

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY

2004

**OCCUPATIONAL HEALTH AND SAFETY AMENDMENT
BILL 2004**

EXPLANATORY STATEMENT

Circulated by authority of the
Minister for Industrial Relations
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OCCUPATIONAL HEALTH AND SAFETY AMENDMENT BILL 2004

OUTLINE

The Occupational Health and Safety Amendment Bill 2004 improves inspector powers, broadens the range of compliance measures available and introduces an internal review mechanism for decisions of inspectors. In this regard the Act is aligned with the inspector powers and compliance measures in the Dangerous Substances Bill, creating consistency and ease of use and understanding for inspectors, the courts and the community.

Other important changes to the Act made by the Bill are to offences for contravening the Act, and the introduction of right of entry provisions for authorised representatives of employee organisations registered under *Workplace Relations Act 1996 (Cth)*.

Like the Dangerous Substances Bill 2003, this amendment Bill significantly increases available penalties where a breach of a safety duty exposes or causes serious harm to a person. Terms of imprisonment, high monetary penalties or both can be imposed in such circumstances. In addition, this Bill allows courts to order the publication of a statement concerning an offence when a person is convicted or a finding of guilt is made.

The Bill is intended to complement the Dangerous Substances Bill 2003 and other legislative schemes that regulate workplace safety, the handling of infectious or radioactive material, and the transportation of dangerous goods. Together, these laws will ensure that there is a comprehensive system of regulation and control of work related hazards and risks.

Notes on Clauses

Clause 1 – Name of Act

This clause provides that the name of the proposed legislation is the Occupational Health and Safety Amendment Act 2004. The provisions within the Act will alter and omit various sections and Divisions within the *Occupational Health and Safety Act 1989* (the OHS Act). Many of the amendments are intended to produce consistency between the OHS Act and the proposed Dangerous Substances Act.

Clause 2 – Commencement

This provides that the Act will automatically commence 28 days after the Act is notified on the ACT Legislation Register.

Clause 3 – Legislation amended

The provisions within the Act will alter and omit various sections and Divisions within the OHS Act. Consequential amendments will also be made to the *Occupational Health and Safety Regulations 1991*.

Clause 4 – Part 3 heading

The heading for Part 3 of the OHS Act is changed to ‘Safety duties for occupational health and safety’ under this provision. This amendment also inserts the heading ‘Division 3.1 Safety duties’ into the Act.

Clause 5 – Duties of employers in relation to employees

Section 27(1), penalty

This provision removes the penalty provided in section 27(1), as a contravention of this duty will now be an offence under new Division 3.2. At present, a contravention of this duty has a maximum penalty of 250 penalty units, irrespective of whether the contravention exposed anyone to the risk of serious harm, or caused serious harm.

The introduction of Division 3.2 reduces to 100 penalty units the maximum penalty for a general contravention, being a contravention that neither exposes nor causes serious harm to anyone. However, under Division 3.2, penalties for a contravention that does expose or cause serious harm to a person are significantly increased, and allow for a term of imprisonment.

Clause 6 – Duties of employers in relation to third parties

Section 28(1), penalty

This provision removes the penalty provided in section 28(1), as a contravention of this duty will now be an offence under new Division 3.2. At present, a contravention of this duty has a maximum penalty of 250 penalty units, irrespective of whether the contravention exposed anyone to the risk of serious harm, or caused serious harm.

The introduction of Division 3.2 reduces to 100 penalty units the maximum penalty for a general contravention, being a contravention that neither exposes nor causes serious harm to anyone. However, under Division 3.2, penalties for a contravention that does expose or cause serious harm to a person are significantly increased, and allow for a term of imprisonment.

Clause 7 – Duties of persons in control of workplaces
Section 29(1), penalty

This provision removes the penalty provided in section 29(1), as a contravention of this duty will now be an offence under new Division 3.2. At present, a contravention of this duty has a maximum penalty of 250 penalty units, irrespective of whether the contravention exposed anyone to the risk of serious harm, or caused serious harm.

The introduction of Division 3.2 reduces to 100 penalty units the maximum penalty for a general contravention, being a contravention that neither exposes nor causes serious harm to anyone. However, under Division 3.2, the penalties for a contravention that does expose or cause serious harm to a person are significantly increased, and allow for a term of imprisonment.

Clause 8 – Duties of employees
Section 30(1), penalty

This provision removes the penalty provided in section 30(1), as a contravention of this duty will now be an offence under new Division 3.2. At present, a contravention of this duty has a maximum penalty of 250 penalty units, irrespective of whether the contravention exposed anyone to the risk of serious harm, or caused serious harm.

The introduction of Division 3.2 reduces to 100 penalty units the maximum penalty for a general contravention, being a contravention that neither exposes nor causes serious harm to anyone. However, under Division 3.2, the penalties for a contravention that does expose or cause serious harm to a person are significantly increased, and allow for a term of imprisonment.

Clause 9 – Duties of self-employed persons
Section 31, penalty

This provision removes the penalty provided in section 31, as a contravention of this duty will now be an offence under new Division 3.2. At present, a contravention of this duty has a maximum penalty of 250 penalty units, irrespective of whether the contravention exposed anyone to the risk of serious harm, or caused serious harm.

The introduction of Division 3.2 reduces to 100 penalty units the maximum penalty for a general contravention, being a contravention that neither exposes nor causes serious harm to anyone. However, under Division 3.2, the penalties for a contravention that does expose or cause serious harm to a person are significantly increased, and allow for a term of imprisonment.

Clause 10 – Duties of manufacturers in relation to plant and substances
Section 32(1) and (2), penalty

This provision removes the penalties provided in sections 32(1) and 32(2), as a contravention of these duties will now be an offence under new Division 3.2. At present, a contravention of one of these duties has a maximum penalty of 250 penalty units, irrespective of whether the contravention exposed anyone to the risk of serious harm, or caused serious harm.

The introduction of Division 3.2 reduces to 100 penalty units the maximum penalty for a general contravention, being a contravention that neither exposes nor causes serious harm to anyone. However, under Division 3.2, the penalties for a

contravention that does expose or cause serious harm to a person are significantly increased, and allow for a term of imprisonment.

Clause 11 – Duties of suppliers in relation to plant and substances
Section 33(1), penalty

This provision removes the penalty provided in section 33(1), as a contravention of this duty will now be an offence under new Division 3.2. At present, a contravention of this duty has a maximum penalty of 250 penalty units, irrespective of whether the contravention exposed anyone to the risk of serious harm, or caused serious harm.

The introduction of Division 3.2 reduces to 100 penalty units the maximum penalty for a general contravention, being a contravention that neither exposes nor causes serious harm to anyone. However, under Division 3.2, the penalties for a contravention that does expose or cause serious harm to a person are significantly increased, and allow for a term of imprisonment.

