

# Work Health and Safety Act 2011 No 10

[2011-10]



New South Wales

## Status Information

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Fair Trading Legislation Amendment \(Miscellaneous\) Act 2018 No 79](#) (not commenced — to commence on 1.7.2019)
  - [Statute Law \(Miscellaneous Provisions\) Act 2019 No 1](#) (not commenced — to commence on 1.7.2019)

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# Work Health and Safety Act 2011 No 10



New South Wales

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# Work Health and Safety Act 2011 No 10



New South Wales

An Act to secure the health, safety and welfare of persons at work; to repeal the *Occupational Health and Safety Act 2000*; and for other purposes.

## Part 1 Preliminary

### Division 1 Introduction

#### 1 Name of Act

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

#### 2 Commencement

This Act commences on 1 January 2012 or on such later day as may be appointed by proclamation before 1 January 2012.

### Division 2 Object

#### 3 Object

- (1) The main object of this Act is to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by:
  - (a) protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work or from specified types of substances or plant, and
  - (b) providing for fair and effective workplace representation, consultation, co-operation and issue resolution in relation to work health and safety, and
  - (c) encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment, and
  - (d) promoting the provision of advice, information, education and training in relation to work health and safety, and

- (e) securing compliance with this Act through effective and appropriate compliance and enforcement measures, and
  - (f) ensuring appropriate scrutiny and review of actions taken by persons exercising powers and performing functions under this Act, and
  - (g) providing a framework for continuous improvement and progressively higher standards of work health and safety, and
  - (h) maintaining and strengthening the national harmonisation of laws relating to work health and safety and to facilitate a consistent national approach to work health and safety in this jurisdiction.
- (2) In furthering subsection (1) (a), regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work or from specified types of substances or plant as is reasonably practicable.

## Division 3 Interpretation

### Subdivision 1 Definitions

#### 4 Definitions

In this Act:

**approved code of practice** means a code of practice approved under Part 14.

**authorised**, in Part 4—see section 40.

**authorising authority** means the Industrial Relations Commission.

**Category 1 offence**—see section 31.

**Category 2 offence**—see section 32.

**Category 3 offence**—see section 33.

**compliance powers** means the functions and powers conferred on an inspector under this Act.

**condition** includes limitation and restriction.

**construct** includes assemble, erect, reconstruct, reassemble and re-erect.

**corresponding regulator** means the holder of a public office, or a public authority, of the Commonwealth, or of a State, who or which is responsible for administering a corresponding WHS law.

**corresponding WHS law** means:

- (a) a law of an Australian jurisdiction that has the same name as this Act, and
- (b) a law of an Australian jurisdiction that is prescribed by the regulations as a corresponding WHS law.

**court** means the court having jurisdiction in the matter concerned.

**dangerous incident**, in Part 3—see section 37.

**demolition** includes deconstruction.

**design**, in relation to plant, a substance or a structure includes:

- (a) design of part of the plant, substance or structure, and
- (b) redesign or modify a design.

**disclose**, in relation to information, includes divulge or communicate to any person or publish.

**discriminatory conduct**, in Part 6—see section 105.

**document** includes record.

**employee record**, in relation to an employee, has the same meaning as it has in the [Privacy Act 1988](#) of the Commonwealth.

**employer organisation** means an organisation of employers.

**engage in conduct** means doing an act or omitting to do an act.

**Fair Work Act** means the [Fair Work Act 2009](#) of the Commonwealth.

**handling** includes transport.

**health** means physical and psychological health.

**health and safety duty**—see section 30.

**health and safety representative**, in relation to a worker, means the health and safety representative elected under Part 5 for the work group of which the worker is a member.

**import** means to bring into the jurisdiction from outside Australia.

**inspector** means an inspector appointed under Part 9.

**Note—**

Section 18 (8) of the [Work Health and Safety \(Mines and Petroleum Sites\) Act 2013](#) deems government officials under that Act to also be inspectors.

**internal reviewer** means:

- (a) the regulator, or
- (b) a person appointed by the regulator under section 225.

**local authority** means a council, county council or joint organisation under the [Local Government Act 1993](#).

**medical treatment** means treatment by a medical practitioner within the meaning of the [Health Practitioner Regulation National Law \(NSW\)](#).

**member of staff** of the regulator means:

- (a) in the case of SafeWork NSW—a person employed in the Department of Finance, Services and Innovation, or
- (b) in the case of the Secretary of the Department of Planning and Environment—a person employed in that Department.

**notifiable incident**—see section 35.

**officer** means:

- (a) an officer within the meaning of section 9 of the [Corporations Act 2001](#) of the Commonwealth other than a partner in a partnership, or
- (b) an officer of the Crown within the meaning of section 247, or
- (c) an officer of a public authority within the meaning of section 252, other than an elected member of a local authority acting in that capacity.

**official of a union**, in Part 7—see section 116.

**person conducting a business or undertaking**—see section 5.

**personal information** has the same meaning as it has in the [Privacy Act 1988](#) of the Commonwealth.

**plant** includes:

- (a) any machinery, equipment, appliance, container, implement and tool, and
- (b) any component of any of those things, and
- (c) anything fitted or connected to any of those things.

**prohibited reason**, in Part 6—see section 106.

**public authority** means:

- (a) a Division of the Government Service, or
- (b) a NSW Government agency, or
- (c) a local authority, or
- (d) any other public or local authority constituted by or under an Act.

**reasonably practicable**, in relation to a duty to ensure health and safety—see section 18.

**regulator** means the regulator established under clause 1 of Schedule 2.

**relevant person conducting a business or undertaking**, in Part 7—see section 116.

**relevant union**, in Part 7—see section 116.

**relevant worker**, in Part 7—see section 116.

**representative**, in relation to a worker, means:

- (a) the health and safety representative for the worker, or
- (b) a union representing the worker, or
- (c) any other person the worker authorises to represent him or her.

**SafeWork NSW** means SafeWork NSW as referred to in clause 1 of Schedule 2.

**serious injury or illness**, in Part 3—see section 36.

**State** includes Territory.

**State or Territory industrial law** has the same meaning as it has in the Fair Work Act.

**structure** means anything that is constructed, whether fixed or moveable, temporary or permanent, and includes:

- (a) buildings, masts, towers, framework, pipelines, transport infrastructure and underground works (shafts or tunnels), and
- (b) any component of a structure, and
- (c) part of a structure.

**substance** means any natural or artificial substance, whether in the form of a solid, liquid, gas or vapour.

**supply**—see section 6.

**this Act** includes the regulations.

**union** means:

- (a) an employee organisation that is registered, or taken to be registered, under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth, or
- (b) an association of employees or independent contractors, or both, that is registered or recognised as such an association (however described) under a State or Territory industrial law.

**volunteer** means a person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses).

**WHS entry permit** means a WHS entry permit issued under Part 7.

**WHS entry permit holder** means a person who holds a WHS entry permit.

**WHS undertaking** means an undertaking given under section 216 (1).

**work group** means a work group determined under Part 5.

**worker**—see section 7.

**workplace**—see section 8.

## Subdivision 2 Other important terms

### 4A (Repealed)

### 5 Meaning of “person conducting a business or undertaking”

- (1) For the purposes of this Act, a person conducts a business or undertaking:
  - (a) whether the person conducts the business or undertaking alone or with others, and
  - (b) whether or not the business or undertaking is conducted for profit or gain.
- (2) A business or undertaking conducted by a person includes a business or undertaking conducted by a partnership or an unincorporated association.
- (3) If a business or undertaking is conducted by a partnership (other than an incorporated partnership), a reference in this Act to a person conducting the business or undertaking is to be read as a reference to each partner in the partnership.
- (4) A person does not conduct a business or undertaking to the extent that the person is engaged solely as a worker in, or as an officer of, that business or undertaking.
- (5) An elected member of a local authority does not in that capacity conduct a business or undertaking.

- (6) The regulations may specify the circumstances in which a person may be taken not to be a person who conducts a business or undertaking for the purposes of this Act or any provision of this Act.
- (7) A volunteer association does not conduct a business or undertaking for the purposes of this Act.
- (8) In this section, **volunteer association** means a group of volunteers working together for one or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association.

## 6 Meaning of “supply”

- (1) A **supply** of a thing includes a supply and a resupply of the thing by way of sale, exchange, lease, hire or hire-purchase, whether as principal or agent.
- (2) A supply of a thing occurs on the passing of possession of the thing to the person or an agent of the person to be supplied.
- (3) A supply of a thing does not include:
  - (a) the return of possession of a thing to the owner of the thing at the end of a lease or other agreement, or
  - (b) a prescribed supply.
- (4) A financier is taken not to supply plant, a substance or a structure for the purposes of this Act if:
  - (a) the financier has, in the course of the financier’s business as a financier, acquired ownership of, or another right in, the plant, substance or structure on behalf of a customer of the financier, and
  - (b) the action by the financier, that would be a supply but for this subsection, is taken by the financier for, or on behalf of, that customer.
- (5) If subsection (4) applies, the person (other than the financier) who had possession of the plant, substance or structure immediately before the financier’s customer obtained possession of the plant, substance or structure is taken for the purposes of this Act to have supplied the plant, substance or structure to the financier’s customer.

## 7 Meaning of “worker”

- (1) A person is a **worker** if the person carries out work in any capacity for a person conducting a business or undertaking, including work as:
  - (a) an employee, or

- (b) a contractor or subcontractor, or
  - (c) an employee of a contractor or subcontractor, or
  - (d) an employee of a labour hire company who has been assigned to work in the person's business or undertaking, or
  - (e) an outworker, or
  - (f) an apprentice or trainee, or
  - (g) a student gaining work experience, or
  - (h) a volunteer, or
  - (i) a person of a prescribed class.
- (2) For the purposes of this Act, a police officer is:
- (a) a worker, and
  - (b) at work throughout the time when the officer is on duty or lawfully performing the functions of a police officer, but not otherwise.
- (3) The person conducting the business or undertaking is also a **worker** if the person is an individual who carries out work in that business or undertaking.

### **8 Meaning of "workplace"**

- (1) A **workplace** is a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work.
- (2) In this section, **place** includes:
- (a) a vehicle, vessel, aircraft or other mobile structure, and
  - (b) any waters and any installation on land, on the bed of any waters or floating on any waters.

### **9 Examples and notes**

- (1) An example at the foot of a provision forms part of this Act.
- (2) A note at the foot of a provision forms part of this Act.

## **Division 4 Application of Act**

### **10 Act binds the Crown**

- (1) This Act binds the Crown in right of this jurisdiction and, in so far as the legislative power of the Parliament of this jurisdiction permits, the Crown in all its other



capacities.

(2) The Crown is liable for an offence against this Act.

(3) Without limiting subsection (1), the Crown is liable for a contravention of a WHS civil penalty provision.

## **11 Extraterritorial application**

\* \* \* \* \*

### **Note—**

Not required in NSW.

## **12 Scope**

\* \* \* \* \*

### **Note—**

Not required in NSW.

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

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

# **Part 2 Health and safety duties**

## **Division 1 Introductory**

### **Subdivision 1 Principles that apply to duties**

#### **13 Principles that apply to duties**

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

### **Note—**

The principles will apply to duties under this Part and other Parts of this Act such as duties relating to incident notification and consultation.

#### **14 Duties not transferrable**

A duty cannot be transferred to another person.

#### **15 Person may have more than one duty**

A person can have more than one duty by virtue of being in more than one class of duty holder.

## **16 More than one person can have a duty**

- (1) More than one person can concurrently have the same duty.
- (2) Each duty holder must comply with that duty to the standard required by this Act even if another duty holder has the same duty.
- (3) If more than one person has a duty for the same matter, each person:
  - (a) retains responsibility for the person's duty in relation to the matter, and
  - (b) must discharge the person's duty to the extent to which the person has the capacity to influence and control the matter or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

## **17 Management of risks**

A duty imposed on a person to ensure health and safety requires the person:

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

## **Subdivision 2 What is reasonably practicable**

### **18 What is "reasonably practicable" in ensuring health and safety**

In this Act, ***reasonably practicable***, in relation to a duty to ensure health and safety, means that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters including:

- (a) the likelihood of the hazard or the risk concerned occurring, and
- (b) the degree of harm that might result from the hazard or the risk, and
- (c) what the person concerned knows, or ought reasonably to know, about:
  - (i) the hazard or the risk, and
  - (ii) ways of eliminating or minimising the risk, and
- (d) the availability and suitability of ways to eliminate or minimise the risk, and
- (e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

## **Division 2 Primary duty of care**

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

- (1) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of:
  - (a) workers engaged, or caused to be engaged by the person, and
  - (b) workers whose activities in carrying out work are influenced or directed by the person,while the workers are at work in the business or undertaking.
- (2) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.
- (3) Without limiting subsections (1) and (2), a person conducting a business or undertaking must ensure, so far as is reasonably practicable:
  - (a) the provision and maintenance of a work environment without risks to health and safety, and
  - (b) the provision and maintenance of safe plant and structures, and
  - (c) the provision and maintenance of safe systems of work, and
  - (d) the safe use, handling, and storage of plant, structures and substances, and
  - (e) the provision of adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking, including ensuring access to those facilities, and
  - (f) the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking, and
  - (g) that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking.
- (4) If:
  - (a) a worker occupies accommodation that is owned by or under the management or control of the person conducting the business or undertaking, and
  - (b) the occupancy is necessary for the purposes of the worker's engagement because other accommodation is not reasonably available,

the person conducting the business or undertaking must, so far as is reasonably practicable, maintain the premises so that the worker occupying the premises is not exposed to risks to health and safety.

- (5) A self-employed person must ensure, so far as is reasonably practicable, his or her own health and safety while at work.

**Note—**

A self-employed person is also a person conducting a business or undertaking for the purposes of this section.

### **Division 3 Further duties of persons conducting businesses or undertakings**

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

- (1) In this section, ***person with management or control of a workplace*** means a person conducting a business or undertaking to the extent that the business or undertaking involves the management or control, in whole or in part, of the workplace but does not include:
- (a) the occupier of a residence, unless the residence is occupied for the purposes of, or as part of, the conduct of a business or undertaking, or
  - (b) a prescribed person.
- (2) The person with management or control of a workplace must ensure, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace and anything arising from the workplace are without risks to the health and safety of any person.

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

- (1) In this section, ***person with management or control of fixtures, fittings or plant at a workplace*** means a person conducting a business or undertaking to the extent that the business or undertaking involves the management or control of fixtures, fittings or plant, in whole or in part, at a workplace, but does not include:
- (a) the occupier of a residence, unless the residence is occupied for the purposes of, or as part of, the conduct of a business or undertaking, or
  - (b) a prescribed person.
- (2) The person with management or control of fixtures, fittings or plant at a workplace must ensure, so far as is reasonably practicable, that the fixtures, fittings and plant are without risks to the health and safety of any person.

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

- (1) This section applies to a person (the **designer**) who conducts a business or undertaking that designs:
    - (a) plant that is to be used, or could reasonably be expected to be used, as, or at, a workplace, or
    - (b) a substance that is to be used, or could reasonably be expected to be used, at a workplace, or
    - (c) a structure that is to be used, or could reasonably be expected to be used, as, or at, a workplace.
  - (2) The designer must ensure, so far as is reasonably practicable, that the plant, substance or structure is designed to be without risks to the health and safety of persons:
    - (a) who, at a workplace, use the plant, substance or structure for a purpose for which it was designed, or
    - (b) who handle the substance at a workplace, or
    - (c) who store the plant or substance at a workplace, or
    - (d) who construct the structure at a workplace, or
    - (e) who carry out any reasonably foreseeable activity at a workplace in relation to:
      - (i) the manufacture, assembly or use of the plant for a purpose for which it was designed, or the proper storage, decommissioning, dismantling or disposal of the plant, or
      - (ii) the manufacture or use of the substance for a purpose for which it was designed or the proper handling, storage or disposal of the substance, or
      - (iii) the manufacture, assembly or use of the structure for a purpose for which it was designed or the proper demolition or disposal of the structure, or
- Example—**
- Inspection, operation, cleaning, maintenance or repair of plant.
- (f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance or structure at the workplace or whose health or safety may be affected by a use or activity referred to in paragraph (a), (b), (c), (d) or (e).
- (3) The designer must carry out, or arrange the carrying out of, any calculations, analysis, testing or examination that may be necessary for the performance of the duty

imposed by subsection (2).

- (4) The designer must give adequate information to each person who is provided with the design for the purpose of giving effect to it concerning:
  - (a) each purpose for which the plant, substance or structure was designed, and
  - (b) the results of any calculations, analysis, testing or examination referred to in subsection (3), including, in relation to a substance, any hazardous properties of the substance identified by testing, and
  - (c) any conditions necessary to ensure that the plant, substance or structure is without risks to health and safety when used for a purpose for which it was designed or when carrying out any activity referred to in subsection (2) (a)–(e).
- (5) The designer, on request, must, so far as is reasonably practicable, give current relevant information on the matters referred to in subsection (4) to a person who carries out, or is to carry out, any of the activities referred to in subsection (2) (a)–(e).

### **23 Duties of persons conducting businesses or undertakings that manufacture plant, substances or structures**

- (1) This section applies to a person (the **manufacturer**) who conducts a business or undertaking that manufactures:
  - (a) plant that is to be used, or could reasonably be expected to be used, as, or at, a workplace, or
  - (b) a substance that is to be used, or could reasonably be expected to be used, at a workplace, or
  - (c) a structure that is to be used, or could reasonably be expected to be used, as, or at, a workplace.
- (2) The manufacturer must ensure, so far as is reasonably practicable, that the plant, substance or structure is manufactured to be without risks to the health and safety of persons:
  - (a) who, at a workplace, use the plant, substance or structure for a purpose for which it was designed or manufactured, or
  - (b) who handle the substance at a workplace, or
  - (c) who store the plant or substance at a workplace, or
  - (d) who construct the structure at a workplace, or
  - (e) who carry out any reasonably foreseeable activity at a workplace in relation to:
    - (i) the assembly or use of the plant for a purpose for which it was designed or

manufactured or the proper storage, decommissioning, dismantling or disposal of the plant, or

- (ii) the use of the substance for a purpose for which it was designed or manufactured or the proper handling, storage or disposal of the substance, or
- (iii) the assembly or use of the structure for a purpose for which it was designed or manufactured or the proper demolition or disposal of the structure, or

**Example—**

Inspection, operation, cleaning, maintenance or repair of plant.

- (f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance or structure at the workplace or whose health or safety may be affected by a use or activity referred to in paragraph (a), (b), (c), (d) or (e).
- (3) The manufacturer must carry out, or arrange the carrying out of, any calculations, analysis, testing or examination that may be necessary for the performance of the duty imposed by subsection (2).
- (4) The manufacturer must give adequate information to each person to whom the manufacturer provides the plant, substance or structure concerning:
- (a) each purpose for which the plant, substance or structure was designed or manufactured, and
  - (b) the results of any calculations, analysis, testing or examination referred to in subsection (3), including, in relation to a substance, any hazardous properties of the substance identified by testing, and
  - (c) any conditions necessary to ensure that the plant, substance or structure is without risks to health and safety when used for a purpose for which it was designed or manufactured or when carrying out any activity referred to in subsection (2) (a)–(e).
- (5) The manufacturer, on request, must, so far as is reasonably practicable, give current relevant information on the matters referred to in subsection (4) to a person who carries out, or is to carry out, any of the activities referred to in subsection (2) (a)–(e).

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

- (1) This section applies to a person (the **importer**) who conducts a business or undertaking that imports:
- (a) plant that is to be used, or could reasonably be expected to be used, as, or at, a workplace, or

- (b) a substance that is to be used, or could reasonably be expected to be used, at a workplace, or
  - (c) a structure that is to be used, or could reasonably be expected to be used, as, or at, a workplace.
- (2) The importer must ensure, so far as is reasonably practicable, that the plant, substance or structure is without risks to the health and safety of persons:
- (a) who, at a workplace, use the plant, substance or structure for a purpose for which it was designed or manufactured, or
  - (b) who handle the substance at a workplace, or
  - (c) who store the plant or substance at a workplace, or
  - (d) who construct the structure at a workplace, or
  - (e) who carry out any reasonably foreseeable activity at a workplace in relation to:
    - (i) the assembly or use of the plant for a purpose for which it was designed or manufactured or the proper storage, decommissioning, dismantling or disposal of the plant, or
    - (ii) the use of the substance for a purpose for which it was designed or manufactured or the proper handling, storage or disposal of the substance, or
    - (iii) the assembly or use of the structure for a purpose for which it was designed or manufactured or the proper demolition or disposal of the structure, or

**Example—**

Inspection, operation, cleaning, maintenance or repair of plant.

- (f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance or structure at the workplace or whose health or safety may be affected by a use or activity referred to in paragraph (a), (b), (c), (d) or (e).
- (3) The importer must:
- (a) carry out, or arrange the carrying out of, any calculations, analysis, testing or examination that may be necessary for the performance of the duty imposed by subsection (2), or
  - (b) ensure that the calculations, analysis, testing or examination have been carried out.
- (4) The importer must give adequate information to each person to whom the importer provides the plant, substance or structure concerning:



- (a) each purpose for which the plant, substance or structure was designed or manufactured, and
  - (b) the results of any calculations, analysis, testing or examination referred to in subsection (3), including, in relation to a substance, any hazardous properties of the substance identified by testing, and
  - (c) any conditions necessary to ensure that the plant, substance or structure is without risks to health and safety when used for a purpose for which it was designed or manufactured or when carrying out any activity referred to in subsection (2) (a)–(e).
- (5) The importer, on request, must, so far as is reasonably practicable, give current relevant information on the matters referred to in subsection (4) to a person who carries out, or is to carry out, any of the activities referred to in subsection (2) (a)–(e).

