



Safe Work Australia Act 2008

No. 84, 2009

Compilation No. 5

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Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Safe Work Australia Act 2008* that shows the text of the law as amended and in force on 17 August 2017 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to establish Safe Work Australia, and for related purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the *Safe Work Australia Act 2008*.

2 Commencement

- (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
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	18 September 2009
2. Sections 3 to 73	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	1 November 2009 (see F2009L03902)
Note:	This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.	

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 What this Act is about

This Act creates a body called Safe Work Australia to improve work health and safety outcomes and workers' compensation arrangements in Australia.

Safe Work Australia mainly consists of members who represent the Commonwealth, the States, the Territories, workers and employers (see section 10).

It has various functions relating to work health and safety and workers' compensation (see section 6). For example, one of its functions is to develop and evaluate a model WHS legislative framework.

The Ministers of the Commonwealth, the States and the Territories who are responsible for WHS (collectively known as the WHS Ministers) have some oversight of Safe Work Australia's activities. For example, the WHS Ministers consider whether to approve the model WHS legislative framework developed by Safe Work Australia for adoption by the Commonwealth, the States and the Territories.

Safe Work Australia has a CEO who is responsible for its administration and for assisting it to perform its functions. It is also assisted by its staff, its committees and others.

4 Definitions

In this Act:

Australian law means a law of the Commonwealth, a State or a Territory.

CEO means the Chief Executive Officer of Safe Work Australia.

Intergovernmental Agreement means the Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety between the Commonwealth, the States and the Territories, as amended from time to time.

member means a member of Safe Work Australia (including the Chair and the CEO) who is appointed under this Act.

model WHS legislative framework means any model Act, model regulations or model codes of practice relating to WHS, as amended from time to time, developed by Safe Work Australia for adoption by the Commonwealth, the States and the Territories.

Note: The model WHS legislative framework is developed by Safe Work Australia for approval by the WHS Ministers (see item 2 of the table in section 6).

Territory means the Australian Capital Territory or the Northern Territory.

voting member means a member other than the CEO.

WHS means work health and safety.

WHS Ministers means the Minister of the Commonwealth, and the Minister of each State and Territory, who is responsible, or principally responsible, for matters relating to WHS.

Part 2—Establishment and functions of Safe Work Australia

5 Establishment

- (1) Safe Work Australia is established by this section.
- (2) For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):
 - (a) Safe Work Australia is a listed entity; and
 - (b) the CEO is the accountable authority of Safe Work Australia; and
 - (c) the following persons are officials of Safe Work Australia:
 - (i) the CEO;
 - (ii) the other members;
 - (iii) the staff of Safe Work Australia referred to in section 59;
 - (iv) persons whose services are made available to Safe Work Australia under section 61; and
 - (d) the purposes of Safe Work Australia include the functions of Safe Work Australia referred to in section 6.

5A Object

The object of the establishment of Safe Work Australia is to improve national WHS outcomes and workers' compensation arrangements by providing an inclusive tripartite forum for representatives of governments, workers and employers to:

- (a) collaborate on national WHS and workers' compensation matters; and
- (b) lead the development of evidence-based national WHS and workers' compensation policies and strategies; and
- (c) promote consistency in WHS and workers' compensation arrangements across Australia.

6 Functions

Safe Work Australia has the functions set out in this table:

Functions of Safe Work Australia		
Item	Topic	The functions of Safe Work Australia are:
1	National policy and strategy	to develop, evaluate and, if necessary, revise national WHS and workers' compensation policies and supporting strategies, including the following: (a) a national WHS strategy, to be developed for approval by the WHS Ministers; (b) a national compliance and enforcement policy, to be developed for approval by the WHS Ministers, for the model WHS legislative framework; and
2	Model WHS legislative framework and other WHS material	(a) to develop, evaluate and, if necessary, revise: (i) a model WHS legislative framework, to be developed for approval by the WHS Ministers for adoption by the Commonwealth, the States and the Territories; and (ii) other material relating to WHS; and (b) to monitor the adoption by the Commonwealth, the States and the Territories of the model WHS legislative framework approved by the WHS Ministers; and
3	Workers' compensation	to develop proposals to improve workers' compensation arrangements, and to promote national consistency in such arrangements; and
4	Evidence	to: (a) collect, analyse and publish relevant data; and (b) undertake and publish research; to inform the development and evaluation of WHS and workers' compensation policies and strategies; and
5	Education and communication	to develop and implement national education and communication strategies and initiatives:

