
- 3 (3) The health and safety committee must be established within
4 2 months after the day work on the major construction project
5 commences.

6 **21B Training for health and safety committee members—**
7 **major construction project—Act, s 79A (2)**

- 8 (1) For the purposes of the [Act](#), section 79A (2) (Obligation to train
9 health and safety committee members—major construction project),
10 members of the health and safety committee are entitled to attend a
11 course of training in work health and safety that is not less than
12 4 hours of training.
- 13 (2) In approving a course of training in work health and safety for the
14 purposes of the [Act](#), section 79A (2) (a), the regulator may have
15 regard to any relevant matters, including—
- 16 (a) the content and quality of the curriculum, including its
17 relevance to the powers and functions of a health and safety
18 committee; and
- 19 (b) the qualifications, knowledge and experience of the person
20 who is to provide the course.

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

Endnotes

1 Presentation speech

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

2 Notification

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

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.