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

- (1) This section applies to a person (the **supplier**) who conducts a business or undertaking that supplies:
- (a) plant that is to be used, or could reasonably be expected to be used, as, or at, a workplace, or
  - (b) a substance that is to be used, or could reasonably be expected to be used, at a workplace, or
  - (c) a structure that is to be used, or could reasonably be expected to be used, as, or at, a workplace.
- (2) The supplier must ensure, so far as is reasonably practicable, that the plant, substance or structure is without risks to the health and safety of persons:
- (a) who, at a workplace, use the plant or substance or structure for a purpose for which it was designed or manufactured, or
  - (b) who handle the substance at a workplace, or
  - (c) who store the plant or substance at a workplace, or
  - (d) who construct the structure at a workplace, or
  - (e) who carry out any reasonably foreseeable activity at a workplace in relation to:
    - (i) the assembly or use of the plant for a purpose for which it was designed or manufactured or the proper storage, decommissioning, dismantling or disposal of the plant, or

- (ii) the use of the substance for a purpose for which it was designed or manufactured or the proper handling, storage or disposal of the substance, or
- (iii) the assembly or use of the structure for a purpose for which it was designed or manufactured or the proper demolition or disposal of the structure, or

**Example—**

Inspection, storage, operation, cleaning, maintenance or repair of plant.

- (f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance or structure at the workplace or whose health or safety may be affected by a use or activity referred to in paragraph (a), (b), (c), (d) or (e).
- (3) The supplier must:
- (a) carry out, or arrange the carrying out of, any calculations, analysis, testing or examination that may be necessary for the performance of the duty imposed by subsection (2), or
  - (b) ensure that the calculations, analysis, testing or examination have been carried out.
- (4) The supplier must give adequate information to each person to whom the supplier supplies the plant, substance or structure concerning:
- (a) each purpose for which the plant, substance or structure was designed or manufactured, and
  - (b) the results of any calculations, analysis, testing or examination referred to in subsection (3), including, in relation to a substance, any hazardous properties of the substance identified by testing, and
  - (c) any conditions necessary to ensure that the plant, substance or structure is without risks to health and safety when used for a purpose for which it was designed or manufactured or when carrying out any activity referred to in subsection (2) (a)–(e).
- (5) The supplier, on request, must, so far as is reasonably practicable, give current relevant information on the matters referred to in subsection (4) to a person who carries out, or is to carry out, any of the activities referred to in subsection (2) (a)–(e).

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

- (1) This section applies to a person who conducts a business or undertaking that installs, constructs or commissions plant or a structure that is to be used, or could reasonably be expected to be used, as, or at, a workplace.

- (2) The person must ensure, so far as is reasonably practicable, that the way in which the plant or structure is installed, constructed or commissioned ensures that the plant or structure is without risks to the health and safety of persons:
- (a) who install or construct the plant or structure at a workplace, or
  - (b) who use the plant or structure at a workplace for a purpose for which it was installed, constructed or commissioned, or
  - (c) who carry out any reasonably foreseeable activity at a workplace in relation to the proper use, decommissioning or dismantling of the plant or demolition or disposal of the structure, or
  - (d) who are at or in the vicinity of a workplace and whose health or safety may be affected by a use or activity referred to in paragraph (a), (b) or (c).

## **Division 4 Duty of officers, workers and other persons**

### **27 Duty of officers**

- (1) If a person conducting a business or undertaking has a duty or obligation under this Act, an officer of the person conducting the business or undertaking must exercise due diligence to ensure that the person conducting the business or undertaking complies with that duty or obligation.
- (2) Subject to subsection (3), the maximum penalty applicable under Division 5 of this Part for an offence relating to the duty of an officer under this section is the maximum penalty fixed for an officer of a person conducting a business or undertaking for that offence.
- (3) Despite anything to the contrary in section 33, if the duty or obligation of a person conducting a business or undertaking was imposed under a provision other than a provision of Division 2 or 3 of this Part or this Division, the maximum penalty under section 33 for an offence by an officer under section 33 in relation to the duty or obligation is the maximum penalty fixed under the provision creating the duty or obligation for an individual who fails to comply with the duty or obligation.
- (4) An officer of a person conducting a business or undertaking may be convicted or found guilty of an offence under this Act relating to a duty under this section whether or not the person conducting the business or undertaking has been convicted or found guilty of an offence under this Act relating to the duty or obligation.
- (5) In this section, **due diligence** includes taking reasonable steps:
- (a) to acquire and keep up-to-date knowledge of work health and safety matters, and
  - (b) to gain an understanding of the nature of the operations of the business or undertaking of the person conducting the business or undertaking and generally of

the hazards and risks associated with those operations, and

- (c) to ensure that the person conducting the business or undertaking has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking, and
- (d) to ensure that the person conducting the business or undertaking has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information, and
- (e) to ensure that the person conducting the business or undertaking has, and implements, processes for complying with any duty or obligation of the person conducting the business or undertaking under this Act, and

**Example—**

For the purposes of paragraph (e), the duties or obligations under this Act of a person conducting a business or undertaking may include:

- reporting notifiable incidents,
- consulting with workers,
- ensuring compliance with notices issued under this Act,
- ensuring the provision of training and instruction to workers about work health and safety,
- ensuring that health and safety representatives receive their entitlements to training.

- (f) to verify the provision and use of the resources and processes referred to in paragraphs (c)-(e).

## **28 Duties of workers**

While at work, a worker must:

- (a) take reasonable care for his or her own health and safety, and
- (b) take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons, and
- (c) comply, so far as the worker is reasonably able, with any reasonable instruction that is given by the person conducting the business or undertaking to allow the person to comply with this Act, and
- (d) co-operate with any reasonable policy or procedure of the person conducting the business or undertaking relating to health or safety at the workplace that has been notified to workers.

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

A person at a workplace (whether or not the person has another duty under this Part) must:

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

## **Division 5 Offences and penalties**

### **30 Health and safety duty**

In this Division, **health and safety duty** means a duty imposed under Division 2, 3 or 4 of this Part.

### **31 Reckless conduct—Category 1**

(1) A person commits a Category 1 offence if:

- (a) the person has a health and safety duty, and
- (b) the person, without reasonable excuse, engages in conduct that exposes an individual to whom that duty is owed to a risk of death or serious injury or illness, and
- (c) the person is reckless as to the risk to an individual of death or serious injury or illness.

Maximum penalty:

- (a) in the case of an offence committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$300,000 or 5 years imprisonment or both, or
  - (b) in the case of an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$600,000 or 5 years imprisonment or both, or
  - (c) in the case of an offence committed by a body corporate—\$3,000,000.
- (2) The prosecution bears the burden of proving that the conduct was engaged in without reasonable excuse.

### **32 Failure to comply with health and safety duty—Category 2**

A person commits a Category 2 offence if:

- (a) the person has a health and safety duty, and
- (b) the person fails to comply with that duty, and
- (c) the failure exposes an individual to a risk of death or serious injury or illness.

Maximum penalty:

- (a) in the case of an offence committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$150,000, or
- (b) in the case of an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$300,000, or
- (c) in the case of an offence committed by a body corporate—\$1,500,000.

### **33 Failure to comply with health and safety duty—Category 3**

A person commits a Category 3 offence if:

- (a) the person has a health and safety duty, and
- (b) the person fails to comply with that duty.

Maximum penalty:

- (a) in the case of an offence committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$50,000, or
- (b) in the case of an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$100,000, or
- (c) in the case of an offence committed by a body corporate—\$500,000.

### **34 Exceptions**

- (1) A volunteer does not commit an offence under this Division for a failure to comply with a health and safety duty, except a duty under section 28 or 29.
- (2) An unincorporated association does not commit an offence under this Act, and is not liable for a civil penalty under this Act, for a failure to comply with a duty or obligation imposed on the unincorporated association under this Act.

(3) However:

- (a) an officer of an unincorporated association (other than a volunteer) may be liable for a failure to comply with a duty under section 27, and
- (b) a member of an unincorporated association may be liable for failure to comply with a duty under section 28 or 29.

#### **34A Exception for police responding to particular active armed offender incidents**

- (1) A member of the NSW Police Force does not commit an offence under this Division for a failure to comply with a health and safety duty that occurs while:
  - (a) the member is responding to a particular active armed offender incident, or
  - (b) the member is in command of, or is otherwise authorising actions by or providing directions to, other members of the NSW Police Force who are responding to a particular active armed offender incident, or
  - (c) the member is receiving information from, or providing information to, other members of the NSW Police Force for the purposes of assisting them in responding to a particular active armed offender incident, or
  - (d) the member is participating with other members of the NSW Police Force in preparing or planning for responding to a particular active armed offender incident.
- (2) A member of the NSW Police Force is **responding to a particular active armed offender incident** if:
  - (a) a person armed with an offensive weapon or instrument (the **offender**) is attacking or has attacked, or is attempting to attack or has attempted to attack, another person (the **victim**), and
  - (b) the member reasonably believes (or one or more other members of the NSW Police Force who are commanding, authorising actions by or directing the member reasonably believe) that the offender will do any of the following unless prevented from doing so:
    - (i) continue attacking, or attempting to attack, the victim,
    - (ii) attack, or attempt to attack, the victim again,
    - (iii) attack, or attempt to attack, another person apart from the victim, and
  - (c) the member is acting (whether or not in combination with, or at the command or direction of, other members of the NSW Police Force) to prevent the offender from doing so.

(3) To avoid doubt, this section does not affect the duties of the State or the Crown under this Part in connection with responding to a particular active armed offender incident.

(4) In this section:

***offensive weapon or instrument*** has the same meaning as in the [Crimes Act 1900](#).

### **Part 3 Incident notification**

#### **35 What is a “notifiable incident”**

In this Act, ***notifiable incident*** means:

- (a) the death of a person, or
- (b) a serious injury or illness of a person, or
- (c) a dangerous incident.

#### **36 What is a “serious injury or illness”**

In this Part, ***serious injury or illness of a person*** means an injury or illness requiring the person to have:

- (a) immediate treatment as an in-patient in a hospital, or
- (b) immediate treatment for:
  - (i) the amputation of any part of his or her body, or
  - (ii) a serious head injury, or
  - (iii) a serious eye injury, or
  - (iv) a serious burn, or
  - (v) the separation of his or her skin from an underlying tissue (such as degloving or scalping), or
  - (vi) a spinal injury, or
  - (vii) the loss of a bodily function, or
  - (viii) serious lacerations, or

(c) medical treatment within 48 hours of exposure to a substance,

and includes any other injury or illness prescribed by the regulations but does not include an illness or injury of a prescribed kind.



### **37 What is a “dangerous incident”**

In this Part, a **dangerous incident** means an incident in relation to a workplace that exposes a worker or any other person to a serious risk to a person’s health or safety emanating from an immediate or imminent exposure to:

- (a) an uncontrolled escape, spillage or leakage of a substance, or
- (b) an uncontrolled implosion, explosion or fire, or
- (c) an uncontrolled escape of gas or steam, or
- (d) an uncontrolled escape of a pressurised substance, or
- (e) electric shock, or
- (f) the fall or release from a height of any plant, substance or thing, or
- (g) the collapse, overturning, failure or malfunction of, or damage to, any plant that is required to be authorised for use in accordance with the regulations, or
- (h) the collapse or partial collapse of a structure, or
- (i) the collapse or failure of an excavation or of any shoring supporting an excavation, or
- (j) the inrush of water, mud or gas in workings, in an underground excavation or tunnel, or
- (k) the interruption of the main system of ventilation in an underground excavation or tunnel, or
- (l) any other event prescribed by the regulations,

but does not include an incident of a prescribed kind.

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

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

Maximum penalty:

- (a) in the case of an individual—\$10,000, or
  - (b) in the case of a body corporate—\$50,000.
- (2) The notice must be given in accordance with this section and by the fastest possible means.
  - (3) The notice must be given:

- (a) by telephone, or
- (b) in writing.

**Example—**

The written notice can be given by email or other electronic means.

- (4) A person giving notice by telephone must:
  - (a) give the details of the incident requested by the regulator, and
  - (b) if required by the regulator, give a written notice of the incident within 48 hours of that requirement being made.
- (5) A written notice must be in a form, or contain the details, approved by the regulator.
- (6) If the regulator receives a notice by telephone and a written notice is not required, the regulator must give the person conducting the business or undertaking:
  - (a) details of the information received, or
  - (b) an acknowledgement of receiving the notice.
- (7) A person conducting a business or undertaking must keep a record of each notifiable incident for at least 5 years from the day that notice of the incident is given to the regulator under this section.

Maximum penalty:

- (a) in the case of an individual—\$5,000, or
  - (b) in the case of a body corporate—\$25,000.
- (8) Despite subsection (1), a person is not required to give notice under this section of an incident that occurs at a workplace to which the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* applies.

**39 Duty to preserve incident sites**

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

Maximum penalty:

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

- (2) In subsection (1) a reference to a site includes any plant, substance, structure or thing associated with the notifiable incident.
- (3) Subsection (1) does not prevent any action:
  - (a) to assist an injured person, or
  - (b) to remove a deceased person, or
  - (c) that is essential to make the site safe or to minimise the risk of a further notifiable incident, or
  - (d) that is associated with a police investigation, or
  - (e) for which an inspector or the regulator has given permission.
- (4) This section does not apply to a workplace to which the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* applies.

## **Part 4 Authorisations**

### **40 Meaning of “authorised”**

In this Part, **authorised** means authorised by a licence, permit, registration or other authority (however described) as required by the regulations.

### **41 Requirements for authorisation of workplaces**

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

- (a) the regulations require the workplace or workplaces in that class of workplace to be authorised, and
- (b) the workplace is not authorised in accordance with the regulations.

Maximum penalty:

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

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

- (1) A person must not use plant or a substance at a workplace if:
  - (a) the regulations require the plant or substance or its design to be authorised, and
  - (b) the plant or substance or its design is not authorised in accordance with the regulations.

Maximum penalty:

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

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

- (a) the regulations require the plant or substance or its design to be authorised, and
- (b) the plant or substance or its design is not authorised in accordance with the regulations.

Maximum penalty:

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

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

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

- (a) the regulations require the work, or class of work, to be carried out by, or on behalf of, a person who is authorised, and
- (b) the person, or the person on whose behalf the work is carried out, is not authorised in accordance with the regulations.

Maximum penalty:

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

(2) A person who conducts a business or undertaking must not direct or allow a worker to carry out work at a workplace if:

- (a) the regulations require the work, or class of work, to be carried out by, or on behalf of, a person who is authorised, and
- (b) the person, or the person on whose behalf the work is to be carried out, is not authorised in accordance with the regulations.

Maximum penalty:

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

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

- (1) A person must not carry out work at a workplace if:
- (a) the regulations require the work, or class of work, to be carried out by, or under the supervision of, a person who has prescribed qualifications or experience, and
  - (b) the person does not have the prescribed qualifications or experience or the work is not carried out under the supervision of a person who has the prescribed qualifications or experience.

Maximum penalty:

- (a) in the case of an individual—\$20,000, or
  - (b) in the case of a body corporate—\$100,000.
- (2) A person who conducts a business or undertaking must not direct or allow a worker to carry out work at a workplace if:
- (a) the regulations require the work, or class of work, to be carried out by, or under the supervision of, a person who has prescribed qualifications or experience, and
  - (b) the worker does not have the prescribed qualifications or experience or the work is not carried out under the supervision of a person who has the prescribed qualifications or experience.

Maximum penalty:

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

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

A person must comply with the conditions of any authorisation given to that person under the regulations.

Maximum penalty:

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

### **Part 5 Consultation, representation and participation**

#### **Division 1 Consultation, co-operation and co-ordination between duty**

## holders

### 46 Duty to consult with other duty holders

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

Maximum penalty:

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

## Division 2 Consultation with workers

### 47 Duty to consult workers

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

Maximum penalty:

- (a) in the case of an individual—\$20,000, or
  - (b) in the case of a body corporate—\$100,000.
- (2) If the person conducting the business or undertaking and the workers have agreed to procedures for consultation, the consultation must be in accordance with those procedures.
  - (3) The agreed procedures must not be inconsistent with section 48.

### 48 Nature of consultation

- (1) Consultation under this Division requires:
  - (a) that relevant information about the matter is shared with workers, and
  - (b) that workers be given a reasonable opportunity:
    - (i) to express their views and to raise work health or safety issues in relation to the matter, and
    - (ii) to contribute to the decision-making process relating to the matter, and
  - (c) that the views of workers are taken into account by the person conducting the business or undertaking, and

(d) that the workers consulted are advised of the outcome of the consultation in a timely manner.

(2) If the workers are represented by a health and safety representative, the consultation must involve that representative.

#### **49 When consultation is required**

Consultation under this Division is required in relation to the following health and safety matters:

- (a) when identifying hazards and assessing risks to health and safety arising from the work carried out or to be carried out by the business or undertaking,
- (b) when making decisions about ways to eliminate or minimise those risks,
- (c) when making decisions about the adequacy of facilities for the welfare of workers,
- (d) when proposing changes that may affect the health or safety of workers,
- (e) when making decisions about the procedures for:
  - (i) consulting with workers, or
  - (ii) resolving work health or safety issues at the workplace, or
  - (iii) monitoring the health of workers, or
  - (iv) monitoring the conditions at any workplace under the management or control of the person conducting the business or undertaking, or
  - (v) providing information and training for workers, or
- (f) when carrying out any other activity prescribed by the regulations for the purposes of this section.

### **Division 3 Health and safety representatives**

#### **Subdivision 1 Request for election of health and safety representatives**

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

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

## **Subdivision 2 Determination of work groups**

### **51 Determination of work groups**

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

### **52 Negotiations for agreement for work group**

- (1) A work group is to be determined by negotiation and agreement between:
  - (a) the person conducting the business or undertaking, and
  - (b) the workers who will form the work group or their representatives.
- (2) The person conducting the business or undertaking must take all reasonable steps to commence negotiations with the workers within 14 days after a request is made under section 50.
- (3) The purpose of the negotiations is to determine:
  - (a) the number and composition of work groups to be represented by health and safety representatives, and
  - (b) the number of health and safety representatives and deputy health and safety representatives (if any) to be elected, and
  - (c) the workplace or workplaces to which the work groups will apply, and
  - (d) the businesses or undertakings to which the work groups will apply.
- (4) The parties to an agreement concerning the determination of a work group or groups may, at any time, negotiate a variation of the agreement.
- (5) The person conducting the business or undertaking must, if asked by a worker, negotiate with the worker's representative in negotiations under this section (including negotiations for a variation of an agreement) and must not exclude the representative from those negotiations.

Maximum penalty:

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



- (6) The regulations may prescribe the matters that must be taken into account in negotiations for and determination of work groups and variations of agreements concerning work groups.

### **53 Notice to workers**

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

Maximum penalty:

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

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

Maximum penalty:

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

### **54 Failure of negotiations**

- (1) If there is a failure of negotiations (including negotiations concerning the variation of an agreement), any person who is or would be a party to the negotiations may ask the regulator to appoint an inspector for the purposes of this section.
- (2) An inspector appointed under subsection (1) may decide:
  - (a) the matters referred to in section 52 (3), or any of those matters which is the subject of the proposed variation (as the case requires), or
  - (b) that work groups should not be determined or that the agreement should not be varied (as the case requires).
- (3) For the purposes of this section, there is a failure of negotiations if:
  - (a) the person conducting the business or undertaking has not taken all reasonable steps to commence negotiations with the workers and negotiations have not commenced within 14 days after:
    - (i) a request is made under section 50, or

- (ii) a party to the agreement requests the variation of the agreement, or
- (b) agreement cannot be reached on a matter relating to the determination of a work group (or the variation of an agreement concerning a work group) within a reasonable time after negotiations commence.

(4) A decision under this section is taken to be an agreement under section 52.

### **Subdivision 3 Multiple-business work groups**

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

- (1) Work groups may be determined for workers carrying out work for 2 or more persons conducting businesses or undertakings at one or more workplaces.
- (2) The particulars of the work groups are to be determined by negotiation and agreement, in accordance with section 56, between each of the persons conducting the businesses or undertakings and the workers.
- (3) The parties to an agreement concerning the determination of a work group or groups may, at any time, negotiate a variation of the agreement.
- (4) The determination of one or more work groups under this Subdivision does not:
  - (a) prevent the determination under this Subdivision or Subdivision 2 of any other work group of the workers concerned, or
  - (b) affect any work groups of those workers that have already been determined under this Subdivision or Subdivision 2.

#### **56 Negotiation of agreement for work groups of multiple businesses**

- (1) Negotiations concerning work groups under this Subdivision must be directed only at the following:
  - (a) the number and composition of work groups to be represented by health and safety representatives,
  - (b) the number of health and safety representatives and deputy health and safety representatives (if any) for each work group,
  - (c) the workplace or workplaces to which the work groups will apply,
  - (d) the businesses or undertakings to which the work groups will apply.
- (2) A person conducting a business or undertaking must, if asked by a worker, negotiate with the worker's representative in negotiations under this section (including negotiations for a variation of an agreement) and must not exclude the representative from those negotiations.

Maximum penalty:

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

- (3) If agreement cannot be reached on a matter relating to the determination of a work group (or a variation of an agreement) within a reasonable time after negotiations commence under this Subdivision, any party to the negotiations may ask the regulator to appoint an inspector to assist the negotiations in relation to that matter.
- (4) The regulations may prescribe the matters that must be taken into account in negotiations for and determination of work groups and variations of agreements.

### **57 Notice to workers**

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

Maximum penalty:

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

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

Maximum penalty:

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

### **58 Withdrawal from negotiations or agreement involving multiple businesses**

- (1) A party to a negotiation for an agreement, or to an agreement, concerning a work group under this Subdivision may withdraw from the negotiation or agreement at any time by giving reasonable notice (in writing) to the other parties.
- (2) If a party withdraws from an agreement concerning a work group under this Subdivision:
  - (a) the other parties must negotiate a variation to the agreement in accordance with section 56, and

- (b) the withdrawal does not affect the validity of the agreement between the other parties in the meantime.

### **59 Effect of Subdivision on other arrangements**

To avoid doubt, nothing in this Subdivision affects the capacity of 2 or more persons conducting businesses or undertakings and their workers to enter into other agreements or make other arrangements, in addition to complying with this Part, concerning the representation of those workers.