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Functions of Safe Work Australia

Item	Topic	The functions of Safe Work Australia are:
		(a) to support improvements in WHS outcomes and workers' compensation arrangements; and (b) to promote national consistency in such strategies and initiatives; and
6	Collaboration	to collaborate with the Commonwealth, the States and the Territories, and other national and international bodies, on WHS and workers' compensation policy matters of national importance; and
7	Advising the WHS Ministers	to advise the WHS Ministers on national policy matters and initiatives relating to WHS and workers' compensation; and
8	Other conferred functions	such other functions that are conferred on it by, or under, this Act or any other Commonwealth Act.

7 Performance of functions

- (1) Safe Work Australia must perform its functions in accordance with its corporate plan and operational plan.
- (2) When performing its functions, Safe Work Australia may consult with:
 - (a) governments and government bodies; and
 - (b) representatives of workers and employers; and
 - (c) other interested people, bodies and organisations.

8 Immunities and privileges

Safe Work Australia has the privileges and immunities of the Crown in the right of the Commonwealth.

Part 3—Membership of Safe Work Australia

Division 1—What this Part is about

9 What this Part is about

This Part deals with Safe Work Australia’s membership.

Division 2 sets out its membership. It also deals with the appointment of voting members (that is, members other than the CEO). (For the appointment of the CEO, see Division 2 of Part 6.)

Besides the Chair, voting members are representative members—they represent the Commonwealth, States, Territories, workers and employers. There is a special nomination process for the appointment of these members (see sections 13 to 16).

Division 3 provides for the terms and conditions on which voting members are appointed.

Division 2—Membership and appointment

10 Membership of Safe Work Australia

Membership

- (1) Safe Work Australia consists of the following members:
 - (a) the Chair;
 - (b) 1 member who represents the Commonwealth;
 - (c) 8 members, each of whom represents a different State or Territory;
 - (d) 2 members who represent the interests of workers in Australia;
 - (e) 2 members who represent the interests of employers in Australia;
 - (f) the CEO.

When membership falls below threshold

- (2) Safe Work Australia may not perform its functions if more than one-third of the voting members' offices are vacant.

11 Appointment of the Chair

Appointment by Minister

- (1) The Minister must, by written instrument, appoint a person to be the Chair.

Note: The Chair may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

Consultation of WHS Ministers

- (2) The Minister can only make the appointment if the WHS Ministers have been consulted about the appointment of the person.

12 Appointment of acting Chair

Appointment by Minister

- (1) The Minister may, by written instrument, appoint a person to act as the Chair:
 - (a) during a vacancy in the office of the Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Chair:
 - (i) is absent from duty or Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

Consultation of WHS Ministers

- (2) However, the Minister can only do so if the WHS Ministers have been consulted about the appointment of that person.

13 Appointment of the Commonwealth representative

The Minister must, by written instrument, appoint a person to be the voting member who represents the Commonwealth.

Note: The person may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

14 Appointment of each State and Territory representative

Appointment of State or Territory representative

- (1) The Minister must, by written instrument, appoint a person to be the voting member who represents a particular State or Territory.

Note: The person may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

Nomination of State or Territory representative

- (2) The Minister can only make the appointment if the person has been nominated for the appointment by the State or Territory.

15 Appointment of workers' representatives

Appointment of workers' representatives

- (1) The Minister must, by written instrument, appoint a person to be a voting member who represents workers in Australia.

Note: The person may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

Nomination of workers' representatives

- (2) The Minister can only make the appointment if:
- (a) the person has been nominated for the appointment by an authorised body; and
 - (b) the Minister agrees to the person being appointed.
- (3) If an authorised body nominates a person but the Minister does not agree to the person being appointed, an authorised body (which may be the same or a different body) may nominate another person for the appointment.

Authorised body

- (4) The Minister may authorise a body for the purpose of this section if the Minister considers that the body represents the interests of workers in Australia.
- (5) If the Minister does so, the body is an ***authorised body***.

16 Appointment of employers' representatives

Appointment of employers' representatives

- (1) The Minister must, by written instrument, appoint a person to be a voting member who represents employers in Australia.

Note: The person may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

Nomination of employers' representatives

- (2) The Minister can only make the appointment if:
 - (a) the person has been nominated for the appointment by an authorised body; and
 - (b) the Minister agrees to the person being appointed.
- (3) If an authorised body nominates a person but the Minister does not agree to the person being appointed, an authorised body (which may be the same or a different body) may nominate another person for the appointment.