Clause 12 – Duties of persons erecting or installing plant in a workplace
Section 34(1), penalty

This provision removes the penalty provided in section 34(1), as a contravention of this duty will now be an offence under new Division 3.2. At present, a contravention of this duty has a maximum penalty of 250 penalty units, irrespective of whether the contravention exposed anyone to the risk of serious harm, or caused serious harm.

The introduction of Division 3.2 reduces to 100 penalty units the maximum penalty for a general contravention, being a contravention that neither exposes nor causes serious harm to anyone. However, under Division 3.2, the penalties for a contravention that does expose or cause serious harm to a person are significantly increased, and allow for a term of imprisonment.

Clause 13 – Commencement of prosecution in Magistrates Court
Section 35A

This provision renumbers existing section 35A, dealing with commencement of prosecutions in the Magistrates Court, as section 35G of the Act. The content and effect of the section is unchanged.

Clause 14 – New Division 3.2

This provision inserts a new Division into the Act, with the heading ‘**Division 3.2 Failure to comply with safety duties**’. This new Division contains offences for failure to comply with safety duties contained in the previous Division, and covers alternative verdicts for the offences within this part.

Section 35B contains a definition of safety duty for the purposes of this Division of the Bill.

Section 35C explains that it is an offence to fail to comply with a safety duty. This is a strict liability offence, which does not require that the alleged offender’s failure to comply with the safety duty was intended. This offence is subject to lower penalties than offences where it can be demonstrated that a person intentionally, recklessly or negligently failed to comply with a safety duty.

Subsection 35C(2) provides that absolute liability applies to the requirement to comply with a safety duty under subsection 35C(1)(a). As absolute liability applies to the requirement to comply with a safety duty, the defence of mistake of fact does not apply to this requirement. Therefore, the offender's ignorance about the existence of the duty is not relevant for the purposes of the offence, nor is it relevant that the offender was mistaken about whether he or she owed the relevant duty. However, subsection 35C(2) does not render the whole of the offence an absolute liability offence. It simply applies absolute liability to the one particular element of the offence. Accordingly, for section 35C, the prosecution need only establish the existence of the duty in subsection 35C(1)(a), and that the person failed to comply with that duty in subsection 35C(1)(b), or failed to take reasonably practicable steps to comply.

Section 35D provides that it is an offence if the failure to comply with a safety duty exposed a person to a substantial risk of serious harm because of the failure to comply with the duty. The mental elements of the offence include either recklessness or negligence about whether the failure would expose the person to that risk. The offence carries a maximum penalty of 1500 penalty units, imprisonment for five years or both. 'Serious harm' is defined in the dictionary of the *Criminal Code 2002*.

Subsection 35D(2) provides that absolute liability applies to the requirement to comply with a safety duty under subsection 35D(1)(a). As absolute liability applies to the requirement to comply with a safety duty, the defence of mistake of fact does not apply to this requirement. Therefore, the offender's ignorance about the existence of the duty is not relevant for the purposes of the offence, nor is it relevant that the offender was mistaken about whether he or she owed the relevant duty. However, subsection 35D(2) does not render the whole of the offence an absolute liability offence. It simply applies absolute liability to the one particular element of the offence.

Section 35E is an extremely serious offence, where the physical elements of the offence include the circumstance that the failure to comply with the duty resulted in serious harm to a person, and the mental elements of the offence include either recklessness or negligence about whether the failure would cause serious harm to a person. It carries a maximum penalty of 2000 penalty units, imprisonment for 7 years or both.

Subsection 35E(2) provides that absolute liability applies to the requirement to comply with a safety duty under subsection 35E(1)(a). As absolute liability applies to the requirement to comply with a safety duty, the defence of mistake of fact does not apply to this requirement. Therefore, the offender's ignorance about the existence of the duty is not relevant for the purposes of the offence, nor is it relevant that the offender was mistaken about whether he or she owed the relevant duty. However, subsection 35E(2) does not render the whole of the offence an absolute liability offence. It simply applies absolute liability to the one particular element of the offence.

Section 35F makes it clear that where a person has been charged with an offence, if the trier of fact (this is the jury, or the magistrate/judge if there is no jury) is not satisfied beyond a reasonable doubt that the person is guilty of the offence charged,

they may find the defendant guilty of an alternative offence, if satisfied beyond reasonable doubt that the defendant has committed the alternative offence. The alternative offences are set out in the table of alternative verdicts in subsection 35F(3).

Clause 15 – Issue

Section 51(8)

This provision replaces section 51(8) with new subsections 51(8), (8A) and (8B). Under new subsection 8, a health and safety representative (a HSR) may issue a provisional improvement notice (a PIN) to a person, now known as the ‘*responsible person*’. Furthermore, the HSR must still give a copy of the PIN to the commissioner, and where the responsible person is an employee, the HSR must still also give a copy to the employer. A failure of the HSR to give a copy to the required person remains an offence and the maximum penalty remains 1 penalty unit.

Under new subsection 8A, the obligation to give a copy of the PIN to other affected persons is now on the employer and not on the HSR. Determining who could be affected and how to contact such persons requires knowledge that an HSR may not have or be able to obtain.

Subsection 8A imposes an obligation on an employer, either as a responsible person or the employer of a responsible person, to provide a copy of the PIN to certain persons. Where the PIN relates to premises, those persons are the owner of the premises, the lessor and the lessee, and anyone with a right to immediate possession of the premises. If the notice relates to plant, a substance or a thing, who is to be given a copy of the PIN depends on whether the plant, substance or thing is hired. If it is hired, the hirer must be given a copy. If it is not hired, whoever has a right of immediate possession must be given a copy.

The provision requires the employer to give a copy of the PIN to other employers when the PIN affects workplaces of persons employed by other employers. New subsection 8B establishes that an offence against subsection 8 or 8A is a strict liability offence. The maximum penalty is 10 penalty units. This is appropriate as the obligation lies with the employer who has a higher level of responsibility.

Clause 16 – New Division 4.3A

This clause creates a new Division 4.3A concerning entry to workplaces by authorised representatives of employee organisations.

New **section 57A** defines terms that are used in **Division 4.3A**, such as who is an authorised representative. Authorised representatives are representatives of employee organisations registered by the Australian Industrial Relations Commission under Schedule 1B of the *Workplace Relations Act 1996 (Cth)*. This ensures that only formally recognised industrial organisations can enter workplaces to inspect OHS breaches, not unregistered associations who may have some interest in OHS matters.

Under **new section 57B**, an authorised representative of an employee organisation may enter premises to investigate a contravention of the Act. To exercise the right of entry, the representative must have a reasonable belief that a contravention of the Act may have happened, be happening or is likely to happen, and that persons at that workplace are members of the employee organisation or are eligible to be members.

Entry is limited to times when work is being carried on, and any part of the premises used solely for residential purposes must not be entered.