## **Subdivision 4 Election of health and safety representatives**

### **60 Eligibility to be elected**

A worker is:

- (a) eligible to be elected as a health and safety representative for a work group only if he or she is a member of that work group, and
- (b) not eligible to be elected as a health and safety representative if he or she is disqualified under section 65 from being a health and safety representative.

### **61 Procedure for election of health and safety representatives**

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

Maximum penalty:

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

### **62 Eligibility to vote**

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

### **63 When election not required**

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

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

- (1) A health and safety representative for a work group holds office for 3 years.
- (2) However a person ceases to hold office as a health and safety representative for a work group if:
  - (a) the person resigns as a health and safety representative for the work group by written notice given to the person conducting the relevant business or undertaking, or
  - (b) the person ceases to be a worker in the work group for which he or she was elected as a health and safety representative, or
  - (c) the person is disqualified under section 65 from acting as a health and safety representative, or
  - (d) the person is removed from that position by a majority of the members of the work group in accordance with the regulations.
- (3) A health and safety representative is eligible for re-election.

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

- (1) An application may be made to the Industrial Relations Commission to disqualify a health and safety representative on the ground that the representative has:
  - (a) exercised a power or performed a function as a health and safety representative for an improper purpose, or
  - (b) used or disclosed any information he or she acquired as a health and safety representative for a purpose other than in connection with the role of health and safety representative.
- (2) The following persons may make an application under this section:
  - (a) any person adversely affected by:
    - (i) the exercise of a power or the performance of a function referred to in subsection (1) (a), or
    - (ii) the use or disclosure of information referred to in subsection (1) (b),

(b) the regulator.

- (3) If the Industrial Relations Commission is satisfied that a ground in subsection (1) is made out, the Commission may disqualify the health and safety representative for a specified period or indefinitely.

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

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

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

#### **67 Deputy health and safety representatives**

- (1) Each deputy health and safety representative for a work group is to be elected in the same way as a health and safety representative for the work group.
- (2) If the health and safety representative for a work group ceases to hold office or is unable (because of absence or any other reason) to exercise the powers or perform the functions of a health and safety representative under this Act:
- (a) the powers and functions may be exercised or performed by a deputy health and safety representative for the work group, and
- (b) this Act applies in relation to the deputy health and safety representative as if he or she were the health and safety representative.
- (3) Sections 64, 65, 66, 72 and 73 apply to deputy health and safety representatives in the same way as they apply to health and safety representatives.

### **Subdivision 5 Powers and functions of health and safety representatives**

#### **68 Powers and functions of health and safety representatives**

- (1) The powers and functions of a health and safety representative for a work group are:
- (a) to represent the workers in the work group in matters relating to work health and safety, and
- (b) to monitor the measures taken by the person conducting the relevant business or undertaking or that person's representative in compliance with this Act in relation to workers in the work group, and
- (c) to investigate complaints from members of the work group relating to work health

and safety, and

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

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

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

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

(ii) at any time, without notice, in the event of an incident, or any situation involving a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard, and

(b) accompany an inspector during an inspection of the workplace or part of the workplace at which a worker in the work group works, and

(c) with the consent of a worker that the health and safety representative represents, be present at an interview concerning work health and safety between the worker and:

(i) an inspector, or

(ii) the person conducting the business or undertaking at that workplace or the person's representative, and

(d) with the consent of one or more workers that the health and safety representative represents, be present at an interview concerning work health and safety between a group of workers, which includes the workers who gave the consent, and:

(i) an inspector, or

(ii) the person conducting the business or undertaking at that workplace or the person's representative, and

(e) request the establishment of a health and safety committee, and

(f) receive information concerning the work health and safety of workers in the work group, and

(g) whenever necessary, request the assistance of any person.

**Note—**

A health and safety representative also has a power under Division 6 of this Part to direct work to cease in certain circumstances and under Division 7 of this Part to issue provisional improvement notices.

- (3) Despite subsection (2) (f), a health and safety representative is not entitled to have access to any personal or medical information concerning a worker without the worker's consent unless the information is in a form that:
  - (a) does not identify the worker, and
  - (b) could not reasonably be expected to lead to the identification of the worker.
- (4) Nothing in this Act imposes or is taken to impose a duty on a health and safety representative in that capacity.

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

- (1) A health and safety representative for a work group may exercise powers and perform functions under this Act only in relation to matters that affect, or may affect, workers in that group.
- (2) Subsection (1) does not apply if:
  - (a) there is a serious risk to health or safety emanating from an immediate or imminent exposure to a hazard that affects or may affect a member of another work group, or
  - (b) a member of another work group asks for the representative's assistance, and the health and safety representative (and any deputy health and safety representative) for that other work group is found, after reasonable inquiry, to be unavailable.
- (3) In this section, **another work group** means another work group of workers carrying out work for a business or undertaking to which the work group that the health and safety representative represents relates.

### **Subdivision 6 Obligations of person conducting business or undertaking to health and safety representatives**

#### **70 General obligations of person conducting business or undertaking**

- (1) The person conducting a business or undertaking must:
  - (a) consult, so far as is reasonably practicable, on work health and safety matters with any health and safety representative for a work group of workers carrying out work for the business or undertaking, and
  - (b) confer with a health and safety representative for a work group, whenever reasonably requested by the representative, for the purpose of ensuring the health and safety of the workers in the work group, and
  - (c) allow any health and safety representative for the work group to have access to



information that the person has relating to:

- (i) hazards (including associated risks) at the workplace affecting workers in the work group, and
  - (ii) the health and safety of the workers in the work group, and
- (d) with the consent of a worker that the health and safety representative represents, allow the health and safety representative to be present at an interview concerning work health and safety between the worker and:
- (i) an inspector, or
  - (ii) the person conducting the business or undertaking at that workplace or the person's representative, and
- (e) with the consent of one or more workers that the health and safety representative represents, allow the health and safety representative to be present at an interview concerning work health and safety between a group of workers, which includes the workers who gave the consent, and:
- (i) an inspector, or
  - (ii) the person conducting the business or undertaking at that workplace or the person's representative, and
- (f) provide any resources, facilities and assistance to a health and safety representative for the work group that are reasonably necessary or prescribed by the regulations to enable the representative to exercise his or her powers or perform his or her functions under this Act, and
- (g) allow a person assisting a health and safety representative for the work group to have access to the workplace if that is necessary to enable the assistance to be provided, and
- (h) permit a health and safety representative for the work group to accompany an inspector during an inspection of any part of the workplace where a worker in the work group works, and
- (i) provide any other assistance to the health and safety representative for the work group that may be required by the regulations.

Maximum penalty:

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

(2) The person conducting a business or undertaking must allow a health and safety

representative to spend such time as is reasonably necessary to exercise his or her powers and perform his or her functions under this Act.

Maximum penalty:

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

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

#### **71 Exceptions from obligations under section 70 (1)**

- (1) This section applies despite section 70 (1).
- (2) The person conducting a business or undertaking must not allow a health and safety representative to have access to any personal or medical information concerning a worker without the worker's consent unless the information is in a form that:
  - (a) does not identify the worker, and
  - (b) could not reasonably be expected to lead to the identification of the worker.

Maximum penalty:

- (a) in the case of an individual—\$10,000, or
- (b) in the case of a body corporate—\$50,000.
- (3) The person conducting a business or undertaking is not required to give financial assistance to a health and safety representative for the purpose of the assistance referred to in section 70 (1) (f).
- (4) The person conducting a business or undertaking is not required to allow a person assisting a health and safety representative for a work group to have access to the workplace:
  - (a) if the assistant has had his or her WHS entry permit revoked, or
  - (b) during any period that the assistant's WHS entry permit is suspended or the assistant is disqualified from holding a WHS entry permit.
- (5) The person conducting a business or undertaking may refuse on reasonable grounds to grant access to the workplace to a person assisting a health and safety representative for a work group.
- (6) If access is refused to a person assisting a health and safety representative under

subsection (5), the health and safety representative may ask the regulator to appoint an inspector to assist in resolving the matter.

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

- (1) The person conducting a business or undertaking must, if requested by a health and safety representative for a work group for that business or undertaking, allow the health and safety representative to attend a course of training in work health and safety that is:
  - (a) approved by the regulator, and
  - (b) a course that the health and safety representative is entitled under the regulations to attend, and
  - (c) subject to subsection (5), chosen by the health and safety representative, in consultation with the person conducting the business or undertaking.
- (2) The person conducting the business or undertaking must:
  - (a) as soon as practicable within the period of 3 months after the request is made, allow the health and safety representative time off work to attend the course of training, and
  - (b) pay the course fees and any other reasonable costs associated with the health and safety representative's attendance at the course of training.
- (3) If:
  - (a) a health and safety representative represents a work group of the workers of more than one business or undertaking, and
  - (b) the person conducting any of those businesses or undertakings has complied with this section in relation to the representative,each of the persons conducting those businesses or undertakings is to be taken to have complied with this section in relation to the representative.
- (4) Any time that a health and safety representative is given off work to attend the course of training must be with the pay that he or she would otherwise be entitled to receive for performing his or her normal duties during that period.
- (5) If agreement cannot be reached between the person conducting the business or undertaking and the health and safety representative within the time required by subsection (2) as to the matters set out in subsections (1) (c) and (2), either party may ask the regulator to appoint an inspector to decide the matter.
- (6) The inspector may decide the matter in accordance with this section.

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

Maximum penalty:

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

### **73 Obligation to share costs if multiple businesses or undertakings**

- (1) If a health and safety representative, or deputy health and safety representative (if any), represents a work group of workers carrying out work for 2 or more persons conducting businesses or undertakings:
- (a) the costs of the representative exercising powers and performing functions under this Act, and  
(b) the costs referred to in section 72 (2) (b),
- for which any of the persons conducting those businesses or undertakings are liable must be apportioned equally between each of those persons unless they agree otherwise.
- (2) An agreement to apportion the costs in another way may be varied at any time by negotiation and agreement between each of the persons conducting the businesses or undertakings.

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

- (1) A person conducting a business or undertaking must ensure that:
- (a) a list of each health and safety representative and deputy health and safety representative (if any) for each work group of workers carrying out work for the business or undertaking is prepared and kept up to date, and  
(b) a copy of the up-to-date list is displayed:
- (i) at the principal place of business of the business or undertaking, and  
(ii) at any other workplace that is appropriate taking into account the constitution of the relevant work group or work groups,
- in a manner that is readily accessible to workers in the relevant work group or work groups.

Maximum penalty:

- (a) in the case of an individual—\$2,000, or

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

- (2) A person conducting a business or undertaking must provide a copy of the up-to-date list prepared under subsection (1) to the regulator as soon as practicable after it is prepared.

## **Division 4 Health and safety committees**

### **75 Health and safety committees**

- (1) The person conducting a business or undertaking at a workplace must establish a health and safety committee for the business or undertaking or part of the business or undertaking:
- (a) within 2 months after being requested to do so by:
    - (i) a health and safety representative for a work group of workers carrying out work at that workplace, or
    - (ii) 5 or more workers at that workplace, or
  - (b) if required by the regulations to do so, within the time prescribed by the regulations.

Maximum penalty:

- (a) in the case of an individual—\$5,000, or
  - (b) in the case of a body corporate—\$25,000.
- (2) A person conducting a business or undertaking at a workplace may establish a health and safety committee for the workplace or part of the workplace on the person's own initiative.

#### **Note—**

If a health and safety committee is not required to be established, other consultation procedures can be established for a workplace—see Division 2 of this Part.

### **76 Constitution of committee**

- (1) Subject to subsections (2)–(4), the constitution of a health and safety committee may be agreed between the person conducting the business or undertaking and the workers at the workplace.
- (2) If there is a health and safety representative at a workplace, that representative, if he or she consents, is a member of the committee.
- (3) If there are 2 or more health and safety representatives at a workplace, those representatives may choose one or more of their number (who consent) to be

members of the committee.

- (4) At least half of the members of the committee must be workers who are not nominated by the person conducting the business or undertaking.
- (5) If agreement is not reached under this section within a reasonable time, any party may ask the regulator to appoint an inspector to decide the matter.
- (6) An inspector appointed on a request under subsection (5) may decide the constitution of the health and safety committee or that the committee should not be established.
- (7) A decision of an inspector under this section is taken to be an agreement under this section between the parties.

#### **76A Special provision for coal mines**

The health and safety committee for a workplace that is a coal mine within the meaning of the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* must include:

- (a) at least 1 person who is a site safety and health representative for the coal mine, and
- (b) at least 1 person who is an electrical safety and health representative for the coal mine.

#### **77 Functions of committee**

The functions of a health and safety committee are:

- (a) to facilitate co-operation between the person conducting a business or undertaking and workers in instigating, developing and carrying out measures designed to ensure the workers' health and safety at work, and
- (b) to assist in developing standards, rules and procedures relating to health and safety that are to be followed or complied with at the workplace, and
- (c) any other functions prescribed by the regulations or agreed between the person conducting the business or undertaking and the committee.

#### **78 Meetings of committee**

A health and safety committee must meet:

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

#### **79 Duties of person conducting business or undertaking**

- (1) The person conducting a business or undertaking must allow each member of the

health and safety committee to spend the time that is reasonably necessary to attend meetings of the committee or to carry out functions as a member of the committee.

Maximum penalty:

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

(2) Any time that a member of a health and safety committee spends for the purposes set out in subsection (1) must be with the pay that he or she would otherwise be entitled to receive for performing his or her normal duties during that period.

(3) The person conducting a business or undertaking must allow the health and safety committee for a workplace to have access to information that the person has relating to:

- (a) hazards (including associated risks) at the workplace, and
- (b) the health and safety of the workers at the workplace.

Maximum penalty:

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

(4) Despite subsection (3), the person conducting a business or undertaking must not allow the health and safety committee to have access to any personal or medical information concerning a worker without the worker's consent unless the information is in a form that:

- (a) does not identify the worker, and
- (b) could not reasonably be expected to lead to the identification of the worker.

Maximum penalty:

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

## **Division 5 Issue resolution**

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

(1) In this Division, **parties**, in relation to an issue, means the following:

- (a) the person conducting the business or undertaking or the person's representative,
- (b) if the issue involves more than one business or undertaking, the person

conducting each business or undertaking or the person's representative,

(c) if the worker or workers affected by the issue are in a work group, the health and safety representative for that work group or his or her representative,

(d) if the worker or workers affected by the issue are not in a work group, the worker or workers or their representative.

(2) A person conducting a business or undertaking must ensure that the person's representative (if any) for the purposes of this Division:

(a) is not a health and safety representative, and

(b) has an appropriate level of seniority, and is sufficiently competent, to act as the person's representative.

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

(1) This section applies if a matter about work health and safety arises at a workplace or from the conduct of a business or undertaking and the matter is not resolved after discussion between the parties to the issue.

(2) The parties must make reasonable efforts to achieve a timely, final and effective resolution of the issue in accordance with the relevant agreed procedure, or if there is no agreed procedure, the default procedure prescribed in the regulations.

(3) A representative of a party to an issue may enter the workplace for the purpose of attending discussions with a view to resolving the issue.

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

(1) This section applies if an issue has not been resolved after reasonable efforts have been made to achieve an effective resolution of the issue.

(2) A party to the issue may ask the regulator to appoint an inspector to attend the workplace to assist in resolving the issue.

(3) A request to the regulator under this section does not prevent:

(a) a worker from exercising the right under Division 6 of this Part to cease work, or

(b) a health and safety representative from issuing a provisional improvement notice or a direction under Division 6 of this Part to cease work.

(4) On attending a workplace under this section, an inspector may exercise any of the inspector's compliance powers under this Act in relation to the workplace.



## **Division 6 Right to cease or direct cessation of unsafe work**

### **83 Definition of “cease work under this Division”**

In this Division, **cease work under this Division** means:

- (a) to cease, or refuse, to carry out work under section 84, or
- (b) to cease work on a direction under section 85.

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

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

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

- (1) A health and safety representative may direct a worker who is in a work group represented by the representative to cease work if the representative has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker’s health or safety, emanating from an immediate or imminent exposure to a hazard.
- (2) However, the health and safety representative must not give a worker a direction to cease work unless the matter is not resolved after:
  - (a) consulting about the matter with the person conducting the business or undertaking for whom the workers are carrying out work, and
  - (b) attempting to resolve the matter as an issue under Division 5 of this Part.
- (3) The health and safety representative may direct the worker to cease work without carrying out that consultation or attempting to resolve the matter as an issue under Division 5 of this Part if the risk is so serious and immediate or imminent that it is not reasonable to consult before giving the direction.
- (4) The health and safety representative must carry out the consultation as soon as practicable after giving a direction under subsection (3).
- (5) The health and safety representative must inform the person conducting the business or undertaking of any direction given by the health and safety representative to workers under this section.
- (6) A health and safety representative cannot give a direction under this section unless the representative has:
  - (a) completed initial training prescribed by the regulations referred to in section 72
  - (1) (b), or

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

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

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

A worker who ceases work under this Division must:

(a) as soon as practicable, notify the person conducting the business or undertaking that the worker has ceased work under this Division unless the worker ceased work under a direction from a health and safety representative, and

(b) remain available to carry out suitable alternative work.

#### **87 Alternative work**

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

#### **88 Continuity of engagement of worker**

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

(a) at the same or another workplace, and

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

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

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

**Note—**

The issue resolution procedures in Division 5 of this Part can also be used to resolve an issue arising in relation to the cessation of work.

### **Division 7 Provisional improvement notices**

#### **90 Provisional improvement notices**

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

(a) is contravening a provision of this Act, or

- (b) has contravened a provision of this Act in circumstances that make it likely that the contravention will continue or be repeated.
- (2) The health and safety representative may issue a provisional improvement notice requiring the person to:
  - (a) remedy the contravention, or
  - (b) prevent a likely contravention from occurring, or
  - (c) remedy the things or operations causing the contravention or likely contravention.
- (3) However, the health and safety representative must not issue a provisional improvement notice to a person unless he or she has first consulted the person.
- (4) A health and safety representative cannot issue a provisional improvement notice unless the representative has:
  - (a) completed initial training prescribed by the regulations referred to in section 72 (1) (b), or
  - (b) previously completed that training when acting as a health and safety representative for another work group, or
  - (c) completed training equivalent to that training under a corresponding WHS law.
- (5) A health and safety representative cannot issue a provisional improvement notice in relation to a matter if an inspector has already issued (or decided not to issue) an improvement notice or prohibition notice in relation to the same matter.

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

A provisional improvement notice must be in writing.

### **92 Contents of provisional improvement notice**

A provisional improvement notice must state:

- (a) that the health and safety representative believes the person:
  - (i) is contravening a provision of this Act, or
  - (ii) has contravened a provision of this Act in circumstances that make it likely that the contravention will continue or be repeated, and
- (b) the provision the representative believes is being, or has been, contravened, and
- (c) briefly, how the provision is being, or has been contravened, and
- (d) the day, at least 8 days after the notice is issued, by which the person is required to remedy the contravention or likely contravention.

### **93 Provisional improvement notice may give directions to remedy contravention**

- (1) A provisional improvement notice may include directions concerning the measures to be taken to remedy the contravention or prevent the likely contravention or the matters or activities causing the contravention or likely contravention to which the notice relates.
- (2) A direction included in a provisional improvement notice may:
  - (a) refer to a code of practice, and
  - (b) offer the person to whom it is issued a choice of ways in which to remedy the contravention.

### **94 Minor changes to provisional improvement notice**

A health and safety representative may make minor changes to a provisional improvement notice:

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

### **95 Issue of provisional improvement notice**

A provisional improvement notice may be issued to a person in accordance with section 209.

### **96 Health and safety representative may cancel notice**

The health and safety representative may at any time cancel a provisional improvement notice issued to a person by written notice given to that person.

### **97 Display of provisional improvement notice**

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

Maximum penalty:

- (a) in the case of an individual—\$5,000, or
  - (b) in the case of a body corporate—\$25,000.
- (2) A person must not intentionally remove, destroy, damage or deface a notice displayed under subsection (1) during the period that the notice is in force.

Maximum penalty:

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

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

A provisional improvement notice is not invalid only because of:

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

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

- (1) This section applies if a provisional improvement notice has been issued to a person and an inspector has not been required under section 101 to attend at the workplace.
- (2) The person must comply with the provisional improvement notice within the time specified in the notice.

Maximum penalty:

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

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

- (1) Within 7 days after a provisional improvement notice is issued to a person:
  - (a) the person to whom it was issued, or
  - (b) if the person is a worker, the person conducting the business or undertaking at the workplace at which the worker carries out work,may ask the regulator to appoint an inspector to review the notice.
- (2) If a request is made under subsection (1), the operation of the provisional improvement notice is stayed until the inspector makes a decision on the review.

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

- (1) The regulator must ensure that an inspector attends the workplace as soon as practicable after a request is made under section 100.
- (2) The inspector must review the provisional improvement notice and inquire into the circumstances that are the subject of the provisional improvement notice.

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

#### **102 Decision of inspector on review of provisional improvement notice**

- (1) After reviewing the provisional improvement notice, the inspector must:
  - (a) confirm the provisional improvement notice, or
  - (b) confirm the provisional improvement notice with changes, or
  - (c) cancel the provisional improvement notice.
- (2) The inspector must give a copy of his or her decision to:
  - (a) the applicant for the review of the provisional improvement notice, and
  - (b) the health and safety representative who issued the notice.
- (3) A provisional improvement notice that is confirmed (with or without changes) by an inspector is taken to be an improvement notice issued by the inspector under this Act.

### **Division 8 Part not to apply to prisoners**

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

Nothing in this Part applies to a worker who is in lawful detention or custody.

### **Part 6 Discriminatory, coercive and misleading conduct**

#### **Division 1 Prohibition of discriminatory, coercive or misleading conduct**

##### **104 Prohibition of discriminatory conduct**

- (1) A person must not engage in discriminatory conduct for a prohibited reason.  
Maximum penalty:
  - (a) in the case of an individual—\$100,000, or
  - (b) in the case of a body corporate—\$500,000.
- (2) A person commits an offence under subsection (1) only if the reason referred to in section 106 was the dominant reason for the discriminatory conduct.