Authorised body

- (4) The Minister may authorise a body for the purpose of this section if the Minister considers that the body represents the interests of employers in Australia.
- (5) If the Minister does so, the body is an **authorised body**.

Division 3—Terms and conditions of voting members

Subdivision A—Terms and conditions that apply to all voting members

17 Basis and period of appointment of all voting members

Part-time basis

- (1) A voting member holds office on a part-time basis.

Period of appointment

- (2) A voting member holds office for the period specified in his or her instrument of appointment. The period must not exceed 3 years.

Note: The voting member may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

18 Disclosure of interests

- (1) A disclosure by a voting member under section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) must be made to the Minister.
- (2) Subsection (1) applies in addition to any rules made for the purposes of that section.
- (3) For the purposes of this Act and the *Public Governance, Performance and Accountability Act 2013*, a voting member is taken not to have complied with section 29 of that Act if the voting member does not comply with subsection (1) of this section.

19 Resignation of voting members

- (1) A voting member may resign his or her appointment by giving the Minister a written resignation.

- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

20 Termination of appointment of voting members

Misbehaviour or incapacity

- (1) The Minister may terminate the appointment of a voting member:
- (a) for misbehaviour; or
 - (b) if the member is unable to perform the duties of his or her office because of physical or mental incapacity.

Bankruptcy etc.

- (2) The Minister may terminate the appointment of a voting member if:
- (a) the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the member is absent, except on leave of absence, from 3 consecutive meetings of Safe Work Australia; or
 - (c) the member fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.

Nominating body's request

- (3) The Minister must terminate the appointment of a voting member who represents a State, a Territory, workers or employers if the

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body that nominated the member requests the Minister, in writing, to terminate that appointment.

Note: See sections 14 to 16 for the nomination process.

Subdivision B—Terms and conditions that apply only to the Chair

21 Remuneration of the Chair

- (1) The Chair is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Chair is to be paid the remuneration that is prescribed by the regulations.
- (2) The Chair is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

22 Leave of absence of the Chair

The Minister may grant leave of absence to the Chair on the terms and conditions as to remuneration or otherwise that the Minister determines.

23 Other terms and conditions of the Chair

The Chair holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

Subdivision C—Terms and conditions etc. that apply only to other voting members

24 Leave of absence of other voting members

The Chair may grant leave of absence to any other voting member.

25 Application of the Remuneration Tribunal Act

The office of a voting member (other than the Chair) is not a public office within the meaning of the *Remuneration Tribunal Act 1973*.

Part 4 Planning by Safe Work Australia

Division 1 What this Part is about

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Part 4—Planning by Safe Work Australia

Division 1—What this Part is about

26 What this Part is about

This Part is about Safe Work Australia’s corporate plan and operational plan. These plans impact on how Safe Work Australia, and its CEO, perform their respective functions (see subsections 7(2) and 45(2)).

Division 2 deals with the corporate plan. The CEO prepares a draft corporate plan and gives it to the WHS Ministers for approval. Once the WHS Ministers approve the draft plan, the plan is given to the Minister under section 35 of the *Public Governance, Performance and Accountability Act 2013*.

Division 3 deals with the operational plan. The CEO prepares a draft operational plan and gives it to the WHS Ministers for approval. Once the WHS Ministers approve the draft plan, it becomes final. The plan covers a period of 1 year. It sets out the activities that Safe Work Australia is to undertake in that year.

Division 4 allows the WHS Ministers to direct the CEO to amend either of the final plans.

Division 2—Corporate plan for Safe Work Australia

27 Draft corporate plan

- (1) Before giving a corporate plan to the Minister under section 35 of the *Public Governance, Performance and Accountability Act 2013*, the CEO must prepare a draft corporate plan and give it to the WHS Ministers.
- (2) Despite that section, the draft corporate plan must deal with the following matters only:
 - (a) the outcomes to be achieved by Safe Work Australia;
 - (b) the strategies that are to be followed by Safe Work Australia to achieve those outcomes.
- (3) The draft corporate plan must not deal with the allocation of resources for the performance of Safe Work Australia's functions.
- (4) Subsection 35(3) of the *Public Governance, Performance and Accountability Act 2013* (which deals with the Australian Government's key priorities and objectives) does not apply to a corporate plan prepared by the CEO.

