Work Health and Safety Act 2011

No. 137, 2011 as amended

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Includes amendments up to:	Act No. 54, 2013

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About this compilation

The compiled Act

This is a compilation of the *Work Health and Safety Act 2011* as amended and in force on 28 May 2013. It includes any amendment affecting the compiled Act to that date.

This compilation was prepared on 11 June 2013.

The notes at the end of this compilation (the ***endnotes***) include information about amending Acts and instruments and the amendment history of each amended provision.

Uncommenced provisions and amendments

If a provision of the compiled Act is affected by an uncommenced amendment, the text of the uncommenced amendment is set out in the endnotes.

Application, saving and transitional provisions for amendments

If the operation of an amendment is affected by an application, saving or transitional provision, the provision is identified in the endnotes.

Modifications

If a provision of the compiled Act is affected by a textual modification that is in force, the text of the modifying provision is set out in the endnotes.

Provisions ceasing to have effect

If a provision of the compiled Act has expired or otherwise ceased to have effect in accordance with a provision of the Act, details of the provision are set out in the endnotes.

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An Act relating to work health and safety, and for related purposes

Part 1—Preliminary

Division 1—Introduction

1 Short title

This Act may be cited as the *Work Health and Safety Act 2011*.

2 Commencement

This Act commences on 1 January 2012.

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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; 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 as is reasonably practicable.

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Division 3—Interpretation

Subdivision 1—Definitions

4 Definitions

In this Act:

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

Australia, when used in its geographical sense, includes the external Territories.

authorised, in Part 4—see section 40.

authorising authority means the Fair Work Commission.

Category 1 offence—see section 31.

Category 2 offence—see section 32.

Category 3 offence—see section 33.

Comcare means the body corporate established under section 68 of the *Safety, Rehabilitation and Compensation Act 1988*.

Commonwealth includes any person or body, other than a public authority, that is an agency within the meaning of the *Financial Management and Accountability Act 1997*.

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 a regulator under a corresponding WHS law.

corresponding WHS law means each of the following:

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(a) the *Work Health and Safety Act 2011* of New South Wales;
(b) the *Work Health and Safety Act 2011* of Victoria;
(c) the *Work Health and Safety Act 2011* of Queensland;
(d) the *Work Health and Safety Act 2011* of Western Australia;
(e) the *Work Health and Safety Act 2011* of South Australia;
(f) the *Work Health and Safety Act 2011* of Tasmania;
(g) the *Work Health and Safety Act 2011* of the Australian Capital Territory;
(h) the *Work Health and Safety Act 2011* of the Northern Territory;
(i) any other law of a State or Territory prescribed by the regulations.

court means:
(a) the Federal Court of Australia; and
(b) the Federal Circuit Court of Australia; and
(c) the Supreme Court of a State or of the Australian Capital Territory or the Northern Territory; and
(d) a court of a State or Territory prescribed by the regulations for the purposes of section 273A.

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.

emergency services worker means:
(a) a member of 1 of the following:
(i) a police force or service;

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(ii) a fire service;
(iii) an ambulance service;
(iv) a coast guard service, rescue service or emergency service;
(v) any other organisation prescribed by the regulations for the purposes of this subparagraph; or

(b) a member of the Defence Force who is engaged in civil emergency or disaster relief operations; or

(c) a person who is an emergency services worker under a corresponding WHS law.

employee record, in relation to an employee, has the same meaning as it has in the *Privacy Act 1988*.

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*.

Fair Work Commission means the body continued in existence under section 575 of the *Fair Work Act 2009*.

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.

internal reviewer means:

(a) the regulator; or

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

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legal practitioner means a person who is admitted to the legal profession by a federal court or a Supreme Court of a State or Territory.

local authority means a local authority under a corresponding WHS law.

medical treatment means treatment by a medical practitioner registered or licensed under a State or Territory law that provides for the registration or licensing of medical practitioners.

modifications include additions, omissions and substitutions.

non-Commonwealth licensee means a body corporate that was a non-Commonwealth licensee for the purposes of the *Occupational Health and Safety Act 1991* immediately before the commencement of this Act.

notifiable incident—see section 35.

officer means:

(a) an officer within the meaning of section 9 of the *Corporations Act 2001* other than a partner in a partnership; or

(b) an officer of the Commonwealth 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*.

plant includes:

(a) any machinery, equipment, appliance, container, implement and tool; and

(b) any component of any of those things; and

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(c) anything fitted or connected to any of those things.

prohibited reason, in Part 6—see section 106.

public authority means:

(a) a body corporate established for a public purpose by or under a law of the Commonwealth or a law of a Territory (other than the Australian Capital Territory, the Northern Territory or Norfolk Island), but does not include a body corporate prescribed by the regulations to be a body corporate to which this Act does not apply; and

(b) a Commonwealth company within the meaning of the *Commonwealth Authorities and Companies Act 1997*, other than a Commonwealth company prescribed by the regulations to be a Commonwealth company to which this Act does not apply; and

(c) a body corporate prescribed by the regulations to be a public authority for the purposes of this Act.

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

regulator means Comcare.

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

relevant State or Territory industrial law, 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.

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

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State includes the Australian Capital Territory and the Northern 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 or the equivalent Part of a corresponding WHS law.

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.

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worker—see section 7.

workplace—see section 8.

Subdivision 2—Other important terms

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 1 or more community purposes where none of

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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

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(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, the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police or an AFP employee (all within the meaning of the *Australian Federal Police Act 1979*) is:
(a) a worker; and
(b) at work throughout the time when the person is on duty or lawfully performing the functions of the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police or an AFP employee, but not otherwise; and
(c) carrying out work for a business or undertaking conducted by the Commonwealth when the person is on duty or lawfully performing the functions of the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police or an AFP employee, but not otherwise; and
(d) an employee of the Commonwealth.

(2A) For the purposes of this Act, a member of the Defence Force is:
(a) a worker; and
(b) at work throughout the time when the person is lawfully performing the functions of a member of the Defence Force, but not otherwise; and
(c) carrying out work for a business or undertaking conducted by the Commonwealth when the person is lawfully performing those functions, but not otherwise; and
(d) an employee of the Commonwealth.

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(2B) For the purposes of this Act, a person who is the holder of, or acting in, an office established by a law of the Commonwealth or a law of a Territory (other than the Australian Capital Territory, the Northern Territory or Norfolk Island) is:

(a) a worker; and

(b) at work throughout the time when the person is lawfully performing the functions of that office, but not otherwise; and

(c) carrying out work for a business or undertaking conducted by the Commonwealth when the person is lawfully performing those functions, but not otherwise; and

(d) an employee of the Commonwealth.

(2C) For the purposes of this Act, a person who constitutes, or is acting as the person constituting, a public authority is:

(a) a worker; and

(b) at work throughout the time when the person is lawfully performing the functions of that authority, but not otherwise; and

(c) carrying out work for a business or undertaking conducted by the public authority when the person is lawfully performing those functions, but not otherwise; and

(d) an employee of the public authority.