**Note—**

Civil proceedings may be brought under Division 3 of this Part in relation to discriminatory conduct engaged in for a prohibited reason.

### **105 What is “discriminatory conduct”**

- (1) For the purposes of this Part, a person engages in **discriminatory conduct** if:
- (a) the person:
    - (i) dismisses a worker, or
    - (ii) terminates a contract for services with a worker, or
    - (iii) puts a worker to his or her detriment in the engagement of the worker, or
    - (iv) alters the position of a worker to the worker’s detriment, or
  - (b) the person:
    - (i) refuses or fails to offer to engage a prospective worker, or
    - (ii) treats a prospective worker less favourably than another prospective worker would be treated in offering terms of engagement, or
  - (c) the person terminates a commercial arrangement with another person, or
  - (d) the person refuses or fails to enter into a commercial arrangement with another person.
- (2) For the purposes of this Part, a person also engages in discriminatory conduct if the person organises to take any action referred to in subsection (1) or threatens to organise or take that action.

### **106 What is a “prohibited reason”**

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

- (a) is, has been or proposes to be a health and safety representative or a member of a health and safety committee, or
- (b) undertakes, has undertaken or proposes to undertake another role under this Act, or
- (c) exercises a power or performs a function or has exercised a power or performed a function or proposes to exercise a power or perform a function as a health and safety representative or as a member of a health and safety committee, or
- (d) exercises, has exercised or proposes to exercise a power under this Act or exercises, has exercised or proposes to exercise a power under this Act in a particular way, or
- (e) performs, has performed or proposes to perform a function under this Act or performs, has performed or proposes to perform a function under this Act in a particular way, or

- (f) refrains from, has refrained from or proposes to refrain from exercising a power or performing a function under this Act or refrains from, has refrained from or proposes to refrain from exercising a power or performing a function under this Act in a particular way, or
- (g) assists or has assisted or proposes to assist, or gives or has given or proposes to give any information to any person exercising a power or performing a function under this Act, or
- (h) raises or has raised or proposes to raise an issue or concern about work health and safety with:
  - (i) the person conducting a business or undertaking, or
  - (ii) an inspector, or
  - (iii) a WHS entry permit holder, or
  - (iv) a health and safety representative, or
  - (v) a member of a health and safety committee, or
  - (vi) another worker, or
  - (vii) any other person who has a duty under this Act in relation to the matter, or
  - (viii) any other person exercising a power or performing a function under this Act, or
- (i) is involved in, has been involved in or proposes to be involved in resolving a work health and safety issue under this Act, or
- (j) is taking action, has taken action or proposes to take action to seek compliance by any person with any duty or obligation under this Act.

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

A person must not request, instruct, induce, encourage, authorise or assist another person to engage in discriminatory conduct in contravention of section 104.

Maximum penalty:

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

**Note—**

Civil proceedings may be brought under Division 3 of this Part if a person requested, instructed, induced, encouraged, authorised or assisted another person to engage in discriminatory conduct for a prohibited reason.



### 108 Prohibition of coercion or inducement

- (1) A person must not organise or take, or threaten to organise or take, any action against another person with intent to coerce or induce the other person, or a third person:
- (a) to exercise or not to exercise a power, or to propose to exercise or not to exercise a power, under this Act, or
  - (b) to perform or not to perform a function, or to propose to perform or not to perform a function, under this Act, or
  - (c) to exercise or not to exercise a power or perform a function, or to propose to exercise or not to exercise a power or perform a function, in a particular way, or
  - (d) to refrain from seeking, or continuing to undertake, a role under this Act.

Maximum penalty:

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

#### Note—

Civil proceedings may be brought under Division 3 of this Part in relation to a contravention of this section.

- (2) In this section, a reference to taking action or threatening to take action against a person includes a reference to not taking a particular action or threatening not to take a particular action in relation to that person.
- (3) To avoid doubt, a reasonable direction given by an emergency services worker in an emergency is not an action with intent to coerce or induce a person.
- (4) In this section, **emergency services worker** includes an officer, employee or member of any of the following:
- (a) the Ambulance Service of NSW,
  - (b) Fire and Rescue NSW,
  - (c) the NSW Rural Fire Service,
  - (d) the NSW Police Force,
  - (e) the State Emergency Service,
  - (f) the NSW Volunteer Rescue Association Inc,
  - (g) the New South Wales Mines Rescue Brigade established under the *Coal Industry Act 2001*,

- (h) an accredited rescue unit within the meaning of the *State Emergency and Rescue Management Act 1989*.

### **109 Misrepresentation**

- (1) A person must not knowingly or recklessly make a false or misleading representation to another person about that other person's:
  - (a) rights or obligations under this Act, or
  - (b) ability to initiate, or participate in, a process or proceedings under this Act, or
  - (c) ability to make a complaint or inquiry to a person or body empowered under this Act to seek compliance with this Act.

Maximum penalty:

- (a) in the case of an individual—\$100,000, or
  - (b) in the case of a body corporate—\$500,000.
- (2) Subsection (1) does not apply if the person to whom the representation is made would not be expected to rely on it.

## **Division 2 Criminal proceedings in relation to discriminatory conduct**

### **110 Proof of discriminatory conduct**

- (1) This section applies if in proceedings for an offence of contravening section 104 or 107, the prosecution:
  - (a) proves that the discriminatory conduct was engaged in, and
  - (b) proves that a circumstance referred to in section 106 (a)-(j) existed at the time the discriminatory conduct was engaged in, and
  - (c) adduces evidence that the discriminatory conduct was engaged in for a prohibited reason.
- (2) The reason alleged for the discriminatory conduct is presumed to be the dominant reason for that conduct unless the accused proves on the balance of probabilities, that the reason was not the dominant reason for the conduct.
- (3) To avoid doubt, the burden of proof on the accused under subsection (2) is a legal burden of proof.

### **111 Order for compensation or reinstatement**

If a person is convicted or found guilty of an offence under section 104 or 107, the court may (in addition to imposing a penalty) make either or both of the following orders:

- (a) an order that the offender pay (within a specified period) the compensation to the person who was the subject of the discriminatory conduct that the court considers appropriate,
- (b) in relation to a person who was or is an employee or prospective employee, an order that:
  - (i) the person be reinstated or reemployed in his or her former position or, if that position is not available, in a similar position, or
  - (ii) the person be employed in the position for which he or she had applied or a similar position.

### **Division 3 Civil proceedings in relation to discriminatory or coercive conduct**

#### **112 Civil proceedings in relation to engaging in or inducing discriminatory or coercive conduct**

- (1) An eligible person may apply to the District Court for an order under this section.
- (2) The District Court may make one or more of the orders set out in subsection (3) in relation to a person who has:
  - (a) engaged in discriminatory conduct for a prohibited reason, or
  - (b) requested, instructed, induced, encouraged, authorised or assisted another person to engage in discriminatory conduct for a prohibited reason, or
  - (c) contravened section 108.
- (3) For the purposes of subsection (2), the orders that the District Court may make are:
  - (a) an injunction, or
  - (b) in the case of conduct referred to in subsection (2) (a) or (b), an order that the person pay (within a specified period) the compensation to the person who was the subject of the discriminatory conduct that the District Court considers appropriate, or
  - (c) in the case of conduct referred to in subsection (2) (a) in relation to a worker who was or is an employee or prospective employee, an order that:
    - (i) the worker be reinstated or reemployed in his or her former position or, if that position is not available, in a similar position, or
    - (ii) the prospective worker be employed in the position for which he or she had applied or a similar position, or

(d) any other order that the District Court considers appropriate.

- (4) For the purposes of this section, a person may be found to have engaged in discriminatory conduct for a prohibited reason only if a reason referred to in section 106 was a substantial reason for the conduct.
- (5) Nothing in this section is to be construed as limiting any other power of the District Court.
- (6) For the purposes of this section, each of the following is an **eligible person**:
  - (a) a person affected by the contravention,
  - (b) a person authorised as a representative by a person referred to in paragraph (a).

### **113 Procedure for civil actions for discriminatory conduct**

- (1) A proceeding brought under section 112 must be commenced not more than 1 year after the date on which the applicant knew or ought to have known that the cause of action accrued.
- (2) In a proceeding under section 112 in relation to conduct referred to in section 112 (2) (a) or (b), if a prohibited reason is alleged for discriminatory conduct, that reason is presumed to be a substantial reason for that conduct unless the defendant proves, on the balance of probabilities, that the reason was not a substantial reason for the conduct.
- (3) It is a defence to a proceeding under section 112 in relation to conduct referred to in section 112 (2) (a) or (b) if the defendant proves that:
  - (a) the conduct was reasonable in the circumstances, and
  - (b) a substantial reason for the conduct was to comply with the requirements of this Act or a corresponding WHS law.
- (4) To avoid doubt, the burden of proof on the defendant under subsections (2) and (3) is a legal burden of proof.

## **Division 4 General**

### **114 General provisions relating to orders**

- (1) The making of an order in a proceeding under section 112 in relation to conduct referred to in section 112 (2) (a) or (b) does not prevent the bringing of a proceeding for an offence under section 104 or 107 in relation to the same conduct.
- (2) If the District Court makes an order under section 112 in a proceeding in relation to conduct referred to in section 112 (2) (a) or (b), the court cannot make an order under section 111 in a proceeding for an offence under section 104 or 107 in relation to the

same conduct.

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

### **115 Prohibition of multiple actions**

A person cannot:

- (a) commence a proceeding under Division 3 of this Part if the person has commenced a proceeding or made an application or complaint in relation to the same matter under a law of the Commonwealth or a State and that proceeding, application or complaint has not been withdrawn, or
- (b) recover any compensation under Division 3 of this Part if the person has received compensation for the matter under a law of the Commonwealth or a State, or
- (c) commence or continue an application under Division 3 of this Part if the person has failed in a proceeding, application or complaint in relation to the same matter under a law of the Commonwealth or a State, other than a proceeding, application or complaint relating to workers' compensation.

## **Part 7 Workplace entry by WHS entry permit holders**

### **Note—**

Division 7 of Part 13 sets out the procedure in relation to the bringing of proceedings in relation to WHS civil penalty provisions.

## **Division 1 Introductory**

### **116 Definitions**

In this Part:

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

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

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

**relevant worker**, in relation to a workplace, means a worker:

- (a) who is a member, or eligible to be a member, of a relevant union, and
- (b) whose industrial interests the relevant union is entitled to represent, and

- (c) who works at that workplace.

## **Division 2 Entry to inquire into suspected contraventions**

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

- (1) A WHS entry permit holder may enter a workplace for the purpose of inquiring into a suspected contravention of this Act that relates to, or affects, a relevant worker.
- (2) The WHS entry permit holder must reasonably suspect before entering the workplace that the contravention has occurred or is occurring.

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

- (1) While at the workplace under this Division, the WHS entry permit holder may do all or any of the following in relation to the suspected contravention of this Act:
  - (a) inspect any work system, plant, substance, structure or other thing relevant to the suspected contravention,
  - (b) consult with the relevant workers in relation to the suspected contravention,
  - (c) consult with the relevant person conducting a business or undertaking about the suspected contravention,
  - (d) require the relevant person conducting a business or undertaking to allow the WHS entry permit holder to inspect, and make copies of, any document that is directly relevant to the suspected contravention and that:
    - (i) is kept at the workplace, or
    - (ii) is accessible from a computer that is kept at the workplace,
  - (e) warn any person whom the WHS entry permit holder reasonably believes to be exposed to a serious risk to his or her health or safety emanating from an immediate or imminent exposure to a hazard, of that risk.
- (2) However, the relevant person conducting the business or undertaking is not required under subsection (1) (d) to allow the WHS entry permit holder to inspect or make copies of a document if to do so would contravene a law of the Commonwealth or a law of a State.
- (3) A relevant person conducting a business or undertaking must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1) (d).

WHS civil penalty provision.

Maximum penalty:

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

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

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

**Notes—**

**1** At least 24 hours notice is required for an entry to a workplace to inspect employee records or other documents held by someone other than a person conducting a business or undertaking. See section 120.

**2** The use or disclosure of personal information obtained under this section is regulated under the [Privacy Act 1988](#) of the Commonwealth.

**119 Notice of entry**

(1) A WHS entry permit holder must, as soon as is reasonably practicable after entering a workplace under this Division, give notice of the entry and the suspected contravention, in accordance with the regulations, to:

- (a) the relevant person conducting a business or undertaking, and
- (b) the person with management or control of the workplace.

(2) Subsection (1) does not apply if to give the notice would:

- (a) defeat the purpose of the entry to the workplace, or
- (b) unreasonably delay the WHS entry permit holder in an urgent case.

(3) Subsection (1) does not apply to an entry to a workplace under this Division to inspect or make copies of documents referred to in section 120.

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

(1) This section applies if a WHS entry permit holder is entitled under section 117 to enter a workplace to inquire into a suspected contravention of this Act.

(2) For the purposes of the inquiry into the suspected contravention, the WHS entry permit holder may enter any workplace for the purpose of inspecting, or making copies of:

- (a) employee records that are directly relevant to a suspected contravention, or
- (b) other documents that are directly relevant to a suspected contravention and that are not held by the relevant person conducting a business or undertaking.

(3) Before doing so, the WHS entry permit holder must give notice of the proposed entry to the person from whom the documents are requested and the relevant person conducting a business or undertaking.

(4) The notice must comply with the regulations.

- (5) The notice must be given during usual working hours at that workplace at least 24 hours, but not more than 14 days, before the entry.

**Note—**

The use or disclosure of personal information obtained under this section is regulated under the [Privacy Act 1988](#) of the Commonwealth.

## **Division 3 Entry to consult and advise workers**

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

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

### **122 Notice of entry**

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

## **Division 4 Requirements for WHS entry permit holders**

### **123 Contravening WHS entry permit conditions**

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

WHS civil penalty provision.

Maximum penalty: \$10,000.

### **124 WHS entry permit holder must also hold permit under other law**

A WHS entry permit holder must not enter a workplace unless he or she also holds an entry permit under the Fair Work Act or the [Industrial Relations Act 1996](#).

WHS civil penalty provision.



Maximum penalty: \$10,000.

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

A WHS entry permit holder must, at all times that he or she is at a workplace under a right of entry under Division 2 or 3 of this Part, have his or her WHS entry permit and photographic identification available for inspection by any person on request.

WHS civil penalty provision.

Maximum penalty: \$10,000.

### **126 When right may be exercised**

A WHS entry permit holder may exercise a right under Division 2 or 3 of this Part only during the usual working hours at the workplace.

WHS civil penalty provision.

Maximum penalty: \$10,000.

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

A WHS entry permit holder may exercise a right of entry to a workplace only in relation to:

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

### **128 Work health and safety requirements**

A WHS entry permit holder must not exercise a right of entry to a workplace under Division 2 or 3 of this Part unless he or she complies with any reasonable request by the relevant person conducting a business or undertaking or the person with management or control of the workplace to comply with:

- (a) any work health and safety requirement that applies to the workplace, and
- (b) any other legislated requirement that applies to that type of workplace.

WHS civil penalty provision.

Maximum penalty: \$10,000.

### **129 Residential premises**

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

WHS civil penalty provision.

Maximum penalty: \$10,000.

### **130 WHS entry permit holder not required to disclose names of workers**

- (1) A WHS entry permit holder is not required to disclose to the relevant person conducting a business or undertaking or the person with management or control of the workplace the name of any worker at the workplace.
- (2) A WHS entry permit holder who wishes to disclose to the relevant person conducting a business or undertaking or the person with management or control of the workplace the name of any worker may only do so with the consent of the worker.

## **Division 5 WHS entry permits**

### **131 Application for WHS entry permit**

- (1) A union may apply to the authorising authority for the issue of a WHS entry permit to a person who is an official of the union.
- (2) The application must specify the person who is to hold the WHS entry permit and include a statutory declaration by that person declaring that he or she:
  - (a) is an official of the union, and
  - (b) has satisfactorily completed the prescribed training, and
  - (c) holds, or will hold, an entry permit under:
    - (i) the Fair Work Act, or,
    - (ii) the *Industrial Relations Act 1996*.

### **132 Consideration of application**

In considering whether to issue a WHS entry permit, the authorising authority must take into account:

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

### **133 Eligibility criteria**

The authorising authority must not issue a WHS entry permit to an official of a union unless the authorising authority is satisfied that the official:

- (a) is an official of the union, and
- (b) has satisfactorily completed the prescribed training, and
- (c) holds, or will hold, an entry permit under:

- (i) the Fair Work Act, or
- (ii) the *Industrial Relations Act 1996*.

#### **134 Issue of WHS entry permit**

The authorising authority may issue a WHS entry permit to a person if the authorising authority has taken into account the matters in section 132 and is satisfied about the matters in section 133.

#### **135 Conditions on WHS entry permit**

The authorising authority may impose conditions on a WHS entry permit.

#### **136 Term of WHS entry permit**

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

#### **137 Expiry of WHS entry permit**

- (1) Unless it is earlier revoked, a WHS entry permit expires at the first of the following to occur:
  - (a) at the end of the term of the WHS entry permit,
  - (b) at the end of the term of the entry permit held by the WHS entry permit holder under:
    - (i) the Fair Work Act, or
    - (ii) the *Industrial Relations Act 1996*,
  - (c) when the permit holder ceases to be an official of the union that applied for the permit,
  - (d) the union that applied for the permit ceases to be:
    - (i) an organisation that is registered, or taken to be registered, under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth, or
    - (ii) an association of employees or independent contractors, or both, that is registered or recognised as such an association (however described) under the *Industrial Relations Act 1996*.
- (2) An application may be made for the issue of a subsequent WHS entry permit before or after the current WHS entry permit expires.

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

- (1) The following persons may apply to the authorising authority for a WHS entry permit held by a person to be revoked:

- (a) the regulator,
  - (b) the relevant person conducting a business or undertaking,
  - (c) any other person in relation to whom the WHS entry permit holder has exercised or purported to exercise a right under this Part,
  - (d) any other person affected by the exercise or purported exercise of a right under this Part by a WHS entry permit holder.
- (2) The grounds for an application for revocation of a WHS entry permit are:
- (a) that the permit holder no longer satisfies the eligibility criteria for a WHS entry permit or an entry permit under a corresponding WHS law, or the Fair Work Act or the *Workplace Relations Act 1996* of the Commonwealth or the *Industrial Relations Act 1996*, or
  - (b) that the permit holder has contravened any condition of the WHS entry permit, or
  - (c) that the permit holder has acted or purported to act in an improper manner in the exercise of any right under this Act, or
  - (d) in exercising or purporting to exercise a right under this Part, that the permit holder has intentionally hindered or obstructed a person conducting the business or undertaking or workers at a workplace.
- (3) The applicant must give written notice of the application, setting out the grounds for the application, to the person who holds the WHS entry permit and the union concerned.
- (4) The person who holds the WHS entry permit and the union that the WHS entry permit holder represents are parties to the application.

### **139 Authorising authority must permit WHS entry permit holder to show cause**

- (1) If, on an application under section 138, the authorising authority is satisfied that a ground may exist for the revocation of the WHS entry permit under section 138 (2), the authorising authority must:
- (a) give the WHS entry permit holder written notice (a **show cause notice**), and
  - (b) if the authorising authority considers it appropriate, suspend the operation of the WHS entry permit until the authorising authority decides the application for revocation.
- (2) The show cause notice must:
- (a) contain a statement to the effect that the WHS entry permit holder may, not later than 21 days after the day the WHS entry permit holder is given the notice, give

the authorising authority written reasons explaining why the WHS entry permit should not be revoked, and

- (b) be accompanied by a summary of the reasons for the application, and
- (c) if applicable, be accompanied by a notice of suspension of the permit.

#### **140 Determination of application**

- (1) If the authorising authority is satisfied on the balance of probabilities about any of the matters in section 138 (2), it may make one or more of the following orders:
  - (a) an order imposing conditions on the WHS entry permit,
  - (b) an order suspending the WHS entry permit,
  - (c) an order revoking the WHS entry permit,
  - (d) an order about the future issue of a WHS entry permit to the person whose WHS entry permit is revoked,
  - (e) an order imposing any alternative action the authorising authority considers appropriate.
- (2) In deciding what action to take under subsection (1), in relation to a person, the authorising authority must take into account:
  - (a) the seriousness of any findings of the authorising authority having regard to the object of this Act, and
  - (b) any other matters the authority considers relevant.

### **Division 6 Dealing with disputes**

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

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

#### **142 Authorising authority may deal with a dispute about a right of entry under this Act**

- (1) The authorising authority may deal with a dispute about the exercise or purported exercise by a WHS entry permit holder of a right of entry under this Act (including a dispute about whether a request under section 128 is reasonable).
- (2) The authorising authority may deal with the dispute in any manner it thinks fit, including by means of mediation, conciliation or arbitration.
- (3) If the authorising authority deals with the dispute by arbitration, it may make one or

more of the following orders:

- (a) an order imposing conditions on a WHS entry permit,
- (b) an order suspending a WHS entry permit,
- (c) an order revoking a WHS entry permit,
- (d) an order about the future issue of WHS entry permits to one or more persons,
- (e) any other order it considers appropriate.

(4) The authorising authority may deal with the dispute:

- (a) on its own initiative, or
- (b) on application by any of the following to whom the dispute relates:
  - (i) a WHS entry permit holder,
  - (ii) the relevant union,
  - (iii) the relevant person conducting a business or undertaking,
  - (iv) any other person in relation to whom the WHS entry permit holder has exercised or purported to exercise the right of entry,
  - (v) any other person affected by the exercise or purported exercise of the right of entry by a WHS entry permit holder,
  - (vi) the regulator.

(5) In dealing with a dispute, the authorising authority must not confer any rights on the WHS entry permit holder that are additional to, or inconsistent with, rights exercisable by the WHS entry permit holder under this Part.

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

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

WHS civil penalty provision.

Maximum penalty:

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

## **Division 7 Prohibitions**

### **144 Person must not refuse or delay entry of WHS entry permit holder**

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

WHS civil penalty provision.

Maximum penalty:

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

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

### **145 Person must not hinder or obstruct WHS entry permit holder**

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

WHS civil penalty provision.