28 Approval of draft corporate plan

WHS Ministers to approve or refuse plan

- (1) If the draft corporate plan is given to the WHS Ministers, the WHS Ministers must:
 - (a) approve the draft plan; or
 - (b) refuse to approve the draft plan.

Note: The WHS Ministers give approvals or refusals by resolution of the WHS Ministers: see section 69.

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WHS Ministers' directions to alter plan

- (2) If the WHS Ministers refuse to approve the draft plan, the WHS Ministers must direct the CEO to:
- (a) make specified alterations to the draft plan; and
 - (b) give the altered draft plan to the Council within the period specified in the direction.

Note: The WHS Ministers give directions by resolution of the WHS Ministers: see section 69.

- (3) A direction under subsection (2):
- (a) may only specify an alteration to the draft plan about the following matters:
 - (i) the outcomes to be achieved by Safe Work Australia;
 - (ii) the strategies Safe Work Australia is to follow to achieve those outcomes; and
 - (b) must not specify an alteration dealing with the allocation of resources for the performance of Safe Work Australia's functions.

CEO to comply with WHS Ministers' directions

- (4) The CEO must comply with a direction under subsection (2).

When WHS Ministers must approve plan

- (5) The WHS Ministers must approve the altered draft plan if:
- (a) the altered draft plan is given to the WHS Ministers; and
 - (b) the alterations are in accordance with the direction.

Otherwise, the WHS Ministers may refuse to approve the altered draft plan.

Note: The WHS Ministers give approvals or refusals by resolution of the WHS Ministers: see section 69.

Corporate plan

- (6) When the draft corporate plan, or altered draft corporate plan, as the case may be, is approved by the WHS Ministers, that plan is to

be given to the Minister under section 35 of the *Public Governance, Performance and Accountability Act 2013*.

Directions etc. not legislative instruments

- (8) If a direction, an approval or a refusal of the WHS Ministers under this section is made in writing, the direction, approval or refusal is not a legislative instrument.

Division 3—Operational plan of Safe Work Australia

29 CEO to prepare a draft operational plan

Preparation of plan

- (1) Before the start of each financial year, the CEO must prepare a draft operational plan for the financial year and give it to the WHS Ministers.

Matters dealt with in plan

- (2) The draft plan must deal with the following matters only:
 - (a) the activities that are to be undertaken by Safe Work Australia in performing its functions during the year;
 - (b) Safe Work Australia's total amount of expenditure for the year.
- (3) The draft plan must not:
 - (a) deal with the allocation of resources for the performance of Safe Work Australia's functions; or
 - (b) be inconsistent with Safe Work Australia's corporate plan that relates to the year.

30 Approval of draft operational plan

WHS Ministers to approve or refuse plan

- (1) If the draft operational plan is given to the WHS Ministers, the WHS Ministers must:
 - (a) approve the draft plan; or
 - (b) refuse to approve the draft plan.

Note: The WHS Ministers give approvals or refusals by resolution of the WHS Ministers: see section 69.

WHS Ministers' directions to alter plan

- (2) If the WHS Ministers refuse to approve the draft plan, the WHS Ministers must direct the CEO to:
- (a) make specified alterations to the draft plan; and
 - (b) give the altered draft plan to the WHS Ministers within the period specified in the direction.

Note: The WHS Ministers give directions by resolution of the WHS Ministers: see section 69.

- (3) A direction under subsection (2):
- (a) may only specify an alteration to the draft plan about the following matters:
 - (i) the activities that are to be undertaken by Safe Work Australia in performing its functions during the year;
 - (ii) Safe Work Australia's total amount of expenditure for the year; and
 - (b) must not specify an alteration dealing with the allocation of resources for the performance of Safe Work Australia's functions; and
 - (c) must not be inconsistent with Safe Work Australia's corporate plan that relates to the year.

CEO to comply with WHS Ministers' directions

- (4) The CEO must comply with a direction under subsection (2).

When WHS Ministers must approve plan

- (5) The WHS Ministers must approve the altered draft plan if:
- (a) the altered draft plan is given to the WHS Ministers; and
 - (b) the alterations are in accordance with the direction.

Otherwise, the WHS Ministers may refuse to approve the altered draft plan.

Note: The WHS Ministers give approvals or refusals by resolution of the WHS Ministers: see section 69.

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When plan becomes the final plan

- (6) When the WHS Ministers approve the draft plan or altered draft plan, it becomes Safe Work Australia's operational plan for the financial year it covers.