New section 57C permits entry to premises without written notice. However, if an authorised representative does enter without notice, they must tell the occupier they are on the premises as soon as is reasonably practicable to do so. An authorised representative is not required to advise the occupier that they are on the premises if the occupier had been given written notice, or if doing so would defeat the purpose of entering.

New section 57D provides that an authorised representative must not remain on premises if the representative does not, or cannot produce their authorisation for inspection when requested by an occupier.

New section 57E details the powers of authorised representatives when entering premises under section 57B. The representative can view or inspect work, systems or plant, can take measurements, photos or drawings, and can examine and copy documents relating to occupational health and safety. The representative may also interview employees that are members of the employee organisation, or are eligible to be members, if they consent. The representative may also require the occupier or anyone else at the premises to give them reasonable assistance, provided they produce their authorisation when doing so.

New section 57F requires an authorised representative to take all reasonable steps to cause as little inconvenience, detriment or damage as is practicable. This recognises that although an authorised representative has a right of entry, work will still be carried on at the premises.

Where damage does occur during the exercise of the representative's functions, the representative must give a written notice of the particulars of the damage to the person who the representative believes owns the damaged thing. If the occupier is not present, the notice must be left in a conspicuous place.

New section 57G allows a person to claim compensation from an employee organisation if the person suffers loss or expense because of the exercise of a right of entry by an authorised representative of the employee organisation. A claim for compensation must be brought in a court of competent jurisdiction, and the court may order the payment of reasonable compensation if it determines that this is just in the circumstances. Matters that the court may, must or must not take into account may be prescribed in the regulations.

New section 57H requires the authorised representative to tell the occupier of premises about his or her findings following exercise of the right of entry. The authorised representative has 2 days in which to issue a written notice to the occupier stating what contraventions of the Act the representative believes has been or may have been committed. This provision ensures the findings of an authorised representative are not secret, and informs the occupier of matters that should be addressed.

New section 57I establishes an offence carrying a maximum penalty of 100 penalty units for pretending to be an authorised representative.

New section 57J establishes a strict liability offence carrying a maximum penalty of 50 penalty units for obstructing, hindering, intimidating or resisting an authorised representative in the exercise of his or her functions. The offence is necessary to ensure that the right-of-entry powers can be used effectively. This is a strict liability offence.

Clause 17 – Part 5

This clause inserts a new Part 5 into the Act containing general provisions dealing with enforcement powers.

New section 61 defines terms that are used in Part 5.

Division 5.2 deals with general powers of inspectors under the Act. These powers are necessary to ensure that inspectors are able to monitor compliance with the legislation. These powers are similar to powers of inspectors under other regulatory schemes and are consistent with the powers of inspectors under the proposed Dangerous Substances Act.

New section 62 contains a general power for inspectors to enter premises. It describes the circumstances in which the power to enter may be exercised, including entry with the consent of the occupier of premises and entry under warrant, and entry without consent or a warrant. It includes a power for an inspector to detain a vehicle, so that the vehicle may be searched.

New section 62A requires an inspector to produce his or her identity card when asked to do so by the occupier of premises that he or she has entered. An inspector who does not produce his or her identity card must leave the premises.

New section 62B explains the way in which an inspector can obtain the consent of the occupier to enter premises. The purpose of this provision is to ensure that the person's consent is fully informed. Among other matters, the inspector must ask the occupier to sign a written acknowledgement of consent. If a written acknowledgement of consent is not produced in court in subsequent proceedings, the Court must find that the occupier of premises did not consent to the entry.

New section 62C sets out the general powers of inspectors in relation to premises that they enter under this part of the Act. These powers enable inspectors to examine things, make copies, take samples, open packages or operate plant or equipment, take measurements, conduct tests, make records, seize items, ask questions, obtain information and ask another person at the premises for assistance in doing any of these things. These comprehensive powers are essential to ensure that inspectors can effectively monitor compliance with the Act.

New section 62D ensures that an inspector can exercise in public places the same powers that are set out in **new section 62**, if the inspector reasonably suspects that the public place is also a workplace for the purposes of the Act.

New section 62E provides that it is an offence if a person does not comply with a requirement made by an inspector exercising his or her powers under **section 62C (i)** or **(j)** which make requirements of the occupier, or anyone at the premises.

New section 62F gives an inspector the power to take direct action to remove or mitigate an imminent risk of serious harm to a person. In exercising the power under this provision, an inspector can take or direct any reasonable action necessary to prevent, remove or minimise the risk and where possible, should consult with the occupier of the premises.

New section 62G requires an inspector to report on action taken under **section 62F**, and to provide a copy of that report to the occupier of the premises and to the chief executive. Where an inspector takes direct action, **new section 62H** provides that the Territory's costs associated with that action can be recovered from the employers at the workplace, the owners and lessees of the premises and/or the person who caused the risk. Costs are not payable by a person if someone else's actions were responsible for causing the risk, or if the risk could not reasonably have been prevented.

New section 62I gives an inspector powers to enter premises if the inspector has reasonable grounds to believe a dangerous occurrence has happened, is happening or is about to happen at those premises (a dangerous occurrence is defined in the dictionary). The purpose of this provision is to ensure that inspectors can readily gain access to premises in these circumstances, so the occurrence can be properly investigated, the premises can be made safe and any evidence relating to the dangerous occurrence can be secured.

New section 62J gives an inspector the power to seize things on premises that he or she has entered under this part of the Act. An inspector can seize items that the inspector is satisfied are connected with any offences against the legislation that are related to the inspector's reasons for entering the premises. An inspector can also seize any things covered by a warrant. An inspectors also has the power to seize things if the inspector is reasonably satisfied that the seizure is necessary to stop the thing from being concealed, lost or destroyed, or used to commit an offence.

New section 62K provides that it is an offence to interfere with something that has been seized by an inspector under **new section 62J**, without the inspector's approval. This is particularly important to ensure that a person does not interfere with a seized item that cannot be removed from the place of seizure. This is a strict liability offence, to ensure that people cannot frustrate a seizure or investigation.

New section 62L gives an inspector the power to order the destruction or disposal of an item that are inspected or seized under this part of the Act, if he or she is reasonably satisfied the item poses a risk to health and safety. The inspector can give directions about the way in which the destruction or disposal is to be carried out. The Territory's costs associated with the destruction or disposal can be recovered from the person responsible for the item. Without such a provision, the costs that the Territory would incur in safely storing such items would be considerable. Some items are so inherently dangerous that they cannot be safely used or stored and destruction is the only feasible option.

New section 62M provides that an inspector can require a person to provide their name and address if that person is reasonably suspected of involvement in the commission of an offence. The inspector must provide and record the reasons for the request. It is an offence not to comply with the request under this provision, or to provide a false information.