Maximum penalty:

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

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

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

WHS civil penalty provision.

Maximum penalty:

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

### **147 Misrepresentations about things authorised by this Part**

- (1) A person must not take action:

- (a) with the intention of giving the impression, or
  - (b) reckless as to whether the impression is given,
- that the doing of a thing is authorised by this Part if it is not so authorised.

WHS civil penalty provision.

Maximum penalty:

- (a) in the case of an individual—\$10,000, or
  - (b) in the case of a body corporate—\$50,000.
- (2) Subsection (1) does not apply if the person reasonably believes that the doing of the thing is authorised.

#### **148 Unauthorised use or disclosure of information or documents**

A person must not use or disclose information or a document obtained under Division 2 of this Part in an inquiry into a suspected contravention for a purpose that is not related to the inquiry or rectifying the suspected contravention, unless:

- (a) the person reasonably believes that the use or disclosure is necessary to lessen or prevent:
  - (i) a serious risk to a person's health or safety, or
  - (ii) a serious threat to public health or safety, or
- (b) the person has reason to suspect that unlawful activity has been, is being or may be engaged in, and uses or discloses the information or document as a necessary part of an investigation of the matter or in reporting concerns to relevant persons or authorities, or
- (c) the use or disclosure is required or authorised by or under law, or
- (d) the person reasonably believes that the use or disclosure is reasonably necessary for one or more of the following by, or on behalf of, an enforcement body (within the meaning of the *Privacy Act 1988* of the Commonwealth):
  - (i) the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law,
  - (ii) the enforcement of laws relating to the confiscation of the proceeds of crime,
  - (iii) the protection of the public revenue,
  - (iv) the prevention, detection, investigation or remedying of seriously improper



conduct or prescribed conduct,

(v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal, or

(e) if the information is, or the document contains, personal information—the use or disclosure is made with the consent of the individual to whom the information relates.

WHS civil penalty provision.

Maximum penalty:

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

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

## **Division 8 General**

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

(1) The person to whom a WHS entry permit is issued must return the permit to the authorising authority within 14 days of any of the following things happening:

(a) the permit is revoked or suspended,

(b) the permit expires.

WHS civil penalty provision.

Maximum penalty: \$2,000.

(2) After the end of a period of suspension of a WHS entry permit, the authorising authority must return the WHS entry permit to the person to whom it was issued if:

(a) the person, or the person's union, applies to the authorising authority for the return of the permit, and

(b) the permit has not expired.

### **150 Union to provide information to authorising authority**

The relevant union must advise the authorising authority if:

(a) the WHS entry permit holder resigns from or otherwise leaves the union, or

(b) the WHS entry permit holder has had any entry permit granted under a corresponding WHS law, or the Fair Work Act or the *Workplace Relations Act 1996* of the Commonwealth or the *Industrial Relations Act 1996* (no matter when in force) cancelled or suspended, or

(c) the union ceases to be:

- (i) an organisation that is registered, or taken to be registered, under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth, or
- (ii) an association of employees or independent contractors, or both, that is registered or recognised as such an association (however described) under the *Industrial Relations Act 1996*.

WHS civil penalty provision.

Maximum penalty:

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

### **151 Register of WHS entry permit holders**

The authorising authority must keep available for public access an up-to-date register of WHS entry permit holders in accordance with the regulations.

## **Part 8 The regulator**

### **Division 1 Functions of regulator**

#### **152 Functions of regulator**

The regulator has the following functions:

- (a) to advise and make recommendations to the Minister and report on the operation and effectiveness of this Act,
- (b) to monitor and enforce compliance with this Act,
- (c) to provide advice and information on work health and safety to duty holders under this Act and to the community,
- (d) to collect, analyse and publish statistics relating to work health and safety,
- (e) to foster a co-operative, consultative relationship between duty holders and the persons to whom they owe duties and their representatives in relation to work health and safety matters,
- (f) to promote and support education and training on matters relating to work health and safety,
- (g) to engage in, promote and co-ordinate the sharing of information to achieve the object of this Act, including the sharing of information with a corresponding regulator,
- (h) to conduct and defend proceedings under this Act before a court or tribunal,

- (i) any other function conferred on the regulator by this Act.

### **153 Powers of regulator**

- (1) Subject to this Act, the regulator has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) Without limiting subsection (1), the regulator has all the powers and functions that an inspector has under this Act.

### **154 Delegation by regulator**

- (1) The regulator may, by instrument in writing, delegate to an authorised person a power or function under this Act other than this power of delegation.
- (2) A delegation under this section:
  - (a) may be made subject to such conditions as the regulator thinks fit, and
  - (b) is revocable at will, and
  - (c) does not derogate from the power of the regulator to act.

- (3) In this section:

***authorised person*** means:

- (a) a member of staff of the regulator, or
- (b) a person of a class prescribed by the regulations or of a class approved by the regulator.

## **Division 2 Powers of regulator to obtain information**

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

- (1) This section applies if the regulator has reasonable grounds to believe that a person is capable of giving information, providing documents or giving evidence in relation to a possible contravention of this Act or that will assist the regulator to monitor or enforce compliance with this Act.
- (2) The regulator may, by written notice served on the person, require the person to do one or more of the following:
  - (a) to give the regulator, in writing signed by the person (or in the case of a body corporate, by a competent officer of the body corporate) and within the time and in the manner specified in the notice, that information of which the person has knowledge,
  - (b) to produce to the regulator, in accordance with the notice, those documents,

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

(3) The notice must:

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

(b) contain a statement to the effect that a failure to comply with a requirement is an offence, and

(c) if the notice requires the person to provide information or documents or answer questions:

(i) contain a statement about the effect of sections 172 and 269, and

(ii) state that the person may attend with a legal practitioner.

(4) The regulator must not make a requirement under subsection (2) (c) unless the regulator has taken all reasonable steps to obtain the information under subsections (2) (a) and (b) and has been unable to do so.

(5) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under this section.

Maximum penalty:

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

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

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

(7) Section 172 (with any necessary changes) applies to a requirement under this section.

(8) The regulator has the same power to record questions, answers and evidence given orally under this section as an inspector has under section 185A in respect of questions and answers to questions given under Part 9.

### **155A Extraterritorial application**

(1) A notice under section 155 may be served on a person in respect of a matter even though the person is outside the State or the matter occurs or is located outside the State, so long as the matter relates to the administration of this Act (including, but not limited to, investigation of, or enforcement action relating to, offences against this Act).

- (2) To avoid doubt, section 155 (5) applies to a requirement in a notice that is served in the manner referred to in subsection (1).

## **Part 9 Securing compliance**

### **Division 1 Appointment of inspectors**

#### **156 Appointment of inspectors**

The regulator may, by instrument, appoint any of the following as an inspector:

- (a) an officer or employee of a public authority,
- (b) the holder of a statutory office,
- (c) a person who is appointed as an inspector under a corresponding WHS law,
- (d) a person in a prescribed class of persons.

#### **156A (Repealed)**

#### **157 Identity cards**

- (1) The regulator must give each inspector an identity card that states the person's name and appointment as an inspector and includes any other matter prescribed by the regulations.
- (2) An inspector must produce his or her identity card for inspection on request when exercising compliance powers.
- (3) If a person to whom an identity card has been issued ceases to be an inspector, the person must return the identity card to the regulator as soon as practicable.

#### **158 Accountability of inspectors**

- (1) An inspector must give written notice to the regulator of all interests, pecuniary or otherwise, that the inspector has, or acquires, and that conflict or could conflict with the proper performance of the inspector's functions.
- (2) The regulator must give a direction to an inspector not to deal, or to no longer deal, with a matter if the regulator becomes aware that the inspector has a potential conflict of interest in relation to a matter and the regulator considers that the inspector should not deal, or should no longer deal, with the matter.

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

- (1) The regulator may suspend or end the appointment of an inspector.
- (2) A person's appointment as an inspector ends when the person ceases to be eligible for appointment as an inspector.

## **Division 2 Functions and powers of inspectors**

### **160 Functions and powers of inspectors**

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

- (a) to provide information and advice about compliance with this Act,
- (b) to assist in the resolution of:
  - (i) work health and safety issues at workplaces, and
  - (ii) issues related to access to a workplace by an assistant to a health and safety representative, and
  - (iii) issues related to the exercise or purported exercise of a right of entry under Part 7,
- (c) to review disputed provisional improvement notices,
- (d) to require compliance with this Act through the issuing of notices,
- (e) to investigate contraventions of this Act and assist in the prosecution of offences,
- (f) to attend coronial inquests in relation to work-related deaths and examine witnesses.

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

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

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

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

### **162A (Repealed)**

## **Division 3 Powers relating to entry**

### **Subdivision 1 General powers of entry**

#### **163 Powers of entry**

- (1) An inspector may at any time enter a place that is, or that the inspector reasonably suspects is, a workplace.
- (2) An entry may be made under subsection (1) with, or without, the consent of the

person with management or control of the workplace.

- (3) If an inspector enters a place under subsection (1) and it is not a workplace, the inspector must leave the place immediately.
- (4) An inspector may enter any place if the entry is authorised by a search warrant.

**Note—**

An inspector may enter residential premises to gain access to a workplace (see section 170 (c)).

**164 Notification of entry**

- (1) An inspector may enter a place under section 163 without prior notice to any person.
- (2) An inspector must, as soon as practicable after entry to a workplace or suspected workplace, take all reasonable steps to notify the following persons of the entry and the purpose of the entry:
  - (a) the relevant person conducting a business or undertaking at the workplace,
  - (b) the person with management or control of the workplace,
  - (c) any health and safety representative for workers carrying out work for that business or undertaking at the workplace.
- (3) However, an inspector is not required to notify any person if to do so would defeat the purpose for which the place was entered or cause unreasonable delay.
- (4) In this section, **relevant person conducting a business or undertaking** means the person conducting any business or undertaking in relation to which the inspector is exercising the powers of entry.

**165 General powers on entry**

- (1) An inspector who enters a workplace under this Division may do all or any of the following:
  - (a) inspect, examine and make inquiries at the workplace,
  - (b) inspect and examine anything (including a document) at the workplace,
  - (c) bring to the workplace and use any equipment or materials that may be required,
  - (d) take measurements, conduct tests and make sketches or recordings (including photographs, films, audio, video, digital or other recordings),
  - (e) take and remove for analysis a sample of any substance or thing without paying for it,
  - (f) require a person at the workplace to give the inspector reasonable help to exercise

the inspector's powers under paragraphs (a) to (e),

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

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

Maximum penalty:

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

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

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

#### **165A (Repealed)**

#### **166 Persons assisting inspectors**

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

(2) The assistant:

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

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

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

#### **166A (Repealed)**

### **Subdivision 2 Search warrants**

#### **167 Search warrant**

(1) An inspector may apply to an authorised officer for a search warrant if the inspector believes on reasonable grounds that a provision of this Act has been or is being or is about to be contravened in or about any premises.

(2) An authorised officer to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the inspector named in the warrant to enter the premises and to search the premises for evidence of a contravention of this Act.



(3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.

(4) In this section:

**authorised officer** has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

### **168 Announcement before entry on warrant**

\* \* \* \* \*

**Note—**

Not required in NSW.

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

\* \* \* \* \*

**Note—**

Not required in NSW.

## **Subdivision 3 Limitation on entry powers**

### **170 Places used for residential purposes**

Despite anything else in this Division, the powers of an inspector under this Division in relation to entering a place are not exercisable in relation to any part of a place that is used only for residential purposes except:

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

## **Subdivision 4 Specific powers on entry**

### **171 Power to require production of documents and answers to questions**

- (1) An inspector who enters a workplace under this Division may:
  - (a) require a person to tell the inspector who has custody of, or access to, a document, or

- (b) require a person who has custody of, or access to, a document to produce that document to the inspector while the inspector is at that workplace or within a specified period, or
  - (c) require a person at the workplace to answer any questions put by the inspector.
- (2) A requirement under subsection (1) (b) must be made by written notice unless the circumstances require the inspector to have immediate access to the document.
  - (3) An interview conducted by an inspector under subsection (1) (c) must be conducted in private if:
    - (a) the inspector considers it appropriate, or
    - (b) the person being interviewed so requests.
  - (4) Subsection (3) does not limit the operation of section 166 or prevent a representative of the person being interviewed from being present at the interview.
  - (5) Subsection (3) may be invoked during an interview by:
    - (a) the inspector, or
    - (b) the person being interviewed,in which case the subsection applies to the remainder of the interview.
  - (6) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under this section.

Maximum penalty:

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

**Note—**

See sections 172 and 173 in relation to self-incrimination and section 269 in relation to legal professional privilege.

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

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

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

- (2) However, the answer to a question or information or a document provided by an individual is not admissible as evidence against that individual in civil or criminal proceedings other than proceedings arising out of the false or misleading nature of the answer, information or document.

### **173 Warning to be given**

- (1) Before requiring a person to answer a question or provide information or a document under this Part, an inspector must:
  - (a) identify himself or herself to the person as an inspector by producing the inspector's identity card or in some other way, and
  - (b) warn the person that failure to comply with the requirement or to answer the question, without reasonable excuse, would constitute an offence, and
  - (c) warn the person about the effect of section 172, and
  - (d) advise the person about the effect of section 269.
- (2) It is not an offence for an individual to refuse to answer a question put by an inspector or provide information or a document to an inspector under this Part on the ground that the question, information or document might tend to incriminate him or her, unless he or she was first given the warning in subsection (1) (c).
- (3) Nothing in this section prevents an inspector from obtaining and using evidence given to the inspector voluntarily by any person.

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

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

### **175 Power to seize evidence etc**

- (1) An inspector who enters a workplace under this Part may:

- (a) seize anything (including a document) at the place if the inspector reasonably believes the thing is evidence of an offence against this Act, or
  - (b) take and remove for analysis, testing or examination a sample of any substance or thing without paying for it.
- (2) An inspector who enters a place with a search warrant may seize the evidence for which the warrant was issued.
- (3) An inspector may also seize anything else at the place if the inspector reasonably believes:
- (a) the thing is evidence of an offence against this Act, and
  - (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed or used to continue or repeat the offence.

### **176 Inspector's power to seize dangerous workplaces and things**

- (1) This section applies if an inspector who enters a workplace under this Part reasonably believes that:
- (a) the workplace or part of the workplace, or
  - (b) plant at the workplace, or
  - (c) a substance at the workplace or part of the workplace, or
  - (d) a structure at a workplace,
- is defective or hazardous to a degree likely to cause serious injury or illness or a dangerous incident to occur.
- (2) The inspector may seize the workplace or part, the plant, the substance or the structure.

### **177 Powers supporting seizure**

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

#### **Examples**

Sealing a thing and marking it to show access to it is restricted.

Sealing the entrance to a room where the seized thing is situated and marking it to show access to it is restricted.

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

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

Maximum penalty:

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

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

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

(a) to take it to a stated reasonable place by a stated reasonable time, and

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

(4) The requirement:

(a) must be made by written notice, or

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

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

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

Maximum penalty:

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

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

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

### **178 Receipt for seized things**

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

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

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

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

### **179 Forfeiture of seized things**

- (1) A seized thing is forfeited to the State if the regulator:
  - (a) cannot find the person entitled to the thing after making reasonable inquiries, or
  - (b) cannot return it to the person entitled to it, after making reasonable efforts, or
  - (c) reasonably believes it is necessary to forfeit the thing to prevent it being used to commit an offence against this Act.
- (2) Subsection (1) (a) does not require the regulator to make inquiries if it would be unreasonable to make inquiries to find the person entitled to the thing.
- (3) Subsection (1) (b) does not require the regulator to make efforts if it would be unreasonable to make efforts to return the thing to the person entitled to it.
- (4) If the regulator decides to forfeit the thing under subsection (1) (c), the regulator must tell the person entitled to the thing of the decision by written notice.
- (5) Subsection (4) does not apply if:
  - (a) the regulator cannot find the person entitled to the thing, after making reasonable inquiries, or
  - (b) it is impracticable or would be unreasonable to give the notice.
- (6) The notice must state:
  - (a) the reasons for the decision, and
  - (b) that the person entitled to the thing may apply within 28 days after the date of the notice for the decision to be reviewed, and
  - (c) how the person may apply for the review, and
  - (d) that the person may apply for a stay of the decision if the person applies for a review.
- (7) In deciding whether and, if so, what inquiries and efforts are reasonable or whether it would be unreasonable to give notice about a thing, regard must be had to the thing's nature, condition and value.
- (8) Any costs reasonably incurred by the State in storing or disposing of a thing forfeited under subsection (1) (c) may be recovered in a court of competent jurisdiction as a debt due to the State from that person.

- (9) In this section, **person entitled** to a thing means the person from whom it was seized unless that person is not entitled to possess it in which case it means the owner of the thing.

#### **180 Return of seized things**

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

#### **181 Access to seized things**

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

### **Division 4 Damage and compensation**

#### **182 Damage etc to be minimised**

In the exercise, or purported exercise, of a compliance power, an inspector must take all reasonable steps to ensure that the inspector, and any assistant to the inspector, cause as little inconvenience, detriment and damage as is practicable.

#### **183 Inspector to give notice of damage**

- (1) This section applies if an inspector or an assistant to an inspector damages a thing when exercising or purporting to exercise a compliance power.
- (2) The inspector must, as soon as practicable, give written notice of the damage to the person who the inspector believes on reasonable grounds, is the person in control of

the thing.

- (3) If the inspector believes the damage was caused by a latent defect in the thing or circumstances beyond the inspector's or assistant's control, the inspector may state it in the notice.
- (4) If, for any reason, it is impracticable to comply with subsection (2), the inspector must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.
- (5) This section does not apply to damage the inspector reasonably believes is trivial.

#### **184 Compensation**

- (1) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under Division 3 of this Part.
- (2) Compensation may be claimed and ordered in a proceeding:
  - (a) brought in a court of competent jurisdiction, or
  - (b) for an offence against this Act brought against the person claiming compensation.
- (3) The court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) The regulations may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

### **Division 5 Other matters**

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

- (1) An inspector may require a person to provide the person's name and residential address if:
  - (a) the inspector finds the person committing an offence against this Act, or
  - (b) the inspector finds the person in circumstances that lead, or has information that leads, the inspector to reasonably suspect the person has committed an offence against this Act.
- (2) When asking a person to provide his or her name and residential address, the inspector must:
  - (a) tell the person the reason for the requirement to provide their name and residential address, and
  - (b) warn the person that it is an offence to fail to state that name and residential address, unless the person has a reasonable excuse.



- (3) If the inspector reasonably believes that the name or residential address is false, the inspector may ask the person to give evidence of its correctness. It is not an offence for a person to fail to give that evidence.
- (4) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1).  
Maximum penalty: \$10,000.
- (5) Subsection (4) places an evidential burden on the accused to show a reasonable excuse.

#### **185A Recording of evidence**

- (1) An inspector may cause any questions and answers to questions given under this Part to be recorded if the inspector has informed the person who is to be questioned that the recording is to be made.
- (2) A recording may be made using a sound recording device or an audio visual device.
- (3) A copy of any such recording must be provided by the inspector to the person who is questioned as soon as practicable after it is made.
- (4) A recording may be made under this section despite the provisions of any other law.

#### **186 Inspector may take affidavits**

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

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

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

### **Division 6 Offences in relation to inspectors**

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

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

Maximum penalty:

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

#### **189 Offence to impersonate inspector**

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

inspector.

Maximum penalty: \$10,000.

### **190 Offence to assault, threaten or intimidate inspector**

A person must not directly or indirectly assault, threaten or intimidate, or attempt to assault, threaten or intimidate, an inspector or a person assisting an inspector.

Maximum penalty:

- (a) in the case of an individual—\$50,000 or imprisonment for 2 years or both, or
- (b) in the case of a body corporate—\$250,000.

## **Part 10 Enforcement measures**

### **Division 1 Improvement notices**

#### **191 Issue of improvement notices**

- (1) This section applies if an inspector reasonably believes that a person:
  - (a) is contravening a provision of this Act, or
  - (b) has contravened a provision in circumstances that make it likely that the contravention will continue or be repeated.
- (2) The inspector may issue an improvement notice requiring the person to:
  - (a) remedy the contravention, or
  - (b) prevent a likely contravention from occurring, or
  - (c) remedy the things or operations causing the contravention or likely contravention.

#### **192 Contents of improvement notices**

- (1) An improvement notice must state:
  - (a) that the inspector believes the person:
    - (i) is contravening a provision of this Act, or
    - (ii) has contravened a provision in circumstances that make it likely that the contravention will continue or be repeated, and
  - (b) the provision the inspector believes is being, or has been, contravened, and
  - (c) briefly, how the provision is being, or has been, contravened, and
  - (d) the day by which the person is required to remedy the contravention or likely

contravention.

- (2) An improvement notice may include directions concerning the measures to be taken to remedy the contravention or prevent the likely contravention, or the matters or activities causing the contravention or likely contravention, to which the notice relates.
- (3) The day stated for compliance with the improvement notice must be reasonable in all the circumstances.

### **193 Compliance with improvement notice**

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

Maximum penalty:

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

### **194 Extension of time for compliance with improvement notices**

- (1) This section applies if a person has been issued with an improvement notice.
- (2) An inspector may, by written notice given to the person, extend the compliance period for the improvement notice.
- (3) However, the inspector may extend the compliance period only if the period has not ended.
- (4) In this section:

***compliance period*** means the period stated in the improvement notice under section 192, and includes that period as extended under this section.

## **Division 2 Prohibition notices**

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

- (1) This section applies if an inspector reasonably believes that:
  - (a) an activity is occurring at a workplace that involves or will involve a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard, or
  - (b) an activity may occur at a workplace that, if it occurs, will involve a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard.

- (2) The inspector may give a person who has control over the activity a direction prohibiting the carrying on of the activity, or the carrying on of the activity in a specified way, until an inspector is satisfied that the matters that give or will give rise to the risk have been remedied.
- (3) The direction may be given orally, but must be confirmed by written notice (a **prohibition notice**) issued to the person as soon as practicable.