(2D) For the purposes of this Act, a person who is, or is acting as, a member or a deputy member of a public authority is:

(a) a worker; and

(b) at work throughout the time when the person is lawfully performing the functions of the public authority, but not otherwise; and

(c) carrying out work for a business or undertaking conducted by the public authority when the person is lawfully performing those functions, but not otherwise; and

(d) an employee of the public authority.

(2E) For the purposes of this Act, a person who is, or is acting as, a member or a deputy member of a body established by or under an Act establishing a public authority for a purpose associated with the performance of the functions of the public authority is:

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(a) a worker; and
(b) at work throughout the time when the person is lawfully performing the functions of the body, but not otherwise; and
(c) carrying out work for a business or undertaking conducted by the public authority when the person is lawfully performing those functions, but not otherwise; and
(d) an employee of the public authority.

(2F) The Minister may, by instrument in writing, declare that a person of a class specified in the declaration is, for the purposes of this Act:
(a) a worker; and
(b) at work throughout the time specified in the declaration; and
(c) carrying out work for a business or undertaking conducted by the Commonwealth, or a public authority specified in the declaration, when the person is performing functions of the kind specified in the declaration; and
(d) an employee of the Commonwealth, or a public authority specified in the declaration.

(2G) A declaration under subsection (2F) may only be made in relation to a class of persons if persons of that class engage in activities or perform acts:
(a) where the declaration specifies that persons of that class are carrying out work for a business or undertaking conducted by the Commonwealth, or are employees of the Commonwealth:
(i) at the request or direction of the Commonwealth; or
(ii) for the benefit of the Commonwealth; or
(iii) by or under a law of the Commonwealth or of a Territory (other than the Australian Capital Territory, the Northern Territory or Norfolk Island); or
(b) where the declaration specifies that persons of that class are carrying out work for a business or undertaking conducted by a public authority specified in the declaration, or are employees of a public authority specified in the declaration:
(i) at the request or direction of the public authority; or
(ii) for the benefit of the public authority.

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(2H) A declaration under subsection (2F) has effect according to its terms.

(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.

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Division 4—Application of Act

10 Act binds the Commonwealth

(1) This Act binds the Commonwealth.

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

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

11 Extraterritorial application

This Act extends to every external Territory.

12 Scope

The Commonwealth and public authorities

(1) This Act applies in relation to each of the following:

(a) if the Commonwealth is conducting a business or undertaking:

(i) the Commonwealth; and

(ii) an officer of the Commonwealth;

(b) if a public authority is conducting a business or undertaking:

(i) the public authority; and

(ii) an officer of the public authority;

(c) to the extent that a person is a worker and carries out work in any capacity for a business or undertaking conducted by the Commonwealth or a public authority—that person;

(d) to the extent that a person is a worker and is taken to carry out work for a business or undertaking conducted by the Commonwealth or a public authority because of section 7—that person;

(e) if work is carried out by a worker at a place (as defined for the purposes of section 8) for a business or undertaking conducted by the Commonwealth or a public authority—that place;

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(f) if work is taken to be carried out by a worker at a place (as defined for the purposes of section 8) for a business or undertaking conducted by the Commonwealth or a public authority because of section 7—that place.

(2) For the purposes of this Act, the administration of the Australian Capital Territory, the Northern Territory or Norfolk Island is not a business or undertaking conducted by the Commonwealth.

(3) A corresponding WHS law does not apply in relation to the Commonwealth or a public authority.

Non-Commonwealth licensees

(4) During the transitional period for a non-Commonwealth licensee, this Act applies in relation to each of the following:

(a) if the non-Commonwealth licensee is conducting a business or undertaking—the non-Commonwealth licensee;

(b) to the extent that a person carries out work in any capacity for the non-Commonwealth licensee—the person;

(c) if work is carried out at a place (as defined for the purposes of section 8) for a business or undertaking conducted by the non-Commonwealth licensee—that place.

(5) During the transitional period for a non-Commonwealth licensee, a corresponding WHS law does not apply in relation to the non-Commonwealth licensee.

(6) The ***transitional period*** for a non-Commonwealth licensee:

(a) begins on the commencement of this Act; and

(b) ends on a day prescribed by the regulations for the non-Commonwealth licensee, or a class of non-Commonwealth licensees of which the non-Commonwealth licensee is a member.

(7) The regulations may make provisions of a transitional, application or saving nature relating to non-Commonwealth licensees.

(8) Without limiting subsection (7), regulations made for the purposes of that subsection may make modifications to the provisions of this Act, the *Occupational Health and Safety Act 1991* and any

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instrument made under this Act or the *Occupational Health and Safety Act 1991*.

Concurrent operation

(9) Both this Act and a corresponding WHS law may apply in relation to a worker or a workplace.

Double jeopardy

(10) If a person is convicted of an offence under this Act in relation to an act or omission, the person is not liable to be convicted of the same offence under a corresponding WHS law in relation to the same act or omission.

(11) If a person is convicted of an offence under a corresponding WHS law in relation to an act or omission, the person is not liable to be convicted of the same offence under this Act in relation to the same act or omission.

(12) If a monetary penalty is imposed on a person under this Act in relation to an act or omission that contravenes a WHS civil penalty provision, the person is not liable to a monetary penalty under a corresponding WHS law for the contravention of the same WHS civil penalty provision under that law by the same act or omission.

(13) If a monetary penalty is imposed on a person under a corresponding WHS law in relation to an act or omission that contravenes a WHS civil penalty provision, the person is not liable to a monetary penalty under this Act for the contravention of the same WHS civil penalty provision under this Act by the same act or omission.

12A Act does not apply to certain vessels, structures and facilities

(1) This Act does not apply in relation to any vessel (including a ship or a barge) or any structure to which the *Occupational Health and Safety (Maritime Industry) Act 1993* applies.

(2) This Act does not apply in relation to a facility to which Schedule 3 to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* applies.

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12B Duty to consult etc. where law of more than one jurisdiction applies to the same matter

If a person has a duty in relation to a matter under this Act and another person has a duty under a corresponding WHS law in relation to the same matter, the person who has the duty under this Act must consult, co-operate and co-ordinate activities with the other person.

12C Act not to prejudice national security

(1) Nothing in this Act requires or permits a person to take any action, or to refrain from taking any action, that would be, or could reasonably be expected to be, prejudicial to Australia's national security.

(2) Without limiting the generality of subsection (1), the Director-General of Security may, by instrument in writing, declare that specified provisions of this Act do not apply, or apply subject to modifications set out in the declaration, in relation to a person carrying out work for the Director-General of Security.

(2A) Without limiting the generality of subsection (1), the Director-General of ASIS may, by instrument in writing, declare that specified provisions of this Act do not apply, or apply subject to modifications set out in the declaration, in relation to a person carrying out work for the Director-General of ASIS.

(3) A declaration under subsection (2) or (2A) may only be made with the approval of the Minister and, if made with that approval, has effect according to its terms.