New section 62N empowers inspectors to require a person that is involved in something that requires authorisation to do that thing to produce the authority for inspection. The inspector must provide and record the reasons for the request. This power can be seen as analogous to the power that police officers have to request motorists to produce a current drivers license. It is an offence to fail to produce an authority when requested to do so. An example of an authorisation that an inspector may require a person to produce is a certificate of competency for scaffolding work required under the Occupation Health and Safety (Certification of Plant Users and Operators) Regulations 2000.

Division 5.3 contains provisions dealing with search warrants. These provisions are similar to search warrant provisions contained in other regulatory legislation. They explain the process for applying for a search warrant, the actions that search warrants may authorise, power search warrants are to be executed, how searches are to be conducted and associated matters.

New section 63 explains that an inspector can apply to a magistrate for a search warrant. Search warrants can be issued if a magistrate is satisfied that there is likely to be evidence of an offence under the legislation. A warrant issued by a magistrate must contain details such as the items that it applies to, the offence that it relates to, the actions that it authorises and the period for which it remains in force.

New section 63A sets out the methods by which an application for a search warrant may be made to a magistrate if the inspector is not able to make the application in person. This provision is included to cover situations where search warrants are needed urgently, for example because it is thought that evidence might be lost or destroyed if the search is not carried out promptly. The methods that may be used include phone, fax, radio or other form of communication. This clause also includes procedural provisions for recording applications for warrants and the terms of any warrant issued as a result.

New section 63B includes a general requirement that an inspector must announce that he or she is authorised to enter premises before he or she seeks entry under the warrant. This requirement may not apply if the inspector believes on reasonable grounds that immediate entry is necessary for reasons of safety or to preserve evidential material at the premises.

New section 63C requires an inspector to give details of a search warrant to the occupier of the premises to be searched, or to his or her representative. The occupier must also be given a written statement of his or her rights and obligations.

New section 63D makes it clear that an occupier of premises, or his or her representative, is generally entitled to be present during a search. This right is not absolute – a person can be excluded if his or her presence would impede the search, or

if he or she is under arrest and being present at the search might interfere with the objectives of the search.

New section 63E enables an item found at the premises to be moved elsewhere for examination or processing in order to decide whether the item can be seized under the search warrant. There must be reasonable grounds for believing the item is covered by the search warrant, and it must be significantly more practicable to examine or process the item elsewhere. This provision is necessary because it is not always immediately apparent whether an item comes within the terms of a search warrant, and in these circumstances it is desirable to have a clear legal basis for moving items found on premises. The occupier of premises, or his or her representative, is entitled to observe while the item is examined or processed at the other location.

New section 63F authorises the use of electronic equipment on premises that are being searched to access relevant data, providing the inspector reasonably believes the data is relevant to the search warrant and the equipment can be operated without damaging it. This clause also contains provisions for copying data, removing devices from the premises, seizing equipment and data storage devices and transferring data into documentary form.

New section 63G provides that an inspector can apply to a magistrate for an order that a person (for example, someone familiar with the electronic equipment or data system affected by **section 63F**) provide assistance to the inspector to access data, copy the data or convert the data into documentary form. **New section 63G (2)** sets out the criteria for making an order of this type. It is an offence not to comply with an order under this clause.

New section 63H also deals with electronic equipment at premises. It enables an inspector to take steps to secure electronic equipment at premises while expert assistance is being sought to assist with the operation of the equipment.

New section 63I requires inspectors to provide, on request, copies of any documents, films, computer files or other reproducible items that have been seized to the occupier of premises, or his or her representative. This obligation does not extend to things seized under **section 62I (4)** which poses a risk to occupational health and safety, material seized under **section 63F** (Use of electronic equipment under search warrant), or if the person would commit an offence by possessing that material.

Division 5.4 deals with the return and forfeiture of things seized under this part of the Act.

New section 64 explains that an inspector must give a receipt for any items seized to the person from whom they were taken. This provision is necessary so that seized items can be returned to the correct person, when they become available to be returned.

New section 64A provides a right of access to documents or other things that are seized under this part of the Act. The right of access applies to any person who would be entitled to inspect the item if it had not been seized.

New section 64B deals with the return of seized items. It sets out the circumstances in which items must be returned to the owner, or in which compensation is to be paid to the owner if the thing has been lost. In brief, these circumstances are:

- where, within 12 months of seizure, either no infringement notice has been served on the owner; an infringement notice is served but then withdrawn, or no prosecution is subsequently initiated against the owner; an infringement notice is served but disputed, and no conviction results; a prosecution has been initiated but the person has been found not guilty; or
- the chief executive decides, before the item has been forfeited to the Territory, that an offence has not been committed or that the offence should not be prosecuted.

New section 64C provides that a person who claims to be entitled to something that has been seized can apply within 10 days of the seizure to the Magistrates Court for an order disallowing the seizure. An application cannot be made for items that were seized because they posed a risk to the health and safety of people. The chief executive must be served with a copy of the application for the matter to be heard, and he or she may appear as respondent at the hearing. A claim for compensation for any loss or expense can be sought at the same time – see new section 67A.

New section 64D sets out the grounds on which the Magistrates Court can order the return of a seized item. Among other matters, these grounds include where the Court is not satisfied that there is an offence to which the seized item relates or the Court is satisfied that there are exceptional circumstances to justify disallowing the seizure. If the seized item cannot be returned, or if it has suffered a loss in value since it was seized, the Magistrates Court can also order the Territory to pay reasonable compensation.

New section 64E enables the Magistrates Court to adjourn an application to disallow the seizure, while other legal proceedings occur, if the seized item is evidence in those proceedings.

New section 64F deals with the forfeiture of things that have been seized under this part of the Act. It explains that if a forfeited item has not been returned, destroyed or otherwise disposed of, and no application has been made to disallow its seizure, the item is forfeited to the Territory and it may be sold, destroyed or otherwise disposed of as directed by the chief executive.

New section 64G enables the chief executive to return something that has been forfeited under **section 64F**, providing it is returnable, for example, not destroyed. The chief executive can return the item if he or she is satisfied that the item is not connected to an offence.

New section 64H explains that where the Territory incurs costs in disposing of a forfeited item and a person who was the owner of that item has been convicted or found guilty of an offence in relation to that item, the Territory can recover those costs from that person.

Division 5.5 contains powers dealing with taking samples and analysing samples from premises. The purpose of this division is to ensure that inspectors are able to obtain access to material for analysis.

Section 65 removes any doubt that an inspector can buy a sample of a substance so that it can be analysed for the purposes of routine monitoring. In such cases, the inspector is not required to follow the process for obtaining samples under this part of the legislation.

Section 65A explains the procedure to be followed when an inspector wishes to take a sample from premises where a dangerous substance is handled. It obliges the inspector to disclose his or her intention to have the sample analysed.