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

- (1) A prohibition notice must state:
  - (a) that the inspector believes that grounds for the issue of the prohibition notice exist and the basis for that belief, and
  - (b) briefly, the activity that the inspector believes involves or will involve the risk and the matters that give or will give rise to the risk, and
  - (c) the provision of this Act that the inspector believes is being, or is likely to be, contravened by that activity.
- (2) A prohibition notice may include directions on the measures to be taken to remedy the risk, activities or matters to which the notice relates, or the contravention or likely contravention referred to in subsection (1) (c).
- (3) Without limiting section 195, a prohibition notice that prohibits the carrying on of an activity in a specified way may do so by specifying one or more of the following:
  - (a) a workplace, or part of a workplace, at which the activity is not to be carried out,
  - (b) anything that is not to be used in connection with the activity,
  - (c) any procedure that is not to be followed in connection with the activity.

#### **197 Compliance with prohibition notice**

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

Maximum penalty:

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

### **Division 3 Non-disturbance notices**

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

An inspector may issue a non-disturbance notice to the person with management or

control of a workplace if the inspector reasonably believes that it is necessary to do so to facilitate the exercise of his or her compliance powers.

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

- (1) A non-disturbance notice may require the person to:
  - (a) preserve the site at which a notifiable incident has occurred for a specified period, or
  - (b) prevent the disturbance of a particular site (including the operation of plant) in other circumstances for a specified period that is reasonable in the circumstances.
- (2) A non-disturbance notice must specify the period (of no more than 7 days) for which it applies and set out:
  - (a) the obligations of the person to whom the notice is issued, and
  - (b) the measures to be taken to preserve a site or prevent disturbance of a site, and
  - (c) the penalty for contravening the notice.
- (3) In subsection (1) a reference to a site includes any plant, substance, structure or thing associated with the site.
- (4) A non-disturbance notice does not prevent any action:
  - (a) to assist an injured person, or
  - (b) to remove a deceased person, or
  - (c) that is essential to make the site safe or to prevent a further incident, or
  - (d) that is associated with a police investigation, or
  - (e) for which an inspector has given permission.

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

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

Maximum penalty:

- (a) in the case of an individual—\$50,000, or
  - (b) in the case of a body corporate—\$250,000.
- (2) Subsection (1) places an evidential burden on the accused to show a reasonable excuse.

### **201 Issue of subsequent notices**

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

## **Division 4 General requirements applying to notices**

### **202 Application of Division**

In this Division, **notice** means improvement notice, prohibition notice or non-disturbance notice.

### **203 Notice to be in writing**

A notice must be in writing.

### **204 Directions in notices**

A direction included in an improvement notice or prohibition notice may:

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

### **205 Recommendations in notice**

- (1) An improvement notice or prohibition notice may include recommendations.
- (2) It is not an offence to fail to comply with recommendations in a notice.

### **206 Changes to notice by inspector**

- (1) An inspector may make minor changes to a notice:
  - (a) for clarification, or
  - (b) to correct errors or references, or
  - (c) to reflect changes of address or other circumstances.
- (2) An inspector may also, in accordance with section 194, extend the compliance period for an improvement notice.

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

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

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

A notice is not invalid only because of:

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

## **209 Issue and giving of notice**

(1) A notice may be issued or given to a person:

- (a) by delivering it personally to the person or sending it by post or electronic transmission to the person's usual or last known place of residence or business, or
- (b) by leaving it for the person at the person's usual or last known place of residence or business with a person who appears to be over 16 years and who appears to reside or work there, or
- (c) by leaving it for the person at the workplace to which the notice relates with a person who is or appears to be the person with management or control of the workplace, or
- (d) in a prescribed manner.

(2) The regulations may prescribe:

- (a) the manner of issuing a notice, and
- (b) the steps a person to whom a notice is issued must take to bring it to the attention of other persons.

## **210 Display of notice**

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

Maximum penalty:

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

(2) A person must not intentionally remove, destroy, damage or deface a notice displayed under subsection (1) while the notice is in force.

Maximum penalty:

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

## **Division 5 Remedial action**

### **211 When regulator may carry out action**

- (1) This section applies if a person to whom a prohibition notice is issued fails to take reasonable steps to comply with the notice.
- (2) The regulator may take any remedial action the regulator believes reasonable to make the workplace or situation safe after giving written notice to the person to whom the prohibition notice was issued of:
  - (a) the regulator's intention to take that action, and
  - (b) the owner's or person's liability for the costs of that action.

### **212 Power of the regulator to take other remedial action**

- (1) This section applies if the regulator reasonably believes that:
  - (a) circumstances in which a prohibition notice can be issued exist, and
  - (b) a prohibition notice cannot be issued at a workplace because, after taking reasonable steps, the person with management or control of the workplace cannot be found.
- (2) The regulator may take any remedial action necessary to make the workplace safe.

### **213 Costs of remedial or other action**

The regulator may recover the reasonable costs of any remedial action taken under:

- (a) section 211 from the person to whom the notice is issued, or
- (b) section 212 from any person to whom the prohibition notice could have been issued in relation to the matter,

as a debt due to the regulator.

## **Division 6 Injunctions**

### **214 Application of Division**

In this Division, **notice** means improvement notice, prohibition notice or non-disturbance notice.



## **215 Injunctions for noncompliance with notices**

- (1) The regulator may apply to the District Court for an injunction:
  - (a) compelling a person to comply with a notice, or
  - (b) restraining a person from contravening a notice.
- (2) The regulator may do so:
  - (a) whether or not proceedings have been brought for an offence against this Act in connection with any matter in relation to which the notice was issued, and
  - (b) whether any period for compliance with the notice has expired.

## **Part 11 Enforceable undertakings**

### **216 Regulator may accept WHS undertakings**

- (1) The regulator may accept a written undertaking (a **WHS undertaking**) given by a person in connection with a matter relating to a contravention or alleged contravention by the person of this Act.

#### **Note—**

Section 230 (4) requires the regulator to publish guidelines in relation to the acceptance of WHS undertakings.

- (2) A WHS undertaking cannot be accepted for a contravention or alleged contravention that is a Category 1 offence.
- (3) The giving of a WHS undertaking does not constitute an admission of guilt by the person giving it in relation to the contravention or alleged contravention to which the undertaking relates.

### **217 Notice of decision and reasons for decision**

- (1) The regulator must give the person seeking to make a WHS undertaking written notice of the regulator's decision to accept or reject the WHS undertaking and of the reasons for the decision.
- (2) The regulator must publish, on the regulator's website, notice of a decision to accept a WHS undertaking and the reasons for that decision.

### **218 When a WHS undertaking is enforceable**

A WHS undertaking takes effect and becomes enforceable when the regulator's decision to accept the undertaking is given to the person who made the undertaking or at any later date specified by the regulator.

### **219 Compliance with WHS undertaking**

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

Maximum penalty:

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

### **220 Contravention of WHS undertaking**

- (1) The regulator may apply to the District Court for an order if a person contravenes a WHS undertaking.
- (2) If the Court is satisfied that the person who made the WHS undertaking has contravened the undertaking, the Court, in addition to the imposition of any penalty, may make one or both of the following orders:
  - (a) an order directing the person to comply with the undertaking,
  - (b) an order discharging the undertaking.
- (3) In addition to the orders referred to in subsection (2), the Court may make any other order that the Court considers appropriate in the circumstances, including orders directing the person to pay to the State:
  - (a) the costs of the proceedings, and
  - (b) the reasonable costs of the regulator in monitoring compliance with the WHS undertaking in the future.
- (4) Nothing in this section prevents proceedings being brought for the contravention or alleged contravention of this Act to which the WHS undertaking relates.

**Note—**

Section 222 specifies circumstances affecting proceedings for a contravention for which a WHS undertaking has been given.

### **221 Withdrawal or variation of WHS undertaking**

- (1) A person who has made a WHS undertaking may at any time, with the written agreement of the regulator:
  - (a) withdraw the undertaking, or
  - (b) vary the undertaking.
- (2) However, the provisions of the undertaking cannot be varied to provide for a different alleged contravention of the Act.

- (3) The regulator must publish, on the regulator’s website, notice of the withdrawal or variation of a WHS undertaking.

## **222 Proceeding for alleged contravention**

- (1) Subject to this section, no proceedings for a contravention or alleged contravention of this Act may be brought against a person if a WHS undertaking is in effect in relation to that contravention.
- (2) No proceedings may be brought for a contravention or alleged contravention of this Act against a person who has made a WHS undertaking in relation to that contravention and has completely discharged the WHS undertaking.
- (3) The regulator may accept a WHS undertaking in relation to a contravention or alleged contravention before proceedings in relation to that contravention have been finalised.
- (4) If the regulator accepts a WHS undertaking before the proceedings are finalised, the regulator must take all reasonable steps to have the proceedings discontinued as soon as possible.

## **Part 12 Review of decisions**

### **Division 1 Reviewable decisions**

#### **223 Which decisions are reviewable**

- (1) The following table sets out:
  - (a) decisions made under this Act that are reviewable in accordance with this Part (**reviewable decisions**), and
  - (b) who is eligible to apply for review of a reviewable decision (the **eligible person**).

<b>Item</b>	<b>Provision under which reviewable decision is made</b>	<b>Eligible person in relation to reviewable decision</b>
-------------	--	---

- |   |   |   |
|---|---|---|
|   |   | (1) A worker whose interests are affected by the decision or his or her representative appointed for the purpose of section 52 (1) (b).   |
| 1 | Section 54 (2) (decision following failure to commence negotiations)                  | (2) A person conducting a business or undertaking whose interests are affected by the decision.<br>(3) A health and safety representative who represents a worker whose interests are affected by the decision.   |
| 2 | Section 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.<br>(2) A health and safety representative whose interests are affected by the decision.   |
| 3 | Section 76 (6) (decision relating to health and safety committee)                     | (1) A worker whose interests are affected by the decision.<br>(2) A person conducting a business or undertaking whose interests are affected by the decision.<br>(3) A health and safety representative who represents a worker whose interests are affected by the decision.   |
| 4 | Section 102 (decision on review of provisional improvement notice)                    | (1) The person to whom the provisional improvement notice was issued.<br>(2) The health and safety representative who issued the provisional improvement notice.<br>(3) A worker whose interests are affected by the decision.<br>(4) A health and safety representative who represents a worker whose interests are affected by the decision.<br>(5) A person conducting a business or undertaking whose interests are affected by the decision. |

5	Section 179 (forfeiture of seized things)	The person entitled to the thing.
6	Section 180 (return of seized things)	The person entitled to the thing.
7	Section 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.
8	Section 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.

- |    |   |   |
|----|---|---|
| 9  | Section 195 (issue of prohibition 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, plant or substance.</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) A health and safety representative who gave a direction under section 85 to cease work, that is relevant to the prohibition notice.</li></ul> |
| 10 | Section 198 (issue of non-disturbance 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>   |

11	Section 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>
12	Section 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) In the case of a prohibition notice, a health and safety representative whose direction under section 85 to cease work gave rise to the notice.</li></ul>
13	A prescribed provision of the regulations	A person prescribed by the regulations as eligible to apply for review of the reviewable decision.

(2) Unless the contrary intention appears, a reference in this Part to a decision includes a reference to:

(a) making, suspending, revoking or refusing to make an order, determination or decision,

(b) giving, suspending, revoking or refusing to give a direction, approval, consent or

permission,

(c) issuing, suspending, revoking or refusing to issue an authorisation,

(d) imposing a condition,

(e) making a declaration, demand or requirement,

(f) retaining, or refusing to deliver up, a thing, or

(g) doing or refusing to do any other act or thing.

(3) In this section **person entitled** to a thing means the person from whom it was seized unless that person is not entitled to possess it, in which case it means the owner of the thing.

**Note—**

Decisions under the regulations that will be reviewable decisions will be set out in the regulations.

## **Division 2 Internal review**

### **224 Application for internal review**

- (1) An eligible person in relation to a reviewable decision, other than a decision made by the regulator or a delegate of the regulator, may apply to the regulator for review (an **internal review**) of the decision within:
  - (a) the prescribed time after the day on which the decision first came to the eligible person's notice, or
  - (b) such longer period as the regulator allows.
- (2) The application must be made in the manner and form required by the regulator.
- (3) For the purposes of this section, the **prescribed time** is:
  - (a) in the case of a decision to issue an improvement notice the period specified in the notice for compliance with the notice or 14 days, whichever is the lesser, and
  - (b) in any other case, 14 days.

### **225 Internal reviewer**

- (1) The regulator may appoint a person or body to review decisions on applications under this Division.
- (2) The person who made the decision cannot be an internal reviewer in relation to that decision.



## **226 Decision of internal reviewer**

- (1) The internal reviewer must review the reviewable decision and make a decision as soon as is reasonably practicable and within 14 days after the application for internal review is received.
- (2) The decision may be:
  - (a) to confirm or vary the reviewable decision, or
  - (b) to set aside the reviewable decision and substitute another decision that the internal reviewer considers appropriate.
- (3) If the internal reviewer seeks further information from the applicant, the 14-day period ceases to run until the applicant provides the information to the internal reviewer.
- (4) The applicant must provide the further information within the time (being not less than 7 days) specified by the internal reviewer in the request for information.
- (5) If the applicant does not provide the further information within the required time, the decision is taken to have been confirmed by the internal reviewer at the end of that time.
- (6) If the reviewable decision is not varied or set aside within the 14-day period, the decision is taken to have been confirmed by the internal reviewer.

## **227 Decision on internal review**

As soon as practicable after reviewing the decision, the internal reviewer must give the applicant in writing:

- (a) the decision on the internal review, and
- (b) the reasons for the decision.

## **228 Stays of reviewable decisions**

- (1) An application for an internal review of a reviewable decision (other than a decision to issue a prohibition notice or a non-disturbance notice) stays the operation of the decision.
- (2) If an application is made for internal review of a decision to issue a prohibition notice or a non-disturbance notice, the reviewer may stay the operation of the decision.
- (3) The reviewer may make the decision to stay the operation of a decision on the reviewer's own initiative or on the application of the applicant for review.
- (4) The reviewer must make a decision on an application for a stay within one working

day after the reviewer receives the application.

- (5) If the reviewer has not made a decision to stay a decision within the time set out in subsection (4), the reviewer is taken to have made a decision to grant a stay.
- (6) A stay of the operation of a decision pending a decision on an internal review continues until whichever of the following is the earlier:
  - (a) the end of the prescribed period for applying for an external review of the decision made on the internal review,
  - (b) an application for external review is made.

## **Division 3 External review**

### **229 Application for external review**

- (1) An eligible person may apply to the Industrial Relations Commission for review (an **external review**) of:
  - (a) a reviewable decision made by the regulator, or
  - (b) a decision made, or taken to have been made, on an internal review.
- (2) The application must be made:
  - (a) if the decision was to forfeit a thing (including a document), within 28 days after the day on which the decision first came to the applicant's notice, or
  - (b) in the case of any other decision, within 14 days after the day on which the decision first came to the applicant's notice, or
  - (c) if the regulator is required by the Industrial Relations Commission to give the eligible person a statement of reasons, within 14 days after the day on which the statement is provided.
- (3) The Industrial Relations Commission may stay the operation of a decision that is the subject of an external review pending a decision on the review.
- (4) The Industrial Relations Commission may, on an external review, confirm, vary or revoke the decision concerned.

## **Part 13 Legal proceedings**

### **Division 1 General matters**

#### **229A (Repealed)**

### **229B Procedure for offences**

- (1) Except as provided by this section, proceedings for an offence against this Act or the regulations are to be dealt with summarily:
  - (a) before the Local Court, or
  - (b) before the District Court in its summary jurisdiction.
- (2) (Repealed)
- (3) Proceedings for a Category 1 offence committed by an individual are to be taken on indictment.
- (4) The maximum monetary penalty that may be imposed by the Local Court in proceedings for an offence against this Act is \$50,000, despite any higher maximum monetary penalty provided in respect of the offence.
- (5) (Repealed)
- (6) (Repealed)

### **230 Prosecutions**

- (1) Subject to subsection (4), proceedings for an offence against this Act may only be brought by:
  - (a) the regulator, or
  - (b) an inspector with the written authorisation of the regulator (either generally or in a particular case), or
  - (c) the secretary of an industrial organisation of employees any member or members of which are concerned in the matter to which the proceedings relate, but only as permitted by subsection (3) if the offence concerned is a Category 1 offence or a Category 2 offence.
- (1A) Proceedings for an offence against this Act may also be brought by an Australian legal practitioner authorised in writing to represent a person who is authorised under this section to bring the proceedings.
- (2) An authorisation under subsection (1) (b) is sufficient authority to continue proceedings in any case where the court amends the charge, warrant or summons.
- (3) The secretary of an industrial organisation of employees can bring proceedings for a Category 1 offence or a Category 2 offence only if the regulator has (after referral of the matter to the regulator and the Director of Public Prosecutions under section 231) declined to follow the advice of the Director of Public Prosecutions to bring the proceedings.

- (4) The regulator must issue, and publish on the regulator's website, general guidelines for or in relation to:
  - (a) the prosecution of offences under this Act, and
  - (b) the acceptance of WHS undertakings under this Act.
- (5) Nothing in this section affects the ability of the Attorney General or the Director of Public Prosecutions to bring proceedings for an offence against this Act.
- (6) The court before which proceedings for an offence against this Act are brought by the secretary of an industrial organisation of employees must not direct that any portion of a fine or other penalty imposed in the proceedings be paid to the prosecutor (despite section 122 of the *Fines Act 1996*).

### **231 Procedure if prosecution is not brought**

- (1) If:
  - (a) a person reasonably considers that the occurrence of an act, matter or thing constitutes a Category 1 offence or a Category 2 offence, and
  - (b) no prosecution has been brought in relation to the occurrence of the act, matter or thing after 6 months but not later than 12 months after that occurrence,the person may make a written request to the regulator that a prosecution be brought.
- (2) Within 3 months after the regulator receives a request the regulator must:
  - (a) advise the person (in writing):
    - (i) whether the investigation is complete, and
    - (ii) if the investigation is complete, whether a prosecution has been or will be brought or give reasons why a prosecution will not be brought, and
  - (b) advise the person who the applicant believes committed the offence of the application and of the matters set out in paragraph (a).
- (3) If the regulator advises the person that a prosecution for a Category 1 or Category 2 offence will not be brought, the regulator must:
  - (a) advise the person that the person may ask the regulator to refer the matter to the Director of Public Prosecutions for consideration, and
  - (b) if the person makes a written request to the regulator to do so, refer the matter to the Director of Public Prosecutions within 1 month of the request.
- (4) The Director of Public Prosecutions must consider the matter and advise (in writing) the regulator within 1 month as to whether the Director considers that a prosecution

should be brought.

- (5) The regulator must ensure a copy of the advice is given to:
  - (a) the person who made the request, and
  - (b) the person who the applicant believes committed the offence.
- (6) If the regulator declines to follow the advice of the Director of Public Prosecutions to bring proceedings, the regulator must give written reasons for the decision to any person to whom a copy of the advice is given under subsection (5).
- (7) In this section a reference to the occurrence of an act, matter or thing includes a reference to a failure in relation to an act, matter or thing.

### **232 Limitation period for prosecutions**

- (1) Proceedings for an offence against this Act may be brought within the latest of the following periods to occur:
  - (a) within 2 years after the offence first comes to the notice of the regulator,
  - (b) within 1 year after a coronial report was made or a coronial inquiry or inquest ended, if it appeared from the report or the proceedings at the inquiry or inquest that an offence had been committed against this Act,
  - (c) if a WHS undertaking has been given in relation to the offence, within 6 months after:
    - (i) the WHS undertaking is contravened, or
    - (ii) it comes to the notice of the regulator that the WHS undertaking has been contravened, or
    - (iii) the regulator has agreed under section 221 to the withdrawal of the WHS undertaking.
- (2) A proceeding for a Category 1 offence may be brought after the end of the applicable limitation period in subsection (1) if fresh evidence relevant to the offence is discovered and the court is satisfied that the evidence could not reasonably have been discovered within the relevant limitation period.

### **233 Multiple contraventions of health and safety duty provision**

- (1) 2 or more contraventions of a health and safety duty provision by a person that arise out of the same factual circumstances may be charged as a single offence or as separate offences.
- (2) This section does not authorise contraventions of 2 or more health and safety duty

provisions to be charged as a single offence.

- (3) A single penalty only may be imposed in relation to 2 or more contraventions of a health and safety duty provision that are charged as a single offence.
- (4) In this section **health and safety duty provision** means a provision of Division 2, 3 or 4 of Part 2.

### **233A Certificate evidence of certain matters**

- (1) A document signed by the regulator, or by a member of staff designated by the regulator for the purposes of this section, and certifying any one or more of the matters specified in subsection (2) is admissible in any proceedings under this Act and is prima facie evidence of the matters so certified.
- (2) The following matters are specified for the purposes of subsection (1):
  - (a) that a person was or was not, at a specified time or during a specified period, an inspector,
  - (b) that a person was or was not, at a specified time or during a specified period, a member of staff of the regulator,
  - (c) that a specified function under this Act was delegated to a specified person during a specified period,
  - (d) that an inspector had, at a specified time or during a specified period, the written authorisation of the regulator to bring proceedings for an offence against this Act (either generally or in a particular case).
- (3) For the purposes of the certification of a matter referred to in subsection (2) (a), the person who appointed the inspector concerned is taken to be a member of staff designated by the regulator (as referred to in subsection (1)).

## **Division 2 Sentencing for offences**

### **234 Application of this Division**

This Division applies if a court convicts a person, or finds a person guilty (the **offender**), of an offence against this Act.

### **235 Orders generally**

- (1) One or more orders may be made under this Division against the offender.
- (2) Orders may be made under this Division in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.