(4) In administering the Australian Security Intelligence Organisation and in the exercise of the power under subsection (2), the Director-General of Security must take into account the need to promote the objects of this Act to the greatest extent consistent with the maintenance of Australia's national security.

(5) In administering the Australian Secret Intelligence Service and in the exercise of the power under subsection (2A), the Director-General of ASIS must take into account the need to

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promote the objects of this Act to the greatest extent consistent with the maintenance of national security.

12D Act not to prejudice Australia's defence

(1) Nothing in this Act requires or permits a person to take any action, or to refrain from taking any action, that would be, or could reasonably be expected to be, prejudicial to Australia's defence.

(2) Without limiting the generality of subsection (1), the Chief of the Defence Force may, by instrument in writing, declare that specified provisions of this Act do not apply, or apply subject to such modifications as are set out in the declaration, in relation to:

(a) a specified activity; or

(b) a specified member of the Defence Force; or

(c) members of the Defence Force included in a specified class of such members.

(3) A declaration under subsection (2) may only be made with the approval of the Minister and, if made with that approval, has effect according to its terms.

(4) In the exercise of the power under subsection (2), the Chief of the Defence Force must take into account the need to promote the objects of this Act to the greatest extent consistent with the maintenance of Australia's defence.

12E Act not to prejudice certain police operations

(1) Nothing in this Act requires or permits a person to take any action, or to refrain from taking any action, that would be, or could reasonably be expected to be, prejudicial to:

(a) an existing or future covert operation of the Australian Federal Police; or

(b) an existing or future international operation of the Australian Federal Police.

Note 1: Under section 12C, this Act does not require or permit a person to take action or refrain from taking action if that action would be, or could reasonably be expected to be, prejudicial to Australia's national security. This might occur, for example, where the Australian Federal

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Police work in cooperation with an intelligence agency or respond to an imminent terrorist threat.

Note 2: Under section 12D, this Act does not require or permit a person to take action or refrain from taking action if that action would be, or could reasonably be expected to be, prejudicial to Australia's defence.

(2) In this section:

AFP appointee has the same meaning as in the *Australian Federal Police Act 1979*.

covert operation means the performance of a function or service under section 8 of the *Australian Federal Police Act 1979* where knowledge of the operation by an unauthorised person, may:

(a) reduce the effectiveness of the performance of the function or service; or

(b) expose a person to the danger of physical harm or death arising from the actions of another person.

Note: A covert operation might, for example, include an undercover operation to identify those involved in drug trafficking, but would not include general duties policing.

international operation means an operation to maintain order in a foreign country where:

(a) because of the environment in which the operation is undertaken, it is not reasonably practicable to eliminate risks to the health and safety of an AFP appointee involved in the operation; and

(b) the Commissioner of the Australian Federal Police has taken all steps reasonably practicable to minimise risks to the health and safety of an AFP appointee involved in the operation.

unauthorised person in relation to a covert operation, means a person, including an AFP appointee, who is not involved in the approval, planning or execution of the operation.

12F Interaction with Commonwealth criminal law

(1) Section 4AB of the *Crimes Act 1914* does not apply to the provisions of this Act.

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(2) Strict liability applies to each physical element of each offence under this Act, unless otherwise stated.

(3) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category A) applies to an offence against this Act.

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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 1 duty

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

16 More than 1 person can have a duty

(1) More than 1 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 1 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.

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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.

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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.

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(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.

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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.

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(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.

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(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) to (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) to (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.

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(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

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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) to (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) to (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

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(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) to (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) to (e).

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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).

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(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) to (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) to (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:

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(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).

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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

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(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

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

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

(a) reporting notifiable incidents;

(b) consulting with workers;

(c) ensuring compliance with notices issued under this Act;

(d) ensuring the provision of training and instruction to workers about work health and safety;

(e) ensuring that health and safety representatives receive their entitlements to training.

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.

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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.

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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.

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.

(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.

(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

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

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.

(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.

(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.

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.

(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.

(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

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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.

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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:

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(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.

Penalty:
(a) In the case of an individual—$10 000.
(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.

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Example: The written notice can be given by facsimile, 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.

Penalty:
   (a) In the case of an individual—$5000.
   (b) In the case of a body corporate—$25 000.

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.

Penalty:
   (a) In the case of an individual—$10 000.
   (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:

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(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.

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.

Penalty:

(a) In the case of an individual—$50 000.

(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.

Penalty:

(a) In the case of an individual—$20 000.

(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:

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(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.

Penalty:

(a) In the case of an individual—$20 000.

(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.

Penalty:

(a) In the case of an individual—$20 000.

(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.

Penalty:

(a) In the case of an individual—$20 000.

(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:

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(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.

Penalty:

(a) In the case of an individual—$20 000.

(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.

Penalty:

(a) In the case of an individual—$20 000.

(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.

Penalty:

(a) In the case of an individual—$20 000.

(b) In the case of a body corporate—$100 000.

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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.

Penalty:

(a) In the case of an individual—$20 000.

(b) In the case of a body corporate—$100 000.

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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.

Penalty:

(a) In the case of an individual—$20 000.

(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.

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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;

(f) when carrying out any other activity prescribed by the regulations for the purposes of this section.

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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 1 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 1 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 1 or more health and safety representatives.

(3) A work group may be determined for workers at 1 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.

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(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.

(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.

   Penalty:
   (a) In the case of an individual—$10 000.
   (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.

   Penalty:
   (a) In the case of an individual—$2000.
   (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

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practicable after the negotiations are completed, notify the workers of the outcome of the negotiations and of the variation (if any) to the agreement.

Penalty:

(a) In the case of an individual—$2000.

(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.

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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 1 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 1 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.

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(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.

Penalty:

(a) In the case of an individual—$10 000.

(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.

Penalty:

(a) In the case of an individual—$2000.

(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.

Penalty:

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(a) In the case of an individual—$2000.
(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.

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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.

Penalty:

(a) In the case of an individual—$10 000.

(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.

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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 a court 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.

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(3) If the court is satisfied that a ground in subsection (1) is made out, the court 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.

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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

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

(d) with the consent of 1 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:

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(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:

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(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 1 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.

Penalty:

(a) In the case of an individual—$10 000.

(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.

Penalty:

(a) In the case of an individual—$10 000.

(b) In the case of a body corporate—$50 000.

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(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.

Penalty:

(a) In the case of an individual—$10 000.

(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)(g).

(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

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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 1 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.

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(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).

Penalty:

(a) In the case of an individual—$10 000.

(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

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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.

Penalty:

(a) In the case of an individual—$2000.

(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.

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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.

Penalty:

(a) In the case of an individual—$5000.

(b) In the case of a body corporate—$25 000.

(1A) Section 4K of the *Crimes Act 1914* does not apply in relation to the offence in subsection (1).

(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) to (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.

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(3) If there are 2 or more health and safety representatives at a workplace, those representatives may choose 1 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.

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.

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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.

Penalty:

(a) In the case of an individual—$10 000.

(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.

Penalty:

(a) In the case of an individual—$10 000.

(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.