Section 65B requires the inspector to pay, or offer to pay, the prescribed amount for a sample which he or she intends to take. If there is no prescribed amount, the market rate is payable.

Section 65C explains how samples can be taken from packaged substances. If a package contains smaller packs, the inspector can take one or more of the smaller packs and need not purchase the whole of the package.

Section 65D sets out the procedure to be followed after a sample is taken. The sample must be divided into three parts, and marked and sealed accordingly. One part must be given to the person in charge of the premises from where the sample is taken, one part must be retained by the inspector for analysis, and the remaining part must be retained for future comparisons with the other two parts. The purpose of this provision is to ensure that disputes about the analysis results can be readily resolved.

Section 65E explains that the procedure described in **section 65D** will not apply in certain circumstances, for example, if dividing it would impede accurate analysis. In these circumstances, the inspector can take as many samples as necessary for the purpose of accurate analysis.

Section 65F explains that the analysis may only be carried out by an authorised analyst, or by a person who is supervised by an authorised analyst. The authorised analyst is required to give the chief executive a certificate about the analysis that complies with the requirements set out in this section. **Section 93J** provides for the appointment of authorised analysts. The certificate will have specific evidentiary value under part 10 of the Act.

Division 5.6 contains other general provisions dealing with enforcement powers.

New section 67 requires inspectors to take all reasonable steps to minimise inconvenience, detriment and damage when exercising powers or functions under the legislation. If damage does occur, the inspector must notify the owner of the thing has damaged.

New section 67A enables a person to claim compensation from the Territory for any loss or expenses arising from the exercise, or purported exercise of functions under this part of the Act. Any court of competent jurisdiction can decide applications for compensation.

Clause 18 – Infringement notices for certain offences

Part 5A

This existing part and the provisions it contains are to be removed from the Act. ACT legislation now utilises the infringement notice provisions in Part 8 of the *Magistrates Court Act 1930*, creating a single consistent set of provisions for the issuing of infringement notices. Accordingly, it is more sensible, efficient and effective if infringement notices for occupational health and safety breaches are issued under the *Magistrates Court Act 1930*, rather than under the OHS Act.

Clause 19 – Part 6

New part 6 includes measures to ensure that people comply with their obligations under the Act. In addition to improvement notices and prohibition notices, which are already available under the Act but are significantly improved by this Bill, a range of other compliance measures are included. Of particular significance are voluntary compliance agreements and court-issued injunctions.

The compliance measures set out in this part are intended to align with proposed compliance measures under the Dangerous Substances Bill 2003 and, in conjunction with the Dangerous Substances Bill 2003, will form part of a comprehensive framework for regulating safety in the workplace, in line with national and international initiatives to reduce accidents and injury arising from workplace hazards.

Division 6.1, and **new section 75**, contains a definition of *responsible person* that applies to all of **Part 6**.

Division 6.2 provides powers for the chief executive to require information and documents to be provided to ensure compliance with the Act. The purpose is to ensure that the chief executive can obtain information to determine whether there is compliance with the Act and what enforcement action, if any, may be necessary to ensure that people comply with the legislation.

New section 75A provides that the chief executive can obtain information from people by requiring them to answer questions and produce documents within a reasonable time, where the chief executive reasonably believes that a person may have breached the Act. The purpose of a request under this clause is to enable the chief executive to determine whether the person has complied with the legislation.

New section 75B explains that where a person is required to produce a document but is not required to answer questions asked by the chief executive, a person can discharge his or her obligations by producing the documents to the chief executive before he or she is due to attend before the chief executive.

New section 75C makes it an offence to fail to attend before the chief executive to answer questions or to produce a document. This clause is necessary to ensure that

people comply with requests from the chief executive. Note that under **section 75A**, a person can only be required to attend before the chief executive at a reasonable time.

New section 75D contains offences related to appearances before the chief executive. Under this clause, it is an offence to fail to answer a question or to stay at the meeting with the chief executive as reasonably required by the chief executive. This is to ensure that people cannot avoid their obligations to provide information to the chief executive by attending and then refusing to answer any questions or leaving again immediately.

New section 75E deals with the privilege against selfincrimination and exposure to civil liability of people who have been required to answer questions and produce documents to an inspector. The effect of this clause is that common-law privileges against self-incrimination and exposure to the imposition of a civil penalty do not apply to allow a person to refuse to answer questions or produce documents. However, any information, document or other thing obtained under this part of the Act cannot be used against the person in civil or criminal proceedings (apart from criminal proceedings under this part of the Act or provisions in the *Crimes Act 1900* dealing with false swearing). **Section 75E** provides derivative use immunity to people required to answer questions, because it protects both directly and indirectly obtained information, documents or things.

Division 6.3 deals with compliance agreements. These are agreements entered into between an inspector and a *relevant responsible person* (defined in **section 75F** and referred to in this part of the Act as a relevant responsible person) where the inspector has reasonable grounds to believe that a contravention of the legislation has occurred, is occurring or may occur. A compliance agreement is a useful mechanism to rectify potentially dangerous situations in a cooperative fashion without resorting to criminal sanctions.

New section 75F contains definitions of terms used in this Division of the Act.

New section 75G explains the circumstances in which an inspector may seek to enter into a compliance agreement with a relevant responsible person. It also sets out the matters that the compliance agreement must contain, including the measures that the relevant responsible person or anybody else is to take, and the time within which the measures must be taken, in order to make sure there is effective compliance with the legislation.

New section 75H explains when a compliance agreement comes into force, and when it expires. This provision is necessary so that all parties to the compliance agreement can be certain when the obligations it creates have legal effect, and to provide certainty as to the time in which any specific remedial action must be taken.

New section 75I puts beyond any doubt that a compliance agreement is not an admission of fault by the relevant responsible person. This provision also makes it clear that evidence that a compliance agreement has been made, or evidence about the matters it contains, is not admissible in legal proceedings or disciplinary action relating to the alleged contravention of the legislation that gave rise to the compliance agreement.

The purpose of this provision is to ensure that people are not deterred from entering into compliance agreements because of a fear that their entry into such agreements could be used against them in later proceedings. This approach is consistent with quality assurance measures in place across a wide variety of industry sectors, and it is intended to ensure that the Territory authorities can work cooperatively with industry to identify potentially risky situations, develop strategies to reduce risk and prevent harm.

New section 75J explains that it is an offence if a relevant responsible person fails to inform everyone whose activities would be affected by the compliance agreement about the terms of that agreement by informing them that the agreement has been entered into, giving a copy of the agreement to other people in control of the relevant premises, and displaying a copy of the agreement in a prominent place at the premises affected by the agreement. The purpose of these offences is to ensure that a relevant responsible person makes sure that the existence and contents of a compliance agreement are brought to the attention of all relevant people.