### **236 Adverse publicity orders**

- (1) The court may make an order (an **adverse publicity order**) in relation to the offender requiring the offender:
  - (a) to take either or both of the following actions within the period specified in the order:
    - (i) to publicise, in the way specified in the order, the offence, its consequences, the penalty imposed and any other related matter,
    - (ii) to notify a specified person or specified class of persons, in the way specified in the order, of the offence, its consequences, the penalty imposed and any other related matter, and
  - (b) to give the regulator, within 7 days after the end of the period specified in the order, evidence that the action or actions were taken by the offender in accordance with the order.
- (2) The court may make an adverse publicity order on its own initiative or on the application of the person prosecuting the offence.
- (3) If the offender fails to give evidence to the regulator in accordance with subsection (1) (b), the regulator, or a person authorised in writing by the regulator, may take the action or actions specified in the order.
- (4) However, if:
  - (a) the offender gives evidence to the regulator in accordance with subsection (1) (b), and
  - (b) despite that evidence, the regulator is not satisfied that the offender has taken the action or actions specified in the order in accordance with the order,the regulator may apply to the court for an order authorising the regulator, or a person authorised in writing by the regulator, to take the action or actions.
- (5) If the regulator or a person authorised in writing by the regulator takes an action or actions in accordance with subsection (3) or an order under subsection (4), the regulator is entitled to recover from the offender, by action in a court of competent jurisdiction, an amount in relation to the reasonable expenses of taking the action or actions as a debt due to the regulator.

### **237 Orders for restoration**

- (1) The court may order the offender to take such steps as are specified in the order, within the period so specified, to remedy any matter caused by the commission of the offence that appears to the court to be within the offender's power to remedy.

- (2) The period in which an order under this section must be complied with may be extended, or further extended, by order of the court but only if an application for the extension is made before the end of that period.

### **238 Work health and safety project orders**

- (1) The court may make an order requiring the offender to undertake a specified project for the general improvement of work health and safety within the period specified in the order.
- (2) The order may specify conditions that must be complied with in undertaking the specified project.

### **239 Release on the giving of a court-ordered WHS undertaking**

- (1) The court may (with or without recording a conviction) adjourn the proceeding for a period of up to 2 years and make an order for the release of the offender on the offender giving an undertaking with specified conditions (a ***court-ordered WHS undertaking***).
- (2) A court-ordered WHS undertaking must specify the following conditions:
  - (a) that the offender appears before the court if called on to do so during the period of the adjournment and, if the court so specifies, at the time to which the further hearing is adjourned,
  - (b) that the offender does not commit, during the period of the adjournment, any offence against this Act,
  - (c) that the offender observes any special conditions imposed by the court.
- (3) An offender who has given a court-ordered WHS undertaking under this section may be called on to appear before the court by order of the court.
- (4) An order under subsection (3) must be served on the offender not less than 4 days before the time specified in it for the appearance.
- (5) If the court is satisfied at the time to which a further hearing of a proceeding is adjourned that the offender has observed the conditions of the court-ordered WHS undertaking, it must discharge the offender without any further hearing of the proceeding.

### **240 Injunctions**

If a court finds a person guilty of an offence against this Act, the court may issue an injunction requiring the person to cease contravening this Act.

**Note—**

An injunction may also be obtained under section 215 for noncompliance with a non-disturbance notice,



improvement notice or prohibition notice.

### **241 Training orders**

The court may make an order requiring the person to undertake or arrange for one or more workers to undertake a specified course of training.

### **242 Offence to fail to comply with order**

(1) A person must not, without reasonable excuse, fail to comply with an order under this Division.

Maximum penalty:

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

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

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

(3) This section does not apply to an order or injunction under section 239 or 240.

## **Division 3 Penalty notices**

### **243 Penalty notices**

(1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.

(2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.

(3) The [Fines Act 1996](#) applies to a penalty notice issued under this section.

#### **Note—**

The [Fines Act 1996](#) provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

(4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding 20% of the maximum amount of penalty that could be imposed for the offence by a court).

(5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

(6) In this section, **authorised officer** means a member of staff of the regulator authorised in writing by the regulator as an authorised officer for the purposes of this section.

## **Division 4 Offences by bodies corporate**

### **244 Imputing conduct to bodies corporate**

- (1) For the purposes of this Act, any conduct engaged in on behalf of a body corporate by an employee, agent or officer of the body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is conduct also engaged in by the body corporate.
- (2) If an offence under this Act requires proof of knowledge, intention or recklessness, it is sufficient in proceedings against a body corporate for that offence to prove that the person referred to in subsection (1) had the relevant knowledge, intention or recklessness.
- (3) If for an offence against this Act mistake of fact is relevant to determining liability, it is sufficient in proceedings against a body corporate for that offence if the person referred to in subsection (1) made that mistake of fact.

## **Division 5 The Crown**

### **245 Offences and the Crown**

- (1) If the Crown is guilty of an offence against this Act, the penalty to be imposed on the Crown is the penalty applicable to a body corporate.
- (2) For the purposes of this Act, any conduct engaged in on behalf of the Crown by an employee, agent or officer of the Crown acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is conduct also engaged in by the Crown.
- (3) If an offence under this Act requires proof of knowledge, intention or recklessness, it is sufficient in proceedings against the Crown for that offence to prove that the person referred to in subsection (2) had the relevant knowledge, intention or recklessness.
- (4) If for an offence against this Act mistake of fact is relevant to determining liability, it is sufficient in proceedings against the Crown for that offence if the person referred to in subsection (2) made that mistake of fact.

### **246 WHS civil penalty provisions and the Crown**

- (1) If the Crown contravenes a WHS civil penalty provision, the monetary penalty to be imposed on the Crown is the penalty applicable to a body corporate.
- (2) For the purposes of a WHS civil penalty provision, any conduct engaged in on behalf of the Crown by an employee, agent or officer of the Crown acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is conduct also engaged in by the Crown.

- (3) If a WHS civil penalty provision requires proof of knowledge, it is sufficient in proceedings against the Crown for a contravention of that provision to prove that the person referred to in subsection (2) had that knowledge.

#### **247 Officers**

- (1) A person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking of the Crown is taken to be an officer of the Crown for the purposes of this Act.
- (2) A Minister of a State or the Commonwealth is not in that capacity an officer for the purposes of this Act.

#### **248 Responsible agency for the Crown**

- (1) A provisional improvement notice, improvement notice, prohibition notice, non-disturbance notice, penalty notice or notice of entry under Part 7 to be given to or served on the Crown under this Act may be given to or served on the responsible agency.
- (2) If a penalty notice is to be served on the Crown for an offence against this Act, the responsible agency may be specified in the penalty notice.
- (3) If proceedings are brought against the Crown for an offence against this Act or in relation to a contravention of this Act, the responsible agency in relation to the offence or contravention may be specified in any document initiating, or relating to, the proceedings.
- (4) The responsible agency in relation to an offence or a contravention of this Act is entitled to act in proceedings against the Crown for the offence or relating to the contravention and, subject to any relevant rules of court, the procedural rights and obligations of the Crown as the accused or defendant in the proceedings are conferred or imposed on the responsible agency.
- (5) The person prosecuting the offence or bringing the proceedings may change the responsible agency during the proceedings with the court's leave.
- (6) In this section, the responsible agency:
  - (a) in relation to a notice referred to in subsection (1) is:
    - (i) in the case of a provisional improvement notice, improvement notice or penalty notice, the agency of the Crown the acts or omissions of which are alleged to contravene this Act,
    - (ii) in the case of a prohibition notice, the agency of the Crown which has control over the activity referred to in section 195 (1) (a) or (b),

- (iii) in the case of a non-disturbance notice, the agency of the Crown with the management and control of the workplace,
  - (iv) in the case of a notice of entry under Part 7, the agency of the Crown conducting the relevant business or undertaking or with the management and control of the workplace, and
- (b) in relation to an offence or proceedings for a contravention of this Act, is the agency of the Crown:
- (i) the acts or omissions of which are alleged to constitute the offence or contravention, or
  - (ii) if that agency has ceased to exist, that is the successor of that agency, or
  - (iii) if that agency has ceased to exist and there is no clear successor, that the court declares to be the responsible agency.

## **Division 6 Public authorities**

### **249 Application to public authorities that are bodies corporate**

This Division applies only to public authorities that are bodies corporate.

### **250 Proceedings against public authorities**

- (1) Proceedings may be brought under this Act against a public authority in its own name.
- (2) Nothing in this Division affects any privileges that a public authority may have under the Crown.

### **251 Imputing conduct to public authorities**

- (1) For the purposes of this Act, any conduct engaged in on behalf of a public authority by an employee, agent or officer of the public authority acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is conduct also engaged in by the public authority.
- (2) If an offence under this Act requires proof of knowledge, intention or recklessness, it is sufficient in proceedings against the public authority for that offence to prove that the person referred to in subsection (1) had the relevant knowledge, intention or recklessness.
- (3) If for an offence against this Act mistake of fact is relevant to determining liability, it is sufficient in proceedings against the public authority for that offence if the person referred to in subsection (1) made that mistake of fact.

### **252 Officer of public authority**

- (1) A person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking of a public authority is taken to be an officer of the public authority for the purposes of this Act.
- (2) A Minister of a State or the Commonwealth is not in that capacity an officer for the purposes of this Act.

### **253 Proceedings against successors to public authorities**

- (1) Proceedings for an offence against this Act that were instituted against a public authority before its dissolution, or that could have been instituted against a public authority if not for its dissolution, may be continued or instituted against its successor if the successor is a public authority.
- (2) A penalty notice served on a public authority for an offence against this Act is taken to be a penalty notice served on its successor if the successor is a public authority.
- (3) Similarly, any penalty paid by a public authority in relation to an penalty notice is taken to be a penalty paid by its successor if the successor is a public authority.

## **Division 7 WHS civil penalty provisions**

### **254 When is a provision a WHS civil penalty provision**

- (1) A subsection of Part 7 (or a section of Part 7 that is not divided into subsections) is a **WHS civil penalty provision** if:
  - (a) the words “WHS civil penalty provision” and one or more amounts by way of monetary penalty are set out at the foot of the subsection (or section), or
  - (b) another provision of Part 7 specifies that the subsection (or section) is a WHS civil penalty provision.
- (2) A subclause of the regulations (or a clause of the regulations that is not divided into subclauses) is a **WHS civil penalty provision** if:
  - (a) the words “WHS civil penalty provision” and one or more amounts by way of monetary penalty are set out at the foot of the subclause (or clause), or
  - (b) another provision of the regulations specifies that the subclause (or clause) is a WHS civil penalty provision.

### **255 Proceedings for contravention of WHS civil penalty provision**

Subject to this Division, proceedings may be brought in the Local Court or the District Court against a person for a contravention of a WHS civil penalty provision.

**256 Involvement in contravention treated in same way as actual contravention**

- (1) A person who is involved in a contravention of a WHS civil penalty provision is taken to have contravened that provision.
- (2) A person is **involved in** a contravention of a civil penalty provision if, and only if, the person:
  - (a) has aided, abetted, counselled or procured the contravention, or
  - (b) has induced the contravention, whether by threats or promises or otherwise, or
  - (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention, or
  - (d) has conspired with others to effect the contravention.

**257 Contravening a civil penalty provision is not an offence**

A contravention of a WHS civil penalty provision is not an offence.

**258 Civil proceeding rules and procedure to apply**

A court must apply the rules of evidence and procedure for civil proceedings when hearing proceedings for a contravention of a WHS civil penalty provision.

**259 Proceeding for a contravention of a WHS civil penalty provision**

- (1) In a proceeding for a contravention of a WHS civil penalty provision, if the court is satisfied that a person has contravened a WHS civil penalty provision, the court may:
  - (a) order the person to pay a monetary penalty that the court considers appropriate, and
  - (b) make any other order that the court considers appropriate, including an injunction.
- (2) A monetary penalty imposed under subsection (1) must not exceed the relevant maximum amount of monetary penalty specified under Part 7 or the regulations in relation to a contravention of that WHS civil penalty provision.

**260 Proceedings may be brought by the regulator or an inspector**

Proceedings for a contravention of a WHS civil penalty provision may only be brought by:

- (a) the regulator, or
- (b) an inspector with the written authorisation of the regulator (either generally or in a particular case).

### **261 Limitation period for WHS civil penalty proceedings**

Proceedings for a contravention of a WHS civil penalty provision may be brought within 2 years after the contravention first comes to the notice of the regulator.

### **262 Recovery of a monetary penalty**

If the court orders a person to pay a monetary penalty:

- (a) the penalty is payable to the State, and
- (b) the State may enforce the order as if it were a judgment of the court.

### **263 Civil double jeopardy**

A court must not make an order against a person under section 259 for contravention of a WHS civil penalty provision if an order has been made against the person under a civil penalty provision under an Act of the Commonwealth or a State in relation to conduct that is substantially the same as the conduct constituting the contravention.

### **264 Criminal proceedings during civil proceedings**

- (1) Proceedings against a person for a contravention of a WHS civil penalty provision are stayed if:
  - (a) criminal proceedings are commenced or have already commenced against the person for an offence, and
  - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention of the WHS civil penalty provision.
- (2) The proceedings for the order may be resumed if the person is not convicted or found guilty of the offence. Otherwise, the proceedings for the order are dismissed.

### **265 Criminal proceedings after civil proceedings**

Criminal proceedings may be commenced against a person for conduct that is substantially the same as conduct constituting a contravention of a WHS civil penalty provision regardless of whether an order has been made against the person under section 259.

### **266 Evidence given in proceedings for contravention of WHS civil penalty provision not admissible in criminal proceedings**

- (1) Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:
  - (a) the individual previously gave the information or produced the documents in proceedings against the individual for a contravention of a WHS civil penalty provision (whether or not the order was made), and

(b) the conduct alleged to constitute the offence is substantially the same as the conduct alleged to constitute the contravention of the WHS civil penalty provision.

(2) However, this does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in the proceedings for the contravention of the WHS civil penalty provision.

## **Division 8 Civil liability not affected by this Act**

### **267 Civil liability not affected by this Act**

Except as provided in Part 6 and Part 7 and Division 7 of this Part, nothing in this Act is to be construed as:

- (a) conferring a right of action in civil proceedings in relation to a contravention of a provision of this Act, or
- (b) conferring a defence to an action in civil proceedings or otherwise affecting a right of action in civil proceedings, or
- (c) affecting the extent (if any) to which a right of action arises, or civil proceedings may be brought, in relation to breaches of duties or obligations imposed by the regulations.

## **Part 14 General**

### **Division 1 General provisions**

#### **268 Offence to give false or misleading information**

(1) A person must not give information in complying or purportedly complying with this Act that the person knows:

- (a) to be false or misleading in a material particular, or
- (b) omits any matter or thing without which the information is misleading.

Maximum penalty:

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

(2) A person must not produce a document in complying or purportedly complying with this Act that the person knows to be false or misleading in a material particular without:

- (a) indicating the respect in which it is false or misleading and, if practicable, providing correct information, or
- (b) accompanying the document with a written statement signed by the person or, in



the case of a body corporate, by a competent officer of the body corporate:

- (i) stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular, and
- (ii) setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.

Maximum penalty:

- (a) in the case of an individual—\$10,000, or
  - (b) in the case of a body corporate—\$50,000.
- (3) Subsection (2) places an evidential burden on the accused to show that the accused had indicated the extent to which the document was false or misleading or that the accompanying document sufficiently explained the extent to which the document was false or misleading.

### **269 Act does not affect legal professional privilege**

Nothing in this Act requires a person to produce a document that would disclose information, or otherwise provide information, that is the subject of legal professional privilege.

### **270 Immunity from liability**

- (1) An inspector, or other person engaged in the administration of this Act, incurs no civil liability for an act or omission done or omitted to be done in good faith and in the execution or purported execution of powers and functions under this Act.
- (2) A civil liability that would, but for subsection (1), attach to a person, attaches instead to the State.

### **271 Confidentiality of information**

- (1) This section applies if a person obtains information or gains access to a document in exercising any power or function under this Act (other than under Part 7).
- (2) The person must not do any of the following:
  - (a) disclose to anyone else:
    - (i) the information, or
    - (ii) the contents of or information contained in the document,
  - (b) give access to the document to anyone else,
  - (c) use the information or document for any purpose.

Maximum penalty:

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

(3) Subsection (2) does not apply to the disclosure of information, or the giving of access to a document or the use of information or a document:

- (a) about a person, with the person's consent, or
- (b) that is necessary for the exercise of a power or function under this Act, or
- (c) that is made or given by the regulator or a person authorised by the regulator if the regulator reasonably believes the disclosure, access or use:
  - (i) is necessary for administering, or monitoring or enforcing compliance with, this Act, or
  - (ii) is necessary for the administration or enforcement of another Act prescribed by the regulations, or
  - (iii) is necessary for the administration or enforcement of another Act or law, if the disclosure, access or use is necessary to lessen or prevent a serious risk to public health or safety, or
  - (iv) is necessary for the recognition of authorisations under a corresponding WHS law, or
  - (v) is required for the exercise of a power or function under a corresponding WHS law, or
- (d) that is required by any court, tribunal, authority or person having lawful authority to require the production of documents or the answering of questions, or
- (e) that is required or authorised under a law, or
- (f) to a Minister.

(4) A person must not intentionally disclose to another person the name of an individual who has made a complaint in relation to that other person unless:

- (a) the disclosure is made with the consent of the complainant, or
- (b) the disclosure is required under a law.

Maximum penalty:

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

### **271A Information sharing between regulators**

- (1) Either one of the regulators or a member of staff of either one of the regulators is authorised to disclose information or give access to a document to the other regulator or a member of staff of the other regulator if the disclosure or giving of access is for the purpose of assisting the other regulator to exercise the powers or functions of the other regulator under this Act or the *Work Health and Safety (Mines and Petroleum Sites) Act 2013*.
- (2) Section 271 applies to the use of information or a document that a person obtains or gains access to as a result of the disclosure of the information or the giving of access to the document as authorised by this section, as if the person had obtained the information or gained access to the document in exercising a power or function under this Act.
- (3) Section 271 (2) does not apply to the disclosure of information or giving of access to a document as authorised by this section.

### **272 No contracting out**

A term of any agreement or contract that purports to exclude, limit or modify the operation of this Act or any duty owed under this Act or to transfer to another person any duty owed under this Act is void.

### **273 Person not to levy workers**

A person conducting a business or undertaking must not impose a levy or charge on a worker, or permit a levy or charge to be imposed on a worker, for anything done, or provided, in relation to work health and safety.

Maximum penalty:

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

## **Division 2 Codes of practice**

### **274 Approved codes of practice**

- (1) The Minister may approve a code of practice for the purposes of this Act and may vary or revoke an approved code of practice.
- (2) The Minister may only approve, vary or revoke a code of practice under subsection (1) if that code of practice, variation or revocation was developed by a process that involved consultation between:
  - (a) the Governments of the Commonwealth and each State and Territory, and

- (b) unions, and
  - (c) employer organisations.
- (3) A code of practice may apply, adopt or incorporate any matter contained in a document formulated, issued or published by a person or body whether:
- (a) with or without modification, or
  - (b) as in force at a particular time or from time to time.
- (4) An approval of a code of practice, or a variation or revocation of an approved code of practice, takes effect when notice of it is published in the Gazette or on such later date as is specified in the approval, variation or revocation.
- (5) As soon as practicable after approving a code of practice, or varying or revoking an approved code of practice, the Minister must ensure that notice of the approval, variation or revocation is published in the Gazette and a newspaper circulating generally throughout the State.
- (6) The regulator must ensure that a copy of:
- (a) each code of practice that is currently approved, and
  - (b) each document applied, adopted or incorporated (to any extent) by an approved code of practice,
- is available for inspection by members of the public without charge at the office of the regulator during normal business hours.

**Editorial note—**

For notices of approved codes of practice published or varied under this section, see Gazettes No 127 of 16.12.2011, p 7194; No 63 of 18.7.2014, p 2695; No 64 of 31.7.2015, p 2311; No 23 of 1.4.2016, p 575; No 27 of 27.1.2017, p 202 and No 136 of 15.12.2017, p 7686.

**275 Use of codes of practice in proceedings**

- (1) This section applies in a proceeding for an offence against this Act.
- (2) An approved code of practice is admissible in the proceeding as evidence of whether or not a duty or obligation under this Act has been complied with.
- (3) The court may:
  - (a) have regard to the code as evidence of what is known about a hazard or risk, risk assessment or risk control to which the code relates, and
  - (b) rely on the code in determining what is reasonably practicable in the circumstances to which the code relates.

**Note—**

See section 18 for the meaning of *reasonably practicable*.

- (4) Nothing in this section prevents a person from introducing evidence of compliance with this Act in a manner that is different from the code but provides a standard of work health and safety that is equivalent to or higher than the standard required in the code.

## **Division 3 Regulation-making powers**

### **276 Regulation-making powers**

- (1) The Governor may make regulations in relation to:
- (a) any matter relating to work health and safety, and
  - (b) any matter or thing required or permitted by this Act to be prescribed or that is necessary or convenient to be prescribed to give effect to this Act.
- (2) Without limiting subsection (1), the regulations may make provision for or in relation to matters set out in Schedule 3.
- (3) The regulations may:
- (a) be of general or limited application, or
  - (b) differ according to differences in time, place or circumstance, or
  - (c) leave any matter or thing to be, from time to time, determined, applied or approved by the regulator, an inspector or any other prescribed person or body of persons, or
  - (d) apply, adopt or incorporate any matter contained in any document formulated, issued or published by a person or body whether:
    - (i) with or without modification, or
    - (ii) as in force at a particular time or as in force or remade from time to time, or
  - (e) prescribe exemptions from complying with any of the regulations on the terms and conditions (if any) prescribed, or
  - (f) allow the regulator to provide exemptions from complying with any of the regulations on the terms and conditions (if any) prescribed or, if the regulations allow, on the terms and conditions (if any) determined by the regulator, or
  - (g) prescribe fees for doing any act or providing any service for the purposes of this Act and prescribe the circumstances and way in which fees can be refunded, waived or reduced, or

(h) prescribe a penalty for any contravention of the regulations not exceeding \$30,000.

- (4) The Minister is not to recommend the making of a regulation containing provisions that confer jurisdiction of the Civil and Administrative Tribunal to exercise functions unless the Minister certifies that the Minister administering the *Civil and Administrative Tribunal Act 2013* has agreed to the provisions.