Penalty:

(a) In the case of an individual—$10 000.

(b) In the case of a body corporate—$50 000.

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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 1 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.

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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.

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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

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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.

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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.

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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.

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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.

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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.

Penalty:

(a) In the case of an individual—$5000.

(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.

Penalty:

(a) In the case of an individual—$5000.

(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.

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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.

Penalty:

(a) In the case of an individual—$50 000.

(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.

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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.

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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 a prisoner in custody in a prison or police gaol.

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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.

Penalty:

(a) In the case of an individual—$100 000.

(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.

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

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:

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(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

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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

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

Penalty:

(a) In the case of an individual—$100 000.

(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

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assisted another person to engage in discriminatory conduct for a prohibited reason.

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

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.

Penalty:

(a) In the case of an individual—$100 000.

(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.

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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.

Penalty:

(a) In the case of an individual—$100 000.

(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.

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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) to (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 re-employed 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.

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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 a court for an order under this section.

(2) The court may make 1 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 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 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 re-employed 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 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

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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 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.

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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 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 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.

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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 respect of 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.

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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

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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.

Penalty:

(a) In the case of an individual—$10 000.

(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.

Note 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.

Note 2: The use or disclosure of personal information obtained under this section is regulated under the *Privacy Act 1988*.

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.

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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*.

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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, 1 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.

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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.

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.

WHS civil penalty provision.

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.

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.

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WHS civil penalty provision.

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.

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.

Penalty: $10 000.

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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.

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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 the Fair Work Act.

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 the Fair Work Act.

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.

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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 the Fair Work Act;

(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 an organisation that is registered, or taken to be registered, under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth.

(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.

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(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

(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

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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 1 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.

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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 1 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 1 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;

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(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.

(6) This section applies despite section 595 of the Fair Work Act.

143 Contravening order made to deal with dispute

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

WHS civil penalty provision.

Penalty:

(a) In the case of an individual—$10 000.

(b) In the case of a body corporate—$50 000.

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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.

Penalty:

(a) In the case of an individual—$10 000.

(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.

Penalty:

(a) In the case of an individual—$10 000.

(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.

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WHS civil penalty provision.

Penalty: $10 000.

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.

Penalty:

(a) In the case of an individual—$10 000.

(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

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

(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.

Penalty:

(a) In the case of an individual—$10 000.

(b) In the case of a body corporate—$50 000.

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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.

Penalty: $2000.

(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 a State or Territory industrial law (no matter when in force) cancelled or suspended; or

(c) the union ceases to be an organisation that is registered, or taken to be registered, under the *Fair Work (Registered Organisations) Act 2009*.

WHS civil penalty provision.

Penalty:

(a) In the case of an individual—$5000.

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(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.

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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.

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154 Delegation by regulator

(1) The regulator may, by instrument in writing, delegate a power or function under this Act other than this power of delegation to:

(a) a member of the staff of the regulator who is an SES employee or an acting SES employee; or

(b) an inspector; or

(c) a member of the staff of the regulator prescribed by regulations.

(2) A delegation under this section may be made subject to such conditions as the regulator thinks fit.

Note: For further provisions relating to delegations and the revocation of delegations, see the *Acts Interpretation Act 1901*.

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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 1 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

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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.

Penalty:

(a) In the case of an individual—$10 000.

(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.

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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) a member of the staff of the regulator;

(b) a person who is appointed as an inspector under a corresponding WHS law of a State;

(c) a person in a prescribed class of persons.

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.

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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.

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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 monitor compliance with this Act.

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.

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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.

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(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 section 163 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;

(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.

Penalty:

(a) In the case of an individual—$10 000.

(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.

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165A Powers relating to electronic equipment

(1) The powers of an inspector who enters a workplace under this Division include the power to operate electronic equipment on the premises to see whether:

(a) the equipment; or

(b) a disk, tape or other storage device that:

(i) is on the premises; and

(ii) can be used with the equipment or is associated with it;

contains information relevant to whether this Act has been complied with.

(2) The powers of an inspector who enters a workplace under this Division include the following powers in relation to information found in the exercise of the power under subsection (1):

(a) if entry to the premises is under a warrant—the power to seize the equipment and the disk, tape or other storage device referred to in that subsection;

(b) the power to operate electronic equipment on the premises to put the information in documentary form and remove the documents so produced from the premises;

(c) the power to operate electronic equipment on the premises to transfer the information to a disk, tape or other storage device that:

(i) is brought to the premises for the exercise of the power; or

(ii) is on the premises and the use of which for that purpose has been agreed in writing by the occupier of the premises;

and remove the disk, tape or other storage device from the premises.

(3) An inspector may operate electronic equipment as mentioned in subsection (1) or (2) only if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

(4) An inspector may seize equipment or a disk, tape or other storage device as mentioned in subsection (2)(a) only if:

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(a) it is not practicable to put the information in documentary form as mentioned in subsection (2)(b) or to transfer the information as mentioned in subsection (2)(c); or

(b) possession of the equipment or the disk, tape or other storage device by the occupier could constitute an offence against a law of the Commonwealth.

165B Expert assistance to operate electronic equipment

(1) This section applies to premises to which a warrant relates.

Securing equipment

(2) If an inspector believes on reasonable grounds that:

(a) there is on the premises evidence of the kind specified in the warrant that may be accessible by operating electronic equipment on the premises; and

(b) expert assistance is required to operate the equipment; and

(c) if he or she does not take action under this subsection, the evidence may be destroyed, altered or otherwise interfered with;

he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or other means.

(3) The inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to secure the equipment and of the fact that the equipment may be secured for up to 24 hours.

Period equipment may be secured

(4) The equipment may be secured:

(a) until the 24-hour period ends; or

(b) until the equipment has been operated by the expert;

whichever happens first.

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Extensions

(5) If an inspector believes on reasonable grounds that the equipment needs to be secured for more than 24 hours, he or she may apply to a magistrate for an extension of that period.

(6) The inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.

(7) The provisions of this Division relating to the issue of warrants apply, with such modifications as are necessary, to the issue of an extension.

(8) The 24-hour period may be extended more than once.

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.

Subdivision 2—Search warrants

167 Search warrants

(1) An inspector may apply to a magistrate for a search warrant for a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

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(3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

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

(4) The magistrate may issue a search warrant only if the magistrate is satisfied there are reasonable grounds for suspecting:

(a) there is a particular thing or activity (the ***evidence***) that may provide evidence of an offence against this Act; and

(b) the evidence is, or may be within the next 72 hours, at the place.

(5) The search warrant must state:

(a) that a stated inspector may, with necessary and reasonable help and force, enter the place and exercise the inspector's compliance powers; and

(b) the offence for which the search warrant is sought; and

(c) the evidence that may be seized under the search warrant; and

(d) the hours of the day or night when the place may be entered; and

(e) the date, within 7 days after the search warrant's issue, the search warrant ends.

168 Announcement before entry on warrant

(1) Before executing a search warrant, the inspector named in the warrant or an assistant to the inspector must:

(a) announce that he or she is authorised by the warrant to enter the place; and

(b) give any person at the place an opportunity to allow that entry.