New section 75K makes it an offence to move, alter, damage, to deface or cover a copy of a compliance agreement that has been displayed in the premises to which the compliance agreement relates. This provision recognises the importance of ensuring that people in premises covered by a compliance agreement have ready access to documentation setting out the obligations under that agreement.

Division 6.4 deals with improvement notices. An improvement notice is another useful alternative to commencing criminal proceedings, and provides a mechanism for ensuring future compliance with the Act by giving the person on whom it is served specific details about the steps that need to be taken in order to comply with the legislation. Improvement notices are another way in which the Act allows regulatory authorities to work cooperatively with people in the industry to optimise safety.

New section 76 contains definitions relevant to Division 6.4 of the Act.

New section 76A deals with giving improvement notices to responsible people. An improvement notice can be given if an inspector believes, on reasonable grounds, that anyone at the premises has contravened, is contravening, or is likely to contravene the legislation. In these circumstances, the purpose of serving an improvement notice is to ensure that the contravention is not repeated, does not continue, or does not occur.

New section 76B sets out the matters that an improvement notice given to a responsible person can require that person to do. The notice must also explain why the inspector believes the notice is necessary, and how long the person is given to comply with the improvement notice.

New section 76C provides further guidance on the scope of improvement notices, and makes it clear that an improvement notice can apply to premises, plant or systems, or an activity or circumstance at the workplace.

New section 76D explains that the period for compliance can be extended with the concurrence of the inspector, or at the inspector's own initiative, before the time limit originally set by the improvement notice has expired. This means that the person to

whom the improvement notice was given cannot wait until after the compliance period has expired before seeking an extension.

New section 76E contains offences relating to informing people about improvement notices. The purpose of this provision is to ensure that responsible people make sure that everyone who is affected by a notice is informed about the notice, so that they can discharge their safety duties and otherwise comply with the legislation.

Under **new section 76F**, it is an offence to remove, alter, damage or deface an improvement notice or a copy of an improvement notice that has been displayed in compliance with **section 76E**.

New section 76G provides that an inspector can revoke an improvement notice when he or she is satisfied that the relevant responsible person has complied (or otherwise ensured compliance) with the notice.

New section 76H makes it an offence to fail to comply with an improvement notice. As there are potentially severe consequences in terms of harm to people if the person does not comply with the notice, this is a strict liability offence. However, it should be noted that an offence is only committed if a person fails to take all reasonable steps to comply with an improvement notice.

Division 6.5 deals with prohibition notices. Prohibition notices are another mechanism that can be used by inspectors to facilitate compliance with the legislation without having to bring criminal proceedings against a person who contravenes the legislation. Prohibition notices have more serious consequences and could, for example, stop work indefinitely at premises where a breach of the Act is resulting in a serious risk to the health and safety of people.

New section 77 contains definitions for this Division of the Act.

New section 77A provides that an inspector can issue a prohibition notice to a responsible person for a workplace. A prohibition notice can be served where an inspector believes that there may be a contravention of the legislation, and the order is necessary to prevent or minimise serious harm, or to allow inspection or other monitoring of the premises, or to allow for the investigation of an accident. The purpose of a prohibition notice is to stop certain actions occurring at the premises to avoid serious harm, or to allow further investigation by the inspector.

New section 77B sets out the matters that a prohibition notice must contain, including the measures that must be taken to ensure compliance with the legislation and the right of the responsible person to seek reinspection of the situation or circumstances that caused the notice to be given. The notice must also specify a reasonable period which in the inspector's judgement is necessary to carry out the inspection, testing, and monitoring of anything at the workplace, or to investigate an accident or incident at the workplace.

New section 77C provides further detail about the scope of prohibition notices, including the actions or matters that a prohibition notice can cover.

New section 77D explains that if a prohibition notice states a time for carrying out the inspection, testing, and monitoring of anything at the workplace, or investigating an accident or incident at the workplace, the inspector can extend that time on their own initiative or at the request of the responsible person, providing the extension is sought before the time limit expires.

New section 77E provides that it is an offence not to tell others at the premises about the notice and steps that need to be taken under the notice, or to fail to display a copy of the notice in a prominent place at the premises.

New section 77F makes it an offence to remove, alter, damage, deface or cover a copy of a prohibition notice displayed at premises.

New section 77G describes when a prohibition notice ceases to have effect.

New section 77H enables a responsible person subject to a prohibition notice to ask the commissioner to have the circumstances or situation reinspected, with a view to revoking the notice.

New section 77I explains that a prohibition notice can be revoked following reinspection if the inspector is satisfied that there has been compliance with the notice. **Section 77I (3)** ensures that a request for a reinspection is responded to promptly, by revoking the notice if a reinspection is not made within 2 business days after the request is made.

New section 77J provides that a prohibition notice is ended at the end of the period specified for carrying out the inspection, testing, and monitoring of anything at the workplace, or investigating an accident or incident at the workplace

New section 77K establishes an offence for a person who fails to comply with a prohibition notice. As there could be very serious safety consequences as a result of not complying with a prohibition notice, this is a strict liability offence. However, it should be noted that an offence is only committed if a person fails to take all reasonable steps to comply with a prohibition notice.

New sections 77L and 77M create a right for people who are bound by a prohibition notice and suffer loss or expense as a consequence to seek compensation, if there were insufficient grounds for the prohibition notice. Applications for compensation are made to the Minister, who must consider applications and provide reasons for any decision about the application. If an application for compensation is not decided within 28 days, the Minister is deemed to have refused the application. It should be noted that applicants who are aggrieved by a decision under this section have judicial review rights under the *Administrative Decisions (Judicial Review) Act 1989*.

Division 6.6 contains provisions dealing with enforceable safety undertakings. Safety undertakings are another mechanism for ensuring compliance with the legislation without resorting to prosecution for criminal offences. Safety undertakings oblige a person to fulfil assurances that he or she makes about future behaviour in relation to occupational health and safety.

New section 78 contains definitions for Division 6.6.

New section 78A sets out the process for making safety undertakings where the chief executive has alleged that there has been a contravention of the Act. A person can give the chief executive a written undertaking to comply with the legislation. This undertaking is the safety undertaking. A safety undertaking must set out the details of the alleged contravention and one or more undertakings that relate to the alleged contravention.

New section 78B explains that if the chief executive decides to accept a safety undertaking, he or she must give a written notice of that acceptance to the person who made the undertaking.

New section 78C describes how a safety undertaking can be amended, and how the person who made the undertaking may withdraw from it if the chief executive agrees.

New section 78D explains when an enforceable undertaking commences, and when it terminates.

New section 78E makes it clear that a safety undertaking is not an admission of fault.

New section 78F explains what happens if an enforceable safety undertaking is contravened. In such cases, the chief executive can apply for an order to require the person to comply with the undertaking (or to ensure that it is complied with). An application under this clause is made to the Magistrates Court. The court can also order the person to pay an amount that represents the value of the benefit derived from the contravention of the undertaking, or to compensate someone for loss or damage resulting from the contravention of the undertaking. It is a strict liability offence not to take reasonable steps to comply with an order made by the court under this section.