## **Division 3A Miscellaneous**

### **276A (Repealed)**

### **276B Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

### **276C (Repealed)**

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

- 1** This Act applies to the storage and handling of dangerous goods even if the dangerous goods are not at a workplace or for use in carrying out work.
- 2** For the purposes of clause 1:
- (a) a reference in this Act to carrying out work includes a reference to the storage or handling of dangerous goods, and
  - (b) a reference in this Act to a workplace includes a reference to the premises at or in which the dangerous goods are stored or handled, and
  - (c) a reference in this Act to work health and safety (however expressed) includes a reference to public health and safety.
- 3** This Act applies to the operation or use of high risk plant, affecting public safety, even if the plant is not situated, operated or used at a workplace or for use in carrying out work.
- 4** For the purposes of clause 3:
- (a) a reference in this Act to carrying out work includes a reference to the operation and use of high risk plant affecting public safety, and
  - (b) a reference in this Act to a workplace includes a reference to any high risk plant affecting

public safety and the premises at or in which the plant is situated or used, and

(c) a reference in this Act to work health and safety (however expressed) includes a reference to public health and safety.

**5** The operation of this Schedule is subject to any exclusions or modifications prescribed by the regulations.

**6** In this Schedule:

**dangerous goods** means anything prescribed as dangerous goods.

**high risk plant** means plant prescribed as high risk plant.

## **Schedule 2 The regulator**

### **1 The regulator**

(1) For the purposes of this Act, the **regulator** is:

(a) the Secretary of the Department of Finance, Services and Innovation, unless paragraph (b) applies, or

(b) in relation to a mine or petroleum site to which the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* applies or a workplace at which activities under the *Petroleum (Offshore) Act 1982* are carried out—the regulator under the *Work Health and Safety (Mines and Petroleum Sites) Act 2013*.

(2) The Secretary of the Department of Finance, Services and Innovation is, as the regulator under this Act, to be known as **SafeWork NSW**.

(3)–(5) (Repealed)

(6) SafeWork NSW is subject to the control and direction of the Minister except in relation to:

(a) the contents of any advice, report or recommendation given to the Minister, or

(b) any decision that relates to proceedings for offences under this Act, or

(c) any decision that relates to a WHS undertaking.

(7) Nothing in this clause limits section 12A of the *Work Health and Safety (Mines and Petroleum Sites) Act 2013*.

#### **Note—**

That section authorises both regulators to exercise their functions in relation to all workplaces.

## **Schedule 3 Regulation-making powers**

### **1 Duties**

- (1) Matters relating to the way in which duties imposed by this Act are to be performed.
- (2) Matters relating to the regulation or prohibition of specified activities or a specified class of activities:
  - (a) at workplaces or a specified class of workplaces, or
  - (b) by a specified class of persons on whom duties or obligations are imposed by this Act,  
to eliminate or minimise risks to health and safety.
- (3) Imposing duties on persons in relation to any matter provided for under the regulations.

### **2 Incidents**

Matters relating to incidents at workplaces including:

- (a) regulating or requiring the taking of any action to avoid an incident at a workplace or in the course of conducting a business or undertaking, and
- (b) regulating, requiring or prohibiting the taking of any action in the event of an incident at a workplace or in the conduct of a business or undertaking.

### **3 Plant, substances or structures**

Matters relating to plant, substances or structures, including:

- (a) regulating the storage and handling of plant, substances and structures, and
- (b) regulating or requiring:
  - (i) the examination, testing, labelling, maintenance or repair of plant and structures,  
or
  - (ii) the examination, testing, analysis or labelling of any substance.

### **4 Protection and welfare of workers**

Matters relating to the protection and welfare of workers including:

- (a) regulating or requiring the provision and use of protective clothing or equipment, or rescue equipment, in specified circumstances, and
- (b) regulating or requiring the provision of specified facilities for the welfare of workers at the workplace, and



- (c) matters relating to health and safety in relation to accommodation provided to workers.

## **5 Hazards and risks**

Matters relating to hazards and risks including:

- (a) the prescribing of standards relating to the use of or exposure to any physical, biological, chemical or psychological hazard, and
- (b) matters relating to safety cases, safety management plans and safety management systems (however described), and
- (c) matters relating to measures to control risks.

## **6 Records and notices**

- (1) The keeping and availability of records of health and safety representatives and deputy health and safety representatives.
- (2) The keeping of records in relation to incidents.
- (3) The keeping of records of specified activities, matters or things to be kept by specified persons.
- (4) The giving of notice of or information about specified activities, matters or things to the regulator, an inspector or other specified person.

## **7 Authorisations**

- (1) Matters relating to authorisations (including licences, registrations and permits) and qualifications, and experience for the purposes of Part 4 or the regulations including providing for:
  - (a) applications for the grant, issue, renewal, variation, suspension and cancellation of authorisations, including the minimum age to be eligible for an authorisation, and
  - (b) the evidence and information to be provided in relation to applications including the provision of statutory declarations, and
  - (c) exemptions, and
  - (d) variations of authorisations by the regulator whether on application or otherwise, and
  - (e) authorisation of persons as trainers and assessors, and
  - (f) examination of applicants for authorisations, and
  - (g) conditions of authorisations, and

(h) fees for applications for the grant, issue, renewal and variation of authorisations.

(2) The recognition of authorisations under corresponding WHS laws and exceptions to recognition.

(3) The sharing of information with corresponding regulators relating to the grant, issue, renewal, variation, suspension or cancellation of authorisations.

## **8 Work groups**

Matters relating to work groups and variation of work groups and agreements or variations of agreements relating to the determination of work groups.

## **9 Health and safety committees and health and safety representatives**

Matters relating to health and safety committees and health and safety representatives.

## **10 Issue resolution**

Matters relating to issue resolution including:

(a) the minimum requirements for an agreed procedure for resolving an issue, and

(b) the requirements for a default issue resolution procedure where there is no agreed procedure.

## **11 WHS entry permits**

Matters relating to WHS entry permits, including providing for:

(a) eligibility for WHS entry permits, and

(b) procedures for applications for WHS entry permits and objections to applications for WHS entry permits, and

(c) conditions of WHS entry permits, and

(d) the form of WHS entry permits, and

(e) requirements for training, and

(f) records of WHS entry permits.

## **12 Identity cards**

Matters relating to identity cards.

## **13 Forfeiture**

Matters relating to:

(a) costs of forfeiture and disposal of forfeited things, and

- (b) disposal of seized things and forfeited things.

#### **14 Review of decisions**

Matters relating to the review of decisions under the regulations including:

- (a) prescribing decisions as reviewable decisions for the purposes of Part 12 or for the purposes of the regulations, and
- (b) prescribing procedures for internal and external review of decisions under the regulations, and
- (c) conferring jurisdiction on the Local Court or the Industrial Relations Commission to conduct reviews under the regulations, and
- (d) conferring jurisdiction on the Civil and Administrative Tribunal to conduct administrative reviews under the [Administrative Decisions Review Act 1997](#).

### **Schedule 4 Savings, transitional and other provisions**

#### **Part 1 General**

##### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act and any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (4) A provision referred to in subclause (1) has effect, if the regulations so provide, despite any other clause of this Schedule.
- (5) The power to make regulations under subclause (1) extends to authorise the making of regulations whereby the provisions of this Act are deemed to be amended in a specified manner, but any regulation made pursuant to this subclause:

- (a) may only be made for or with respect to matters for or with respect to which this Act makes provision, and
  - (b) may not be made so as to have effect after 31 December 2012, and
  - (c) ceases to have effect, unless sooner revoked or otherwise ceasing to have effect, on 31 December 2012.
- (6) Subclause (5) (b) and (c) do not apply, and are taken never to have applied, to or in respect of:
- (a) Schedule 18B to the *Work Health and Safety Regulation 2011*, or
  - (b) any other provision of the *Work Health and Safety Regulation 2011* that does not specifically state that provisions of this Act are deemed to be amended in a specified manner (whether that provision was made before or after the commencement of this subclause).

## **Part 2 Provision consequent on enactment of this Act**

### **2 Definition**

In this Part:

**OHS Act** means the *Occupational Health and Safety Act 2000*.

### **3 Industry codes of practice**

An industry code of practice approved and in force under Part 4 of the OHS Act immediately before the repeal of that Act is taken to be an approved code of practice under Part 14 of this Act.

### **4 Improvement or prohibition notices**

- (1) An improvement notice or provisional improvement notice may be issued under this Act in relation to a contravention of the OHS Act or the regulations under the OHS Act that occurred before the commencement of this Act.
- (2) An improvement notice or prohibition notice issued under the OHS Act and in force on the commencement of this Act is taken to be an improvement notice or prohibition notice issued under this Act.
- (3) Any appeal, review or other proceeding pending under the OHS Act in relation to an improvement notice or prohibition notice issued under the OHS Act is taken to be a proceeding pending under the corresponding provision of this Act.

### **5 Inspectors**

- (1) A person appointed as an inspector under the OHS Act and holding office on the

repeal of the OHS Act is taken to be appointed as an inspector under this Act, subject to the regulations under this Schedule.

- (2) An identification card issued to the inspector under the OHS Act (or to a person taken to have been appointed as an inspector under section 47A or 47B of the OHS Act) is taken to be an identity card issued under this Act until its replacement under this Act, and may be used by an inspector under this Act even though it refers to provisions of the OHS Act.

## **6 Investigative powers and related matters**

Part 9 (Securing compliance) extends to the exercise of powers in connection with the OHS Act or a regulation under the OHS Act in relation to offences committed against the OHS Act or the regulation before its repeal or in relation to any other matter that continues to have any force or effect (except as provided by or under this Schedule).

## **7 Continuation of repealed Regulations**

Without limiting clause 1, the regulations under that clause may make provision for or with respect to:

- (a) the continued operation after the commencement of this Act of a regulation or provision of a regulation made or continued in operation by or under the OHS Act or by or under an Act repealed by the OHS Act, or
- (b) anything done under any such regulation or provision and having any force or effect immediately before the commencement of this Act.

## **8 Existing notices, exemptions etc**

A notice, direction, order, requirement, exemption or other instrument that:

- (a) is given, issued or made under the OHS Act, and
- (b) is in force on the repeal of the OHS Act,

has effect for the purposes of any corresponding provision of or made under this Act, unless this Act or the regulations otherwise provide.

## **9 General saving**

Anything done under the OHS Act or a provision of the OHS Act that has any force or effect immediately before its repeal is taken to have been done under the corresponding provision of this Act, subject to any express or implied provision to the contrary in this Act or the regulations made under this Act.

## **Part 2A Prosecution of offences against OHS laws**

### **9A Definitions**

In this Part:

**OHS Act** means the *Occupational Health and Safety Act 2000*.

**OHS laws** means the OHS Act or the OHS Regulation.

**OHS offence** means an offence against a provision of the OHS laws.

**OHS Regulation** means the *Occupational Health and Safety Regulation 2001*.

**WHS Act** means this Act.

**WHS laws** means this Act or the WHS Regulation.

**WHS Regulation** means regulations under this Act.

### **9B General transitional arrangements for OHS offences**

Proceedings for an OHS offence alleged to have been committed before the repeal of the OHS Act are to be dealt with after the repeal of the OHS Act as if that Act had not been repealed, except as otherwise provided by this Part.

### **9C Arrangements for proceedings commenced after WHS Act commencement**

Proceedings for an OHS offence that are commenced after the commencement of the WHS Act are to be dealt with as follows:

- (a) proceedings are to be dealt with summarily before the Local Court or the District Court in its summary jurisdiction, except as provided by paragraph (b),
- (b) proceedings for an offence against section 32A (Reckless conduct causing death at workplace by person with OHS duties) of the OHS Act are to be taken on indictment.

### **9D Arrangements for offences committed on or after 7/6/11 and prosecuted in Industrial Court**

Proceedings for an OHS offence alleged to have been committed on or after 7 June 2011 that were commenced in the Industrial Court before the commencement of the WHS Act but not finally determined by the Industrial Court before that commencement are discontinued in the Industrial Court on that commencement and are then to be dealt with:

- (a) summarily before the District Court in its summary jurisdiction, unless paragraph (b) applies, or
- (b) on indictment in the case of proceedings for an offence against section 32A of the OHS Act.

### **9E Requirements for workplace death offence prosecutions**

Proceedings for an offence against section 32A of the OHS Act cannot be instituted after the commencement of the WHS Act except with the written consent of a Minister of the Crown (including such a consent given before the commencement of the WHS Act) or by an inspector under the WHS Act.

### **9F Enforceable undertakings for OHS offences**

- (1) Part 11 (Enforceable undertakings) of the WHS Act extends to a contravention or alleged contravention of a provision of the OHS laws that occurred or is alleged to have occurred on or after 7 June 2011.
- (2) This clause does not apply to a contravention or alleged contravention of section 32A of the OHS Act.

### **9G Authority to prosecute for OHS offences**

- (1) In addition to the persons authorised under section 106 of the OHS Act to institute proceedings for an OHS offence, proceedings for such an offence may be instituted by an Australian legal practitioner representing a person so authorised to institute the proceedings.
- (2) This clause extends to proceedings instituted before the commencement of this Part and before the commencement of the WHS Act.

### **9H Validation**

- (1) Any act or omission that would have been valid had this Part been in force at the time of the act or omission is taken to be (and always to have been) valid.
- (2) To remove doubt, this clause extends to the commencement or institution of criminal proceedings (including the purported commencement or institution of criminal proceedings) and any act or omission in connection with criminal proceedings.

## **Part 3 Provisions consequent on enactment of [Work Health and Safety Legislation Amendment Act 2011](#)**

### **10 Definitions**

In this Part:

**amending Act** means the [Work Health and Safety Legislation Amendment Act 2011](#).

**OHS Act** means the [Occupational Health and Safety Act 2000](#).

### **11 Amendment of [Coal Mine Health and Safety Act 2002](#)**

- (1) Section 8B of the [Coal Mine Health and Safety Act 2002](#) (**the CMHS Act**) extends to

matters arising before the commencement of this Act as if a reference in that section to this Act included a reference to the OHS Act.

- (2) A reference to this Act in section 14, 15 or 16 of the CMHS Act includes a reference to the OHS Act in relation to an offence committed before the commencement of this Act.
- (3) A site-specific occupational health and safety management plan prepared for the purposes of section 75 of the CMHS Act that is in force immediately before the commencement of this Act is taken to have been prepared as a site-specific work health and safety management plan.
- (4) A reference to this Act in section 175 of the CMHS Act includes a reference to the OHS Act in relation to a failure that occurs before the commencement of this Act.
- (5) A reference to this Act in section 191 of the CMHS Act includes a reference to the OHS Act in relation to an offence committed before the commencement of this Act.
- (6) A reference to this Act in section 220 of the CMHS Act includes a reference to the OHS Act in relation to a matter or thing done or omitted before the commencement of this Act.
- (7) A reference to the OHS Act in clause 27 (Validation) of Schedule 3 to the CMHS Act includes a reference to this Act if the relevant date under that clause is after the commencement of this Act.

## **12 Amendment of [Crimes \(Sentencing Procedure\) Act 1999](#)**

Section 27 of the [Crimes \(Sentencing Procedure\) Act 1999](#) continues to apply as it was in force before the commencement of this Act to and in relation to an offence against Division 1 of Part 2 of the OHS Act committed before the commencement of this Act.

## **13 Amendment of [Criminal Procedure Act 1986](#)**

Sections 215 and 257D of the [Criminal Procedure Act 1986](#) continue to apply as it was in force before the commencement of this Act to and in respect of proceedings for an offence committed before that commencement.

## **14 Amendment of [Industrial Relations Act 1996](#)**

- (1) There is no right of appeal under section 197A (Appeals against acquittals in proceedings for offences against occupational health and safety legislation) of the [Industrial Relations Act 1996](#) (**the IR Act**) after the repeal of that section, except as provided by subclause (2).
- (2) Section 197A of the IR Act continues to apply (despite its repeal) to and in relation to an appeal commenced under that section before its repeal.



- (3) Section 210 (1) (j) of the IR Act continues to apply as it was in force before the commencement of this Act to and in relation to:
  - (a) any complaint made about a workplace matter (as referred to in that provision) before the repeal of that provision, and
  - (b) the exercise before the repeal of that provision of any function conferred under Division 2 of Part 2 of the OHS Act.
- (4) Section 383A (a) of the IR Act continues to apply (despite its repeal) to and in relation to the recovery of any amount ordered to be paid under section 114 of the OHS Act by the Local Court constituted by an Industrial Magistrate before the repeal of that provision.

#### **15 Amendment of *Mine Health and Safety Act 2004***

- (1) Section 8 of the *Mine Health and Safety Act 2004* (**the MHS Act**) extends to matters arising before the commencement of this Act as if a reference in that section to this Act included a reference to the OHS Act.
- (2) A reference to this Act in sections 18, 19 and 20 of the MHS Act includes a reference to the OHS Act in relation to an offence committed before the commencement of this Act.
- (3) A reference to this Act in section 100 of the MHS Act includes a reference to the OHS Act in relation to a serious breach of a provision of the OHS Act or the regulations under that Act that occurs before the commencement of this Act.
- (4) A reference to this Act in section 164 of the MHS Act includes a reference to the OHS Act in relation to a failure that occurs before the commencement of this Act.
- (5) A reference to this Act in section 189 of the MHS Act includes a reference to the OHS Act in relation to a matter or thing done or omitted before the commencement of this Act.

#### **16 Amendment of *Mining Act 1992***

A reference to this Act in section 378E of the *Mining Act 1992* includes a reference to the OHS Act in relation to an order or direction given before the commencement of this Act.

#### **17 Amendment of *Rail Safety Act 2008***

- (1) Section 138 (1) of the *Rail Safety Act 2008* (**the Act**) continues to apply as it was in force before the commencement of this Act to and in respect of offences committed before the commencement of this Act.
- (2) Section 138 (2) of the Act continues to apply as it was in force before the commencement of this Act to and in respect of improvement or prohibition notices

issued before the commencement of this Act.

- (3) Except as otherwise provided by this clause, an amendment made to the Act by the amending Act does not apply to an act or omission that occurs before the commencement of the amendment.

#### **18 Amendment of [Road Transport \(General\) Act 2005](#)**

For the purposes of section 244A of the [Road Transport \(General\) Act 2005](#), a person who commits an act or omission that constitutes an offence under an applicable road law and under the OHS Act is not liable to be punished twice in relation to that offence if it was committed before the commencement of this Act.

#### **19 Amendment of [Rural Workers Accommodation Act 1969](#)**

For the purposes of section 20 of the [Rural Workers Accommodation Act 1969](#) (**the Act**), a person who commits an act or omission that constitutes an offence under the Act (or any regulations made under the Act) and under the OHS Act is not liable to be punished twice in relation to that offence if it was committed before the commencement of this Act.

#### **20 Amendment of [Workplace Injury Management and Workers Compensation Act 1998](#)**

- (1) A reference in section 245A (Evidence—criminal proceedings under WHS legislation) of the [Workplace Injury Management and Workers Compensation Act 1998](#) to work health and safety legislation includes (in relation to an offence committed before the commencement of this Act) a reference to occupational health and safety legislation within the meaning of that Act as in force before that commencement.
- (2) For the purposes of the operation of section 254 of the [Workplace Injury Management and Workers Compensation Act 1998](#) after the commencement of this Act, an injury reported before that commencement by or on behalf of an employer to an inspector under the OHS Act is taken to have been reported to an inspector under this Act.
- (3) The Workers Compensation and Work Health and Safety Council of New South Wales is a continuation of the Workers Compensation and Workplace Occupational Health and Safety Council of New South Wales as constituted under the [Workplace Injury Management and Workers Compensation Act 1998](#) before the commencement of this Act.

### **Part 4 Provisions consequent on enactment of [Work Health and Safety \(Mines\) Act 2013](#)**

#### **21 Definitions**

In this Part:

**former Acts** means the [Mine Health and Safety Act 2004](#) and the [Coal Mine Health and Safety Act 2002](#).

**WHS(M) Act** means the *Work Health and Safety (Mines) Act 2013*.

## **22 Continued operation of provisions under former Acts**

A reference in section 229A or 271A to the WHS(M) Act includes a reference to each of the former Acts.

## **Part 5 Provisions consequent on enactment of Work Health and Safety Amendment Act 2013**

### **23 Definition**

In this Part:

**amending Act** means the *Work Health and Safety Amendment Act 2013*.

### **24 Authority to prosecute**

- (1) Section 230 (1A) as inserted by the amending Act extends to proceedings brought before the commencement of that Act.
- (2) Proceedings brought or purporting to have been brought before the commencement of section 230 (1A) that would have been validly brought had section 230 (1A) been in force at the time the proceedings were brought are taken to have been (and always to have been) validly brought.

### **25 Court decisions not affected**

- (1) An amendment made by the amending Act does not affect any decision of a court made before the date of assent to that Act, except as provided by subclause (2).
- (2) A decision of a court made before the date of assent to the amending Act that would have been validly made had the amendments made by that Act been in force when the decision was made (and that would otherwise not have been valid) is validated.

### **26 Recommencement of terminated proceedings**

- (1) Proceedings for an OHS offence that were terminated before the date of assent to the amending Act because they were not validly instituted may be recommenced whether or not the time for commencing the proceedings has expired if the proceedings would have been validly instituted if the amending Act had commenced before the proceedings were terminated.
- (2) Proceedings cannot be recommenced under this clause later than 6 months after the date of assent to the amending Act.
- (3) Terminated proceedings that were terminated in the District Court may be recommenced under this clause on the basis of the applications and other documents by which those proceedings were last commenced, and any thing done in the

terminated proceedings (other than the termination of the proceedings) is taken to have been done in the recommenced proceedings.

(4) In this clause:

**OHS offence** means an offence against a provision of the *Occupational Health and Safety Act 2000* or the *Occupational Health and Safety Regulation 2001*.

**proceedings** includes purported proceedings.

**terminated** includes stayed, dismissed or not proceeded with for any other reason (including nullity).

## **Schedule 5 (Repealed)**