Final plan to be published

- (7) An operational plan must be published in such manner as the CEO considers appropriate.

Directions etc. not legislative instruments

- (8) If a direction, an approval or a refusal of the WHS Ministers under this section is made in writing, the direction, approval or refusal is not a legislative instrument.

Division 4—WHS Ministers' directions to alter corporate or operational plans

31 WHS Ministers' directions to alter corporate plan

WHS Ministers' directions

- (1) The WHS Ministers may direct the CEO to:
 - (a) make specified alterations to the corporate plan for Safe Work Australia; and
 - (b) give the altered plan to the WHS Ministers within the period specified in the direction.

Note: The WHS Ministers give a direction by resolution of the WHS Ministers: see section 69.

Direction to amend corporate plan

- (2) A direction under subsection (1):
 - (a) may only specify an alteration to the plan about the following matters:
 - (i) the outcomes to be achieved by Safe Work Australia;
 - (ii) the strategies Safe Work Australia is to follow to achieve those outcomes; and
 - (b) must not specify an alteration dealing with the allocation of resources for the performance of Safe Work Australia's functions.

CEO to comply with WHS Ministers' directions

- (3) The CEO must comply with a direction under subsection (1).

When WHS Ministers must approve alterations to plan

- (4) The WHS Ministers must approve the alterations to the plan if:
 - (a) the plan as altered is given to the WHS Ministers; and
 - (b) the alterations are in accordance with the direction.

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Otherwise, the WHS Ministers may refuse to approve the alterations.

Note: The WHS Ministers give approvals or refusals by resolution of the WHS Ministers: see section 69.

When alterations to corporate plan are to be given to the Minister

- (5) When the altered corporate plan is approved by the WHS Ministers, that plan is to be given to the Minister under section 35 of the *Public Governance, Performance and Accountability Act 2013*.

Directions etc. not legislative instruments

- (7) If a direction, an approval or a refusal of the WHS Ministers under this section is made in writing, the direction, approval or refusal is not a legislative instrument.

32 WHS Ministers' directions to alter operational plan

WHS Ministers' directions

- (1) The WHS Ministers may direct the CEO to:
- (a) make specified alterations to its operational plan for a financial year; and
 - (b) give the altered plan to the WHS Ministers within the period specified in the direction.

Note: The WHS Ministers give a direction by resolution of the WHS Ministers: see section 69.

- (2) A direction under subsection (1):
- (a) may only specify an alteration to the plan about the following matters:
 - (i) the activities that are to be undertaken by Safe Work Australia in performing its functions during the year;
 - (ii) Safe Work Australia's total amount of expenditure for the year; and

- (b) must not specify an alteration dealing with the allocation of resources for the performance of Safe Work Australia's functions; and
- (c) must not be inconsistent with Safe Work Australia's corporate plan that relates to the year.

CEO to comply with WHS Ministers' directions

- (3) The CEO must comply with a direction under subsection (1).

When WHS Ministers must approve alterations to plan

- (4) The WHS Ministers must approve the alterations to the plan if:
 - (a) the plan as altered is given to the WHS Ministers; and
 - (b) the alterations are in accordance with the direction.

Otherwise, the WHS Ministers may refuse to approve the alterations.

Note: The WHS Ministers give approvals or refusals by resolution of the WHS Ministers: see section 69.

When alterations to operational plan take effect

- (5) When the WHS Ministers approve the alterations to the plan, the plan as altered is Safe Work Australia's operational plan for the financial year it covers.

Altered plan to be published

- (6) An altered operational plan must be published in such manner as the CEO considers appropriate.

Directions etc. not legislative instruments

- (7) If a direction, an approval or a refusal of the WHS Ministers under this section is made in writing, the direction, approval or refusal is not a legislative instrument.

Part 5 Decision-making by Safe Work Australia

Division 1 What this Part is about

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Part 5—Decision-making by Safe Work Australia

Division 1—What this Part is about

33 What this Part is about

This Part is about how Safe Work Australia makes decisions.

Division 2 deals with how it makes decisions at meetings and provides the general rules on how the meetings are to be run. Special rules apply for decisions relating to the model WHS legislative framework.

Division 3 deals with how it can make decisions without meeting.

Division 2—Meetings of Safe Work Australia

34 Holding of meetings

- (1) Safe Work Australia must hold such meetings as are necessary for the performance of its functions.
- (2) The Chair:
 - (a) may convene a meeting at any time; and
 - (b) must convene at least 3 meetings each financial year.