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

(a) the safety of any person; or

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

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

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

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

(b) give that person a copy of the execution copy of the warrant.

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

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(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.

Penalty:

(a) In the case of an individual—$10 000.

(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 or Part 8 on the ground

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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, if the person is an individual, none of the following is admissible in evidence in civil or criminal proceedings against the person:

(a) the answer to the question;

(b) the production of the information or document;

(c) any information, document or thing obtained as a direct or indirect consequence of answering the question or producing the 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:

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(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 section 163 may seize anything (including a document) at the place if the inspector reasonably believes the thing is evidence of an offence against this Act.

(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;

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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

Example 1: Sealing a thing and marking it to show access to it is restricted.

Example 2: 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.

Penalty:

(a) In the case of an individual—$10 000.

(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.

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(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).

Penalty:

(a) In the case of an individual—$10 000.

(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 Commonwealth 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.

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(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 Commonwealth in storing or disposing of a thing forfeited under subsection (1)(c) may be recovered in a court as a debt due to the Commonwealth 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.

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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.

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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 Commonwealth 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; or
  (b) for an offence against this Act brought against the person claiming compensation.

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(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.

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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 his or her 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 require the person to give evidence of its correctness.

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

Penalty: $10 000.

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

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.

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187 Attendance of inspector at coronial inquests

Note: In some jurisdictions, an inspector may attend coronial inquests and examine witnesses.

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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.

Penalty:

(a) In the case of an individual—$10 000.
(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, recklessly hold himself or herself out to be an inspector.

Penalty: $10 000.

190 Offence to assault, threaten or intimidate inspector

A person commits an offence if:

(a) the person engages in conduct; and
(b) the person intends, by engaging in that conduct, to directly or indirectly assault, threaten or intimidate another person; and
(c) the other person is an inspector or a person assisting an inspector.

Penalty:

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

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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

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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.

Penalty:

(a) In the case of an individual—$50 000.

(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.

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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).

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(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 1 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.

Penalty:

(a) In the case of an individual—$100 000.

(b) In the case of a body corporate—$500 000.

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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.

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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.

Penalty:

(a) In the case of an individual—$50 000.

(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 1 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.

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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.

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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 facsimile 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.

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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.

Penalty:

(a) In the case of an individual—$5000.

(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.

Penalty:

(a) In the case of an individual—$5000.

(b) In the case of a body corporate—$25 000.

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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.

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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 a 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.

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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(3) 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.

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Penalty:

(a) In the case of an individual—$50 000.

(b) In the case of a body corporate—$250 000.

220 Contravention of WHS undertaking

(1) The regulator may apply to a 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 1 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 Commonwealth:

(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.

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(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.

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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***).

Reviewable decisions

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
1	Section 54(2) (decision following failure to commence negotiations)	(1) A worker whose interests are affected by the decision or his or her representative appointed for the purpose of section 52(1)(b). (2) A person conducting a business or undertaking whose interests are affected by the decision. (3) A health and safety representative who represents a worker whose interests are affected by the decision.
2	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. (2) A health and safety representative whose interests are affected by the decision.

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Reviewable decisions

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
3	Section 76(6) (decision relating to health and safety committee)	(1) A worker whose interests are affected by the decision. (2) A person conducting a business or undertaking whose interests are affected by the decision. (3) A health and safety representative who represents a worker whose interests are affected by the decision.
4	Section 102 (decision on review of provisional improvement notice)	(1) The person to whom the provisional improvement notice was issued. (2) The health and safety representative who issued the provisional improvement notice. (3) A worker whose interests are affected by the decision. (4) A health and safety representative who represents a worker whose interests are affected by the decision. (5) A person conducting a business or undertaking whose interests are affected by the decision.
5	Section 179 (forfeiture of thing)	The person entitled to the thing.
6	Section 180 (Return of seized things)	The person entitled to the thing.

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Reviewable decisions

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
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)	(1) The person to whom the notice was issued. (2) The person with management or control of the workplace, plant or substance. (3) A person conducting a business or undertaking whose interests are affected by the decision. (4) A worker whose interests are affected by the decision. (5) A health and safety representative who represents a worker whose interests are affected by the decision.

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Reviewable decisions		
Item	**Provision under which reviewable decision is made**	**Eligible person in relation to reviewable decision**
		(6) A health and safety representative who gave a direction under section 85 to cease work, that is relevant to the prohibition notice.
10	Section 198 (issue of a non-disturbance notice)	(1) The person to whom the notice was issued. (2) The person with management or control of the workplace. (3) A person conducting a business or undertaking whose interests are affected by the decision. (4) A worker whose interests are affected by the decision. (5) A health and safety representative who represents a worker whose interests are affected by the decision.
11	Section 201 (issue of subsequent notice)	(1) The person to whom the notice was issued. (2) The person with management or control of the workplace. (3) A person conducting a business or undertaking whose interests are affected by the decision. (4) A worker whose interests are affected by the decision. (5) A health and safety representative who represents a worker whose interests are affected by the decision.

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Reviewable decisions		
Item	**Provision under which reviewable decision is made**	**Eligible person in relation to reviewable decision**
12	Section 207 (Decision of regulator to vary or cancel notice)	(1) The person to whom the notice was issued. (2) The person with management or control of the workplace. (3) A person conducting a business or undertaking whose interests are affected by the decision. (4) A worker whose interests are affected by the decision. (5) A health and safety representative who represents a worker whose interests are affected by the decision. (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.
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; or

(b) giving, suspending, revoking or refusing to give a direction, approval, consent or permission; or

(c) issuing, suspending, revoking or refusing to issue an authorisation; or

(d) imposing a condition; or

(e) making a declaration, demand or requirement; or

(f) retaining, or refusing to deliver up, a thing; or

(g) doing or refusing to do any other act or thing.

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(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.

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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.

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(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 on internal review

(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 an 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 1 working day after the reviewer receives the application.

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(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.

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Division 3—External review

229 Application for external review

(1) An eligible person may apply to the Fair Work 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 external review body to give the eligible person a statement of reasons, within 14 days after the day on which the statement is provided.

(3) The Fair Work Commission may do any of the following in relation to the decision to which the application relates:

(a) confirm the decision;

(b) vary the decision;

(c) set aside the decision and make a decision in substitution for the decision set aside.

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Part 13—Legal proceedings

Division 1—General matters

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).

(2) An authorisation under subsection (1)(b) is sufficient authority to continue proceedings in any case where a court amends the charge, warrant or summons.

(3) 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.

(4) Nothing in this section affects the ability of the Director of Public Prosecutions to bring proceedings for an offence against this Act.

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:

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(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.

(3) If the regulator advises the person that an investigation has been conducted and 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 as soon as is practicable as to whether the Director considers that a prosecution should be brought.