Division 6.7 contains powers to seek injunctions to restrain a contravention of the legislation. The purpose of this Division is to provide a quick, legally enforceable mechanism to prevent conduct that would amount to a breach of the Act.

New section 79 allows any interested person to apply to the Magistrates Court for an injunction to restrain a person from contravening the legislation (this can include an injunction that stops a person from doing something or an injunction that requires a person to do something). It is not necessary for the court to be satisfied that there is a likelihood of harm to people in order to grant an injunction under this clause. Likewise, the court need not be satisfied that there is a breach of the legislation, or that such a breach is likely. The Magistrates Court can grant an interim injunction while it decides whether or not to grant permanent injunction under this clause.

New section 79A explains that the Magistrates Court can enforce interim and permanent injunctions made under this part of the legislation.

New section 79B ensures the Magistrates Court has power to amend or discharge injunctions that it makes under this part.

New section 79C makes it clear that when the chief executive applies for an injunction to restrain a breach of the legislation, the chief executive cannot be required by the court to give an undertaking about costs or damages. This clause also allows the chief executive to make an undertaking as to costs or damages if another person, apart from the chief executive, would be required to give such an undertaking in relation to an injunction.

New section 79D makes it clear that the powers given to the Magistrates Court under this Division do not affect any of that Court's other powers. This section also makes it clear that applications for injunction can be made without requiring the applicant to give notice to the person against whom the injunction is sought.

Clause 20 – Section 80C to 82

This clause substitutes new provisions for the reconsideration and review of decisions by inspector and the commissioner and relocates the lists of reviewable decisions to schedules.

New section 81 establishes that for Division 7.2, inspector does not include the commissioner. Under **new section 84R(1)** the Commissioner is an inspector for the *Occupational Health and Safety Act 1989*. The inclusion of section 81 ensures that no decisions of the commissioner are internally reviewable.

New section 82 provides that decisions of an inspector which are listed in schedule 1.1 are reviewable by the commissioner, that is, they are internally reviewable. **Section 82** also provides decisions of the commissioner and the chief executive which are listed in schedule 1.2 and 1.3 respectively are reviewable.

Clause 21 – Section 83

New section 83 imposes a time period in which applications for internal review must be made, and requires the grounds on which the internal review is sought to be specified. The provision also clarifies that an application for internal review does not affect the operation of the decision, ensuring that a decision remains valid and enforceable after an application for internal review has been made.

New section 83A explains that the commissioner must confirm, vary or revoke the decision under review within a prescribed period of the receipt of the application for internal review. Part 5 of Schedule 2 of the Bill prescribes the time for making decision on an application for an internal review.

Clause 22 – New part 7A

New part 7A contains general provisions dealing with the administration of the Act.

New section 84R explains who is an inspector for the purposes of the Act. An inspector includes the commissioner, and public servants who have been appointed as an inspector by the chief executive.

New section 84S deals with identity cards that must be issued to public servants who are appointed as inspectors, and explains the matters that must be stated on the identity card. A person who ceases to be an inspector must return the identity card as soon as practicable. It is an offence not to return an identity card as required by this provision.

New section 84T explains that officials who exercise functions under the Act do not incur any civil or criminal liability for any of their actions or omissions that are done honestly and without negligence. To the extent that civil or criminal liability does attach to an official, it instead attaches to the Territory. The effect is that the Territory indemnifies officials exercising functions under the Act.

Clause 23 – Interfering with workplace notices **Section 90**

This clause omits the existing section 90 of the Act that concerns interfering with workplace notices, such as a provisional improvement notice or a prohibition notice. This provision will no longer be necessary due to the inclusion of new offences in Part 6.

Clause 24 – New sections 93A to 93F

The provisions to be inserted by this clause relate to offences against the *Occupational Health and Safety Act 1989*. The purpose of these provisions is to clarify certain issues of interpretation, procedure and evidence that are likely to arise in any proceedings for offences under the Act.

New section 93A applies to offences that are committed by Territory entities. Under section 121 of the *Legislation Act 2001*, the Crown in any of its capacities is not subject to criminal proceedings. This provision is sometimes referred to as “the shield of the Crown”. It is therefore necessary to include other mechanisms to deal with offences committed by Territory entities. This clause allows a notice of non-compliance to be served on the chief executive of the Territory entity that has committed the offence. The chief executive is required to publish in the annual report for that entity the number of non-compliance notices that have been served under this clause. This mechanism ensures that government entities can be held accountable for their actions.

New section 93B provides that where a notice may be served, or is required to be served on a person, that notice may be served electronically by emailing it to a person’s email address. This method of service is in addition to any other mode of service provided under another law. The objective of this provision is to allow for the use of email to serve notices as email is a fast, flexible and widely available method of communication.

New section 93C provides that the chief executive can publish details of offences against the Act. It sets out the matters that a notice published under this section can contain, and the timeframes within which the chief executive can choose to publish a

notice about a conviction or finding of guilt. The purpose of this provision is to provide a further disincentive to commit an offence against the Act.

New section 93D confers on the court the power to order a convicted person to publish a statement. The court can give directions to the person about the contents of a statement. The purpose of this provision is to give the court another option when dealing with offenders, recognising that the adverse publicity that such a statement would engender can be both a punishment and a significant deterrent.

New section 93E enables a court to make a remedial order against a person convicted or found guilty of an offence against the Act. A remedial order directs a person to take any steps the court considers necessary and appropriate to rectify a state of affairs that resulted from the guilty person's conduct. This power is additional to the power of the court to make a reparation order under the *Crimes Act 1900* when it sentences the offender for the relevant offence.

New section 93F gives the court the power to make orders about any costs and expenses relating to the examination, seizure, detention, storage, analysis, destruction or other disposition of any thing that is covered by a proceeding for an offence against the Act. This power is in addition to any power that the court already has to make orders about costs in criminal proceedings.

New section 93G details the presumptions about substances (relating to matters such as batch representativeness) that apply in criminal proceedings under the Act. These presumptions apply unless the contrary position is established on the balance of probabilities. The purpose of these presumptions is to save both the court, and the parties to the criminal proceeding, the time, energy and resources that would otherwise have to be expended in establishing matters that would ordinarily conform to certain expectations.

New section 93H deals with the evidence given by analysts. It provides that if an analyst gives a certificate about a matter relevant to a criminal proceeding, that certificate is admissible in the proceeding and is evidence of the facts that it states. The analyst is not required to attend court to give evidence in person, but the court does have the power to order the analyst to attend as a witness.