35 Presiding at meetings

- (1) The Chair presides at all meetings at which he or she is present.
- (2) If the Chair is not present at a meeting but the voting member representing the Commonwealth is present, that member is to preside.
- (3) If the Chair and that member are not present at a meeting, the other voting members present must appoint one of themselves to preside.

36 Substitution of voting members at meetings

- (1) A voting member (other than the Chair) who is unable to attend a meeting may, in writing, request the Chair to agree to another specified person being the member's substitute at the meeting.
- (2) If the Chair agrees, in writing, to the specified person being the member's substitute at the meeting, then, for the purpose of that meeting, the person is taken to be that member.

Note: This means, for example, that the substitute will need to disclose any interests in a matter being considered, or about to be considered, at the meeting: see section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) and rules made for the purposes of that section.

37 Quorum at meetings

- (1) At a meeting of Safe Work Australia, a majority of the voting members constitute a quorum.
- (2) However, if:
 - (a) rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013* prevent a voting member from participating in Safe Work Australia's deliberations or decisions in relation to a particular matter; and
 - (b) when the member leaves the meeting concerned there is no longer a quorum present;the remaining voting members at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting in relation to that matter.
- (3) Despite subsections (1) and (2), a quorum is not constituted for the purpose of any deliberation or decision relating to the model WHS legislative framework if a majority of all of the voting members who represent the Commonwealth, States and Territories are not present for the deliberation or decision.

Note: The voting members who represent the Commonwealth, States and Territories are those members referred to in paragraphs 10(1)(b) and (c).

38 Decisions at meetings etc.

- (1) At a meeting, a question is decided by a two-thirds majority of the votes of the voting members present and voting.
- (2) However, if the question relates to the model WHS legislative framework, the question is decided by:
 - (a) a two-thirds majority of the votes of the voting members present and voting; and
 - (b) a majority of the votes of all of the voting members who represent the Commonwealth, States and Territories.

Note: The voting members who represent the Commonwealth, States and Territories are those members referred to in paragraphs 10(1)(b) and (c).

39 Conduct of meetings

Safe Work Australia may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

41 Minutes

Safe Work Australia must keep minutes of its meetings.

Division 3—Decisions without meetings

42 Decisions without meetings

General decisions

- (1) Safe Work Australia is taken to have made a decision at a meeting if:
- (a) without meeting, a two-thirds majority of the voting members entitled to vote on the proposed decision indicate agreement with the decision; and
 - (b) that agreement is indicated in accordance with the method determined by Safe Work Australia under subsection (3); and
 - (c) all the voting members were informed of the proposed decision, or reasonable efforts were made to inform all the voting members of the proposed decision.

Decisions about model WHS legislative framework

- (2) However, if the decision relates to the model WHS legislative framework, Safe Work Australia is only taken to have made the decision at a meeting if:
- (a) without meeting:
 - (i) a two-thirds majority of the voting members entitled to vote on the proposed decision; and
 - (ii) a majority of the votes of all the voting members who represent the Commonwealth, States and Territories; indicate agreement with the decision; and
 - (b) that agreement is indicated in accordance with the method determined by Safe Work Australia under subsection (3); and
 - (c) all the voting members were informed of the proposed decision, or reasonable efforts were made to inform all the voting members of the proposed decision.

When decisions can be made without meeting

- (3) Subsection (1) or (2) applies only if:
- (a) Safe Work Australia has determined that it may make decisions of that kind without meeting; and
 - (b) Safe Work Australia has determined the method by which voting members are to indicate agreement with proposed decisions.

When voting members are not entitled to vote

- (4) For the purposes of paragraph (1)(a) and subparagraph (2)(a)(i), a voting member is not entitled to vote on a proposed decision if the member would not have been entitled to vote on that proposal if the matter had been considered at a meeting of Safe Work Australia.

Record of decisions

- (5) Safe Work Australia must keep a record of decisions made in accordance with this section.

Part 6—The CEO, staff and committees of Safe Work Australia, and others assisting

Division 1—What this Part is about

43 What this Part is about

This Part is about Safe Work Australia's CEO, its staff, its committees and others who assist it to perform its functions.

CEO

Division 2 is about the CEO. The CEO's functions are to manage Safe Work Australia's administration and assist it in the performance of its functions. The CEO must perform his or her functions in accordance with the corporate and operational plans. He or she must also comply with any direction given by the Minister (see section 46) or Safe Work Australia (see section 48).