(5) The regulator must:
(a) notify the following persons in writing whether the Director of Public Prosecutions considers that a prosecution should be brought:
(i) the person who made the request;
(ii) the person who the applicant believes committed the offence; and
(b) must include in the notice given to the person who made the request a summary of the reasons given by the Director of Public Prosecutions for his or her decision.

(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 information is given under subsection (5).

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(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, or an official inquiry 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 in which the proceedings are brought is satisfied that the evidence could not reasonably have been discovered within the relevant limitation period.

(3) In this section:

official inquiry means:

(a) a Royal Commission within the meaning of the *Royal Commissions Act 1902*; or

(b) a Royal Commission of a State or Territory; or

(c) a commission of inquiry of the Commonwealth or of a State or Territory; or

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(d) a court, board or commission of inquiry conducted under regulations made under the *Defence Act 1903*, the *Naval Defence Act 1910* or the *Air Force Act 1923*; or

(e) any other form of inquiry prescribed by regulations for the purposes of this paragraph.

233 Multiple contraventions of health and safety duty provision

(1) Two 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.

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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

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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 a 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, 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.

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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.

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241 Training orders

The court may make an order requiring the person to undertake or arrange for 1 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.

Penalty:

(a) In the case of an individual—$50 000.

(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.

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Division 3—Infringement notices

243 Infringement notices

(1) If an inspector has reasonable grounds to believe that a person has contravened a provision enforceable under this Division, the inspector may give to the person an infringement notice for the alleged contravention.

(2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.

(3) A single infringement notice must relate only to a single contravention of a single provision enforceable under this Division.

(4) The regulations may prescribe provisions that are ***enforceable*** under this Division.

243A Matters to be included in an infringement notice

(1) An infringement notice must:
- (a) be identified by a unique number; and
- (b) state the day on which it is given; and
- (c) state the name of the person to whom the notice is given; and
- (d) state the name and position of the person who gave the notice; and
- (e) give brief details of the alleged contravention, including:
  - (i) the provision that was allegedly contravened; and
  - (ii) the maximum penalty that a court could impose for the contravention; and
  - (iii) the time (if known) and day of, and the place of, the alleged contravention; and
- (f) state the amount that is payable under the notice; and
- (g) give an explanation of how payment of the amount is to be made; and
- (h) state that, if the person to whom the notice is given pays the amount within 28 days after the day the notice is given, then (unless the notice is withdrawn):

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(i) if the provision is an offence provision—the person will not be liable to be prosecuted in a court for the alleged contravention; and

(ii) if the provision is a WHS civil penalty provision—proceedings seeking an order under section 259 will not be brought in relation to the alleged contravention; and

(i) state that payment of the amount is not an admission of guilt or liability; and

(j) state that the person may apply to the regulator to have the period in which to pay the amount extended; and

(k) state that the person may choose not to pay the amount and, if the person does so:

(i) if the provision is an offence provision—the person may be prosecuted in a court for the alleged contravention; and

(ii) if the provision is a WHS civil penalty provision—proceedings seeking an order under section 259 may be brought in relation to the alleged contravention; and

(l) set out how the notice can be withdrawn; and

(m) state that if the notice is withdrawn:

(i) any amount paid under the notice must be refunded; and

(ii) if the provision is an offence provision—the person may be prosecuted in a court for the alleged contravention; and

(iii) if the provision is a WHS civil penalty provision—proceedings seeking an order under section 259 may be brought in relation to the alleged contravention; and

(n) state that the person may make written representations to the regulator seeking the withdrawal of the notice.

(2) For the purposes of subsection (1)(f), the amount to be stated in an infringement notice for the alleged contravention of a provision by a person must be equal to the amount prescribed for the contravention of the provision by the person.

(3) The amount prescribed for the contravention of a provision by a person must be no more than one-fifth of the maximum penalty that a court could impose on the person for a contravention of the provision.

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243B Extension of time to pay amount

(1) A person to whom an infringement notice has been given may apply to the regulator for an extension of the period referred to in section 243A(1)(h).

(2) If the application is made before the end of that period, the regulator may, in writing, extend that period. The regulator may do so before or after the end of that period.

(3) If the regulator extends that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in section 243A(1)(h) is taken to be a reference to that period so extended.

(4) If the regulator does not extend that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in section 243A(1)(h) is taken to be a reference to the period that ends on the later of the following days:

(a) the day that is the last day of the period referred to in section 243A(1)(h);

(b) the day that is 7 days after the day the person was given notice of the regulator's decision not to extend.

(5) The regulator may extend the period more than once under subsection (2).

243C Withdrawal of an infringement notice

Representations seeking withdrawal of notice

(1) A person to whom an infringement notice has been given may make written representations to the regulator seeking the withdrawal of the notice.

Withdrawal of notice

(2) The regulator may withdraw an infringement notice given to a person (whether or not the person has made written representations seeking the withdrawal).

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(3) When deciding whether or not to withdraw an infringement notice (the ***relevant infringement notice***), the regulator:

(a) must take into account any written representations seeking the withdrawal that were given by the person to the regulator; and

(b) may take into account the following:

(i) whether a court has previously imposed a penalty on the person for contravention of a provision enforceable under this Division;

(ii) the circumstances of the alleged contravention;

(iii) whether the person has paid an amount, stated in an earlier infringement notice, for contravention of a provision enforceable under this Division if the contravention is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention in the relevant infringement notice;

(iv) any other matter the inspector considers relevant.

Notice of withdrawal

(4) Notice of the withdrawal of the infringement notice must be given to the person. The withdrawal notice must state:

(a) the person's name and address; and

(b) the day the infringement notice was given; and

(c) the identifying number of the infringement notice; and

(d) that the infringement notice is withdrawn; and

(e) either:

(i) if the provision that was allegedly contravened is an offence provision—that the person may be prosecuted in a court for the alleged contravention; or

(ii) if the provision that was allegedly contravened is a WHS civil penalty provision—that proceedings seeking an order under section 259 may be brought in relation to the alleged contravention.

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Refund of amount if infringement notice withdrawn

(5) If:

(a) an authorised person withdraws the infringement notice; and

(b) the person has already paid the amount stated in the notice;

the Commonwealth must refund to the person an amount equal to the amount paid.

243D Effect of payment of amount

(1) If the person to whom an infringement notice for an alleged contravention of a provision is given pays the amount stated in the notice before the end of the period referred to in section 243A(1)(h):

(a) any liability of the person for the alleged contravention is discharged; and

(b) either:

(i) if the provision is an offence provision—the person may not be prosecuted in a court for the alleged contravention; or

(ii) if the provision is a WHS civil penalty provision—proceedings seeking an order under section 259 may not be brought against the person in relation to the alleged contravention; and

(c) the person is not regarded as having admitted guilt or liability for the alleged contravention; and

(d) if the provision is an offence provision—the person is not regarded as having been convicted of the alleged offence.

(2) Subsection (1) does not apply if the notice has been withdrawn.