New section 93I gives the court the power to order that there be further analysis of a sample, if the analysts engaged by the parties to give evidence disagree about the results of the analysis of the sample. The part of the sample that can be sent by the court for further analysis by an independent analyst is the part that has been retained for future analysis under **section 65D** of the Act. Unless the court orders otherwise, the Territory must pay for the further analysis.

New section 93J explains that the chief executive may appoint a person as an authorised analyst for the purposes of the Act.

Clause 25 – New Part 9

Part 9 makes transitional arrangements in relation to improvement notices and prohibition notices.

New section 98 contains definitions applying to Part 9.

New section 99 provides that improvement notices issued under the *Occupational Health and Safety Act 1989* prior to the commencement of this Act continue as if the *Occupational Health and Safety Act 1989* had not been amended. Should such an improvement notice not end before Part 9 expires, it will end when Part 9 expires.

New section 100 provides that prohibition notices issued under the *Occupational Health and Safety Act 1989* prior to the commencement of this Act continue as if the *Occupational Health and Safety Act 1989* had not been amended. Should such an improvement notice not end before Part 9 expires, it will end when Part 9 expires.

New section 101 provides that the regulations may modify the operation of Part 9 in relation to any matter that the Executive determines is not dealt with by Part 9, or is not dealt with adequately.

Under **new section 102, Part 9** and the transitional matters it contains expire 6 months after the day it commences.

Clause 26 – Schedule 1

This clause lists the reviewable decisions of inspectors, the commissioner, and the chief executive along with the persons who have appeal rights for each decision.

Part 1.1 specifies the reviewable decisions of inspectors which are internally reviewable by the commissioner and the categories of person eligible to appeal a particular decision.

Part 1.2 specifies the reviewable decisions of the commissioner which are reviewable by the review authority and the categories of person eligible to appeal a particular decision. As the commissioner is an inspector, the commissioner's reproduce the list of internally reviewable decisions in addition to other decisions specific to the commissioner. The decision of a commissioner in reconsidering an inspector's decision is a reviewable decision for this part.

Part 1.3 specifies the reviewable decisions of the chief executive which are reviewable by the review authority and the categories of person eligible to appeal a particular decision.

Clause 27 – New dictionary

This provision creates a **dictionary** to replace the provision containing interpretation provisions, which will ensure the Act complies with current drafting practices. Furthermore, the dictionary contains further definitions of terms and concepts that will appear in the Act.

Schedule 1 Technical amendments

Schedule 1 of the Act contains amendments to the Occupational Health and Safety Act of a purely technical nature, and that involve no changes in policy or operational effect. Specific amendments are explained in explanatory notes.

Schedule 2 Occupational Health and Safety Regulations 1991

Schedule 2 of the Act contains amendments to the Occupational Health and Safety Regulations 1991 (the OHS Regulations) that are necessary as a result of additions, alterations or omissions made to the Occupational Health and Safety Act.

Clause 2.1 – Regulation 2A

This clause ties the provisions relating to dangerous occurrences to the relocated definition of a dangerous occurrence in the dictionary.

Clause 2.2 – Part 3A

The infringement notice provisions in Part 5A of the OHS Act are to be omitted in favour of the infringement notice provisions in Part 8 of the *Magistrates Court Act 1930*. Part 3A of the Regulations applies with infringement notices issued under Part 5A of the OHS Act. Accordingly, the omission of Part 3A of the Regulations is a consequential amendment to the omission of Part 5A of the OHS Act.

Clause 2.3 – New part 4

This provision inserts a new part, **part 5** Miscellaneous, for the Occupational Health and Safety Regulations.

New **section 83A(2)** requires the commissioner to review a decision, where an application for internal review has been made, and confirm, vary or revoke the decision within a time prescribed by the regulations. New **regulation 11** provides that the time prescribed is generally 10 business days after the application is received. However, before the 10 business days for review has elapsed, the commissioner can notify the applicant in writing that more time is required. Where this occurs, the chief executive has 20 business days from the time the application is received to make a decision.

There may also be situations where the chief executive requires additional information from the applicant in order to reach a decision. In such circumstances the chief executive may write to the applicant requesting further information. Once the commissioner receives the additional information requested, the chief executive has 10 business days to make a decision.

If the information provided by the applicant is not the additional information the commissioner requested, or is not all of the additional information requested, the commissioner, notify the applicant in writing.

Clause 2.4 – Schedule 1

Under this provision, schedule 1 of the regulations, containing a table of offences and the applicable infringement notice penalties is to be omitted. Schedule 1 of the regulations was connected to regulation 10A which, under clause 2.2 above, is also to be omitted along with the rest of Part 3A.

Schedule 3 Consequential amendments

Part 3.1 Public Sector Management Act 1994

Clause [3.1] Section 249

This clause brings section 249 into line with modern drafting practice.

Clause [3.2] Schedule 3 heading

This clause substitutes a new heading for schedule 3.

Clause [3.3] Schedule 3, modifications 3.1-3.3

This clause makes technical amendments in relation to definitions.

Clause [3.4] Schedule 3, modification 3.7

This clause makes technical amendments in relation to standard drafting language and numbering.

Clause [3.5] Schedule 3, modifications 3.10

This clause reflects changes in the numbering of **modification 3.7**.

Clause [3.6] Schedule 3, modifications 3.11

This clause reflects changes in the numbering of **modification 3.7**.

Clause [3.7] Schedule 3, modifications 3.19

This clause renumbers section 57A as section 58A.

Clause [3.8] Schedule 3, modifications 3.20

This clause corrects an error in numbering substituting part 4A for part 15A.

Clause [3.9] Schedule 3, modifications 3.20, section 60C (4) (b)

This clause replaces numbered references to improvement and prohibition notices.

Clause [3.10] Schedule 3, modifications 3.20, section 60Q (1)

This clause replaces numbered references to improvement and prohibition notices.

Clause [3.11] Schedule 3, modifications 3.20, section 60R

This clause replaces numbered references to improvement and prohibition notices.

Clause [3.12] Schedule 3, modifications 3.21

This clause renumbers sections 62(4) and 62(5) as 62C(2) and 62C(3)

Clause [3.13] Schedule 3, modifications 3.22

This clause renumbers section 62(A) as 62CA.

Clause [3.14] Schedule 3, modifications 3.23

This clause renumbers section 71(A) as 84RA.

Clause [3.15] Schedule 3, modifications 3.25, section 91A (d)(ii) and (iii)

This clause replaces numbered references to improvement and prohibition notices and additionally requires that notices of noncompliance, compliance agreements, and enforceable undertakings be included in annual reports.

Clause [3.16] Schedule 3, modifications 3.26-3.33

This clause links changes to Schedule 1 dealing with appeal rights to the modifications in Schedule 3 of the Public Sector Management Act.

Clause [3.17] Schedule 3, new modifications

This clause makes consequential modifications to the dictionary.

Clause [3.18] Schedule 3 renumbering

This clause provides for the renumbering of the modifications on republication.