Staff, committees and others

Division 3 is about Safe Work Australia's staff, its committees and other people who assist it to perform its functions.

Its staff are members of the Australian Public Service (see section 59).

Its committees are constituted by the Chair, and may consist of members of Safe Work Australia or others (see section 60).

Other people who assist it can be consultants, or those people that the Commonwealth, the States or the Territories make available to Safe Work Australia for that purpose.

Division 2—The CEO of Safe Work Australia

Subdivision A—Functions of the CEO

44 The CEO

There is to be a Chief Executive Officer of Safe Work Australia.

45 Functions of the CEO

- (1) The CEO's functions are:
 - (a) to manage the administration of Safe Work Australia; and
 - (b) to assist Safe Work Australia in the performance of its functions.
- (2) The CEO must perform his or her functions in accordance with Safe Work Australia's corporate plan and operational plan.
- (3) Subsection (2) does not apply to the extent that:
 - (a) performance in accordance with the plans would be inconsistent with a direction of the Minister under section 46; or
 - (b) performance in accordance with the plans would be inconsistent with the CEO's performance of functions or exercise of powers under the *Public Governance, Performance and Accountability Act 2013* in relation to Safe Work Australia; or
 - (c) the plans relate to the CEO's performance of functions or exercise of powers under the *Public Service Act 1999* in relation to Safe Work Australia.

46 Directions from the Minister

Minister may give directions to the CEO

- (1) The Minister may, by legislative instrument, give written directions to the CEO:

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- (a) about the performance of the CEO's functions (see section 45); or
- (b) requiring the provision of a report or advice on a matter relating to Safe Work Australia's functions.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the direction—see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act.

Directions about the CEO's functions are to be general

- (2) A direction under paragraph (1)(a) must be of a general nature only.

The CEO must comply with the Minister's directions

- (3) The CEO must comply with a direction under subsection (1).

When the CEO is not required to comply with directions

- (4) Subsection (3) does not apply to the extent that the direction relates to the CEO's performance of functions or exercise of powers under the *Public Service Act 1999* in relation to Safe Work Australia.

48 Directions from Safe Work Australia

Safe Work Australia may give directions to the CEO

- (1) Safe Work Australia may give written directions to the CEO:
 - (a) about the performance of the CEO's function under paragraph 45(1)(b) (assisting Safe Work Australia); or
 - (b) requiring the provision of a report or advice on a matter relating to Safe Work Australia's functions.

The CEO must comply with Safe Work Australia's directions

- (2) The CEO must comply with a direction under subsection (1).

When the CEO is not required to comply with directions

- (3) Subsection (2) does not apply to the extent that:
- (a) the direction is inconsistent with Safe Work Australia's corporate plan or operational plan; or
 - (b) the direction deals with the allocation of resources for the performance of Safe Work Australia's functions; or
 - (c) compliance with the direction would be inconsistent with a direction of the Minister under section 46; or
 - (d) compliance with the direction would be inconsistent with the CEO's performance of functions or exercise of powers under the *Public Governance, Performance and Accountability Act 2013* in relation to Safe Work Australia; or
 - (e) the direction relates to the CEO's performance of functions or exercise of powers under the *Public Service Act 1999* in relation to Safe Work Australia.

Direction is not a legislative instrument

- (4) A direction under subsection (1) is not a legislative instrument.

49 CEO to keep Safe Work Australia informed

The CEO must keep Safe Work Australia informed of progress on its operational plan.

Subdivision B—Appointment of the CEO

50 Appointment of CEO

Appointment by Minister

- (1) The Minister must, by written instrument, appoint the CEO.

Full-time basis

- (2) The CEO holds office on a full-time basis.

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Period of appointment

- (3) The CEO holds office for the period specified in his or her instrument of appointment. The period must not exceed 5 years.

Note: The CEO may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

51 Appointment of acting CEO

The Minister may, by written instrument, appoint a person to act as the CEO:

- (a) during a vacancy in the office of the CEO (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the CEO:
 - (i) is absent from duty or Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

Subdivision C—Terms and conditions of the CEO

52 Remuneration of the CEO

- (1) The CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the CEO is to be paid the remuneration that is prescribed by the regulations.
- (2) The CEO is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

53 Leave of absence of the CEO

- (1) The CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

54 Other employment of the CEO

The CEO must not engage in paid employment outside the duties of his or her office without the Minister's approval.