243E Effect of this Division

This Division does not:

(a) require an infringement notice to be given to a person for an alleged contravention of a provision enforceable under this Division; or

(b) affect the liability of a person for an alleged contravention of a provision enforceable under this Division if:

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(i) the person does not comply with an infringement notice given to the person for the contravention; or

(ii) an infringement notice is not given to the person for the contravention; or

(iii) an infringement notice is given to the person for the contravention and is subsequently withdrawn; or

(c) prevent the giving of 2 or more infringement notices to a person for an alleged contravention of a provision enforceable under this Division; or

(d) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened a provision enforceable under this Division.

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Division 4—Offences by bodies corporate

244 Imputing conduct to bodies corporate

Note: Corporate criminal responsibility is dealt with in Part 2.5 of the *Criminal Code*.

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Division 5—The Commonwealth

245 Offences and the Commonwealth

(1) If the Commonwealth is guilty of an offence against this Act, the penalty to be imposed on the Commonwealth is the penalty applicable to a body corporate.

(2) For the purposes of this Act, any conduct engaged in on behalf of the Commonwealth by an employee, agent or officer of the Commonwealth 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 Commonwealth.

(3) If an offence under this Act requires proof of knowledge, intention or recklessness, it is sufficient in proceedings against the Commonwealth 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 Commonwealth for that offence if the person referred to in subsection (2) made that mistake of fact.

246 WHS civil penalty provisions and the Commonwealth

(1) If the Commonwealth contravenes a WHS civil penalty provision, the monetary penalty to be imposed on the Commonwealth 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 Commonwealth by an employee, agent or officer of the Commonwealth 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 Commonwealth.

(3) If a WHS civil penalty provision requires proof of knowledge, it is sufficient in proceedings against the Commonwealth for a

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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 a business or undertaking of the Commonwealth is taken to be an officer of the Commonwealth 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 Commonwealth

(1) A provisional improvement notice, improvement notice, prohibition notice, non-disturbance notice, infringement notice or notice of entry under Part 7 to be given to or served on the Commonwealth under this Act may be given to or served on the responsible agency.

(2) If an infringement notice is to be served on the Commonwealth for an offence against this Act, the responsible agency may be specified in the infringement notice.

(3) If proceedings are brought against the Commonwealth 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 Commonwealth for the offence or relating to the contravention and, subject to any relevant rules of court, the procedural rights and obligations of the Commonwealth as the accused or defendant in the proceedings are conferred or imposed on the responsible agency.

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(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 infringement notice, the agency of the Commonwealth the acts or omissions of which are alleged to contravene this Act;

(ii) in the case of a prohibition notice, the agency of the Commonwealth 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 Commonwealth with the management and control of the workplace;

(iv) in the case of a notice of entry under Part 7, the agency of the Commonwealth 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 Commonwealth:

(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.

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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

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.

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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) An infringement notice served on a public authority for an offence against this Act is taken to be an infringement 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 infringement notice is taken to be a penalty paid by its successor if the successor is a public authority.

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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 1 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 subregulation (or a regulation that is not divided into subregulations) is a ***WHS civil penalty provision*** if:

(a) the words "*WHS civil penalty provision*" and 1 or more amounts by way of monetary penalty are set out at the foot of the subregulation (or regulation); or

(b) another provision of the regulations specifies that the subregulation (or regulation) is a WHS civil penalty provision.

255 Proceedings for contravention of WHS civil penalty provision

Subject to this Division, proceedings may be brought in a 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

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(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 Proceeding 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).

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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 Commonwealth; and

(b) the regulator 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

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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.

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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.

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Part 14—General

Division 1—General provisions

268 Offence to give false or misleading information

Note: Part 7.4 of the *Criminal Code* contains offences dealing with false and misleading information.

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 Commonwealth.

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.

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Penalty:

(a) In the case of an individual—$10 000.

(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 commits an offence if:

(a) the person (the ***defendant***) intentionally discloses to another person the name of an individual; and

(b) the individual has made a complaint in relation to the person to whom the individual's name is disclosed; and

(c) the defendant knows or is reckless as to that fact.

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However, the defendant does not commit an offence if the disclosure is made with the consent of the individual or is required under a law.

Penalty:

(a) In the case of an individual—$10 000.

(b) In the case of a body corporate—$50 000.

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.

Penalty:

(a) In the case of an individual—$5000.

(b) In the case of a body corporate—$25 000.

273A Conferral of jurisdiction

(1) Jurisdiction is conferred on the following courts in relation to any civil matter arising under this Act:

(a) the Federal Court of Australia (the ***Federal Court***);

(b) the Federal Circuit Court of Australia;

(c) the Supreme Court of a State or of the Australian Capital Territory or the Northern Territory;

(d) a court of a State or Territory prescribed by the regulations for the purposes of this section.

(2) The jurisdiction conferred on the Federal Court in subsection (1) is to be exercised in the Fair Work Division of the Federal Court if:

(a) an application is made to the Federal Court under this Act; or

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(b) a writ of mandamus or prohibition or an injunction is sought in the Federal Court against the regulator, the authorising authority or an inspector; or

(c) a declaration is sought under section 21 of the *Federal Court of Australia Act 1976* in relation to a matter arising under this Act; or

(d) an injunction is sought under section 23 of the *Federal Court of Australia Act 1976* in relation to a matter arising under this Act; or

(e) an appeal is instituted in the Federal Court from a judgment of the Federal Circuit Court of Australia or a court of a State in a matter arising under this Act; or

(f) proceedings in relation to a matter arising under this Act are transferred to the Federal Court from the Federal Circuit Court of Australia; or

(g) the Federal Circuit Court of Australia or a court of a State states a case or reserves a question for the consideration of the Federal Court in a matter arising under this Act; or

(h) the High Court remits a matter arising under this Act to the Federal Court.

(3) The jurisdiction conferred on the Federal Circuit Court of Australia in subsection (1) is to be exercised in the Fair Work Division of the Federal Circuit Court of Australia if:

(a) an application is made to the Federal Circuit Court of Australia under this Act; or

(b) an injunction is sought under section 15 of the *Federal Circuit Court of Australia Act 1999* in relation to a matter arising under this Act; or

(c) a declaration is sought under section 16 of the *Federal Circuit Court of Australia Act 1999* in relation to a matter arising under this Act; or

(d) proceedings in relation to a matter arising under this Act are transferred to the Federal Circuit Court of Australia from the Federal Court; or

(e) the High Court remits a matter arising under this Act to the Federal Circuit Court of Australia.

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273B Application of the *Legislative Instruments Act 2003*

(1) The following are to be made by legislative instrument:

(a) a declaration under section 7(2F) (declaration that persons of a class are workers);

(b) a declaration under section 12D(2) (application where Act would prejudice Australia's defence);

(c) a general direction or a direction relating to a specified class of matter under section 162(1) (exercise of inspector's powers);

(d) a code of practice, or a variation or revocation of a code of practice, that is approved by the Minister under section 274(1).

(2) The following are not legislative instruments (if done by an instrument in writing):

(a) a declaration under section 12C(2) or (2A) (application where Act would prejudice Australia's national security);

(b) an approval under section 72(1)(a) (approval of course of training);

(c) a notice under section 139(1)(a) (show cause notice);

(d) a register kept under section 151 (register of WHS entry permit holders);

(e) advice or information provided in writing under section 152(c) or 160(a) (provision of advice and information by Comcare and inspectors);

(f) a direction relating to a specified matter under section 162(1) (exercise of inspector's powers);

(g) a notice under section 191(2) (improvement notice);

(h) a notice under section 195(3) (prohibition notice);

(i) a notice under section 198 (non-disturbance notice);

(j) guidelines issued under section 230(3) (prosecution of offences and acceptance of WHS undertakings);

(k) a notice under section 231(5) (notice of conclusion of Director of Public Prosecutions on possible prosecution, and reasons for conclusion).

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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.

Note: Subsection (4) is included in some jurisdictions to deal with publication and commencement of an approved code of practice. Under this Act, an approved code of practice is a legislative instrument (see section 273B(1)) and so will be registered on the Federal Register of Legislative Instruments and commence in accordance with section 12 of the *Legislative Instruments Act 2003*.

(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 a newspaper circulating generally throughout the Commonwealth.

(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.

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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.

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Division 3—Regulation-making powers

276 Regulation-making powers

(1) The Governor-General 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

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(h) prescribe a penalty for any contravention of the regulations not exceeding $30 000; or

(i) prescribe an infringement penalty for each infringement offence which must not exceed 20 per cent of the penalty for the offence which is prescribed as the infringement offence.

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Schedule 1—Application of Act to dangerous goods and high risk plant

Note: In some jurisdictions, Schedule 1 of the corresponding WHS law applies that law to work health and safety issues arising from the storage and handling of dangerous goods and the operation or use of high risk plant. This is not the case under this Act.

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Schedule 2—The regulator and local tripartite consultation arrangements and other local arrangements

Part 1—Preliminary

1 Definitions

In this Schedule:

Commission means the Safety, Rehabilitation and Compensation Commission established by section 89A of the *Safety, Rehabilitation and Compensation Act 1988*.

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Part 2—The Commission

2 Functions

For the purposes of paragraph 89B(c) of the *Safety, Rehabilitation and Compensation Act 1988*, the following additional functions are conferred on the Commission:

(a) to advise the Minister on the administration of this Act;

(b) to advise and make recommendations to the Minister on the most effective means of giving effect to the objects of this Act;

(c) to enquire into and make recommendations to the Minister on any matter relating to work health and safety referred to the Commission by the Minister;

(d) to provide a forum for consultation between Comcare and persons conducting businesses or undertakings, workers and the bodies that represent them.

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Part 3—Comcare

3 Annual reports

The annual report of Comcare for a financial year must include:

(a) statistics, with appropriate details, of each of the following:

(i) notifiable incidents of which Comcare is notified under section 38 during the year;

(ii) all investigations conducted by Comcare during the year;

(iii) all seizures made under section 175 or 176 during the year;

(iv) all improvement notices issued under section 191 during the year;

(v) all prohibition notices issued under section 195 during the year;

(vi) all non-disturbance notices issued under section 198 during the year;

(vii) all remedial action taken under section 211 or 212 during the year;

(viii) all written undertakings accepted by Comcare under section 216 during the year;

(ix) all applications for internal review made under section 224 during the year;

(x) all applications for external review made under section 229 during the year;

(xi) all infringement notices given under section 243 during the year; and

(b) details of prosecutions instituted under this Act during the year; and

(c) any other matter prescribed.

Note: Under section 90 of the *Safety, Rehabilitation and Compensation Act 1988*, details of any directions given by the Minister under section 73 of that Act must also be reported.

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Part 4—Other persons

4 Annual reports

(1) Each of the following entities must include the matters mentioned in subclause (2) in its annual report for a financial year:

(a) person or body that is an agency within the meaning of the *Financial Management and Accountability Act 1997*;

(b) a public authority.

(2) The matters are:

(a) initiatives taken during the year to ensure the health, safety and welfare of workers who carry out work for the entity; and

(b) health and safety outcomes (including the impact on injury rates of workers) achieved as a result of initiatives mentioned under paragraph (a) or previous initiatives; and

(c) statistics of any notifiable incidents of which the entity becomes aware during the year that arose out of the conduct of businesses or undertakings by the entity; and

(d) any investigations conducted during the year that relate to businesses or undertakings conducted by the entity, including details of all notices given to the entity during the year under Part 10 of this Act; and

(e) such other matters as are required by guidelines approved on behalf of the Parliament by the Joint Committee of Public Accounts and Audit.

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Schedule 3—Regulation-making powers

1 Duties

1.1 Matters relating to the way in which duties imposed by this Act are to be performed.

1.2 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.

1.3 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.

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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

6.1 The keeping and availability of records of health and safety representatives and deputy health and safety representatives.

6.2 The keeping of records in relation to incidents.

6.3 The keeping of records of specified activities, matters or things to be kept by specified persons.

6.4 The giving of notice of or information about specified activities, matters or things to the regulator, an inspector or other specified person.

7 Authorisations

7.1 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:

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(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.

7.2 The recognition of authorisations under corresponding WHS laws and exceptions to recognition.

7.3 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

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(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 Fair Work Commission to conduct reviews under the regulations.

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Endnotes

Endnote 1—Legislation history

This endnote sets out details of the legislation history of the *Work Health and Safety Act 2011*.

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Work Health and Safety Act 2011	137, 2011	29 Nov 2011	1 Jan 2012	
Fair Work Amendment Act 2012	174, 2012	4 Dec 2012	Schedule 9 (items 1333–1338): 1 Jan 2013	—
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Schedule 1 (item 560): 12 Apr 2013 (*see* s. 2(1)) Schedule 2 (item 2): *(a)*	—
Foreign Affairs Portfolio Miscellaneous Measures Act 2013	54, 2013	28 May 2013	Schedule 1 (items 3–6): Royal Assent	—

(a) Subsection 2(1) (items 2 and 3) of the *Federal Circuit Court of Australia (Consequential Amendments) Act 2013* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
2. Schedule 1	At the same time as item 1 of Schedule 1 to the *Federal Circuit Court of Australia Legislation Amendment Act 2012* commences.	12 April 2013
3. Schedule 2	Immediately after the commencement of the provision(s) covered by table item 2.	12 April 2013

Endnote 2—Amendment history

This endnote sets out the amendment history of the *Work Health and Safety Act 2011*.

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
Part 1	
Division 3	
Subdivision 1	
s. 4	am. No. 174, 2012; No. 13, 2013
Division 4	
s. 12C	am. No. 54, 2013
Part 12	
Division 3	
s. 229	am. No. 174, 2012
Part 14	
Division 1	
s. 273A	am. No. 13, 2013
s. 273B	am. No. 54, 2013
Schedule 3	
c. 14	am. No. 174, 2012

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Endnote 3—Uncommenced amendments [none]

There are no uncommenced amendments.

Endnote 4—Misdescribed amendments [none]

There are no misdescribed amendments.