56 Resignation of the CEO

- (1) The CEO may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

57 Termination of appointment of the CEO

Misbehaviour or incapacity

- (1) The Minister may terminate the appointment of the CEO:
 - (a) for misbehaviour; or
 - (b) if the CEO is unable to perform the duties of his or her office because of physical or mental incapacity.

Bankruptcy etc.

- (2) The Minister may terminate the appointment of the CEO if:
 - (a) the CEO:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

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- (iii) compounds with his or her creditors; or
- (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (b) the CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
- (c) the CEO engages, except with the Minister's approval, in paid employment outside the duties of his or her office (see section 54); or
- (d) the CEO fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.

Unsatisfactory performance

- (3) The Minister may terminate the appointment of the CEO if the Minister is of the opinion that the performance of the CEO has been unsatisfactory.

58 Other terms and conditions of the CEO

The CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

Division 3—Staff and committees of Safe Work Australia, and others assisting it

Subdivision A—Staff of Safe Work Australia

59 Staff of Safe Work Australia

- (1) The staff of Safe Work Australia must be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the CEO and the staff of Safe Work Australia together constitute a Statutory Agency; and
 - (b) the CEO is the Head of that Statutory Agency.

Subdivision B—Committees of Safe Work Australia

60 Committees of Safe Work Australia

- (1) Safe Work Australia may constitute committees for the purpose of assisting it in the performance of its functions.
- (2) A committee may be constituted:
 - (a) wholly by members; or
 - (b) wholly by persons who are not members; or
 - (c) partly by members and partly by other persons.
- (3) The procedures under which a committee is to operate are to be as determined by Safe Work Australia.
- (4) A committee must give Safe Work Australia such reports, documents and information in relation to the committee's functions as Safe Work Australia requests.

Subdivision C—Others assisting Safe Work Australia

61 Persons assisting Safe Work Australia

Safe Work Australia may also be assisted:

- (a) by employees of Agencies (within the meaning of the *Public Service Act 1999*); or
- (b) by officers and employees of a State or Territory; or
- (c) by officers and employees of authorities of the Commonwealth, State or Territory;

whose services are made available to Safe Work Australia in connection with the performance of any of its functions.

62 Consultants

The CEO may, on behalf of the Commonwealth, engage consultants to assist in the performance of Safe Work Australia's functions.

Part 7—The Safe Work Australia Special Account

63 What this Part is about

This Part is about the funding of Safe Work Australia.

It establishes an account for the money that is allocated by the Commonwealth, the States and the Territories for the purposes of Safe Work Australia.

It also provides how that money may be spent.

64 The Safe Work Australia Special Account

- (1) The Safe Work Australia Special Account is established by this section.
- (2) The Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

65 Credits to the Account

There must be credited to the Account amounts equal to the following:

- (a) amounts that are paid by a State or Territory to the Commonwealth in accordance with the Intergovernmental Agreement;
- (b) amounts that the Commonwealth agrees to allocate in accordance with the Intergovernmental Agreement;
- (c) any other amounts that are paid by a State or Territory to the Commonwealth for the purpose of the performance of Safe Work Australia's functions;
- (d) any other amounts that the Commonwealth agrees to allocate for the purpose of the performance of Safe Work Australia's functions;

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- (e) amounts of any gifts given or bequests made for the purposes of the Account.

Note: An Appropriation Act may contain a provision to the effect that, if any of the purposes of a special account is a purpose that is covered by an item in the Appropriation Act (whether or not the item expressly refers to the special account), then amounts may be debited against the appropriation for that item and credited to that special account.

66 Purposes of the Account

- (1) This section sets out the purposes of the Account.
- (2) Amounts standing to the credit of the Account may be debited for the following purposes:
 - (a) in payment or discharge of the costs, expenses and other obligations incurred by the Commonwealth in the performance of Safe Work Australia's functions;
 - (b) in payment of any remuneration and allowances payable to any person under this Act;
 - (c) meeting the expenses of administering the Account.

Part 8—Miscellaneous

67 Delegation by Safe Work Australia

Safe Work Australia may, in writing, delegate all or any of its functions or powers under this Act to the following:

- (a) a member;
- (b) an SES employee or acting SES employee of the staff of Safe Work Australia.

68 Delegation by the CEO of Safe Work Australia

The CEO may, in writing, delegate all or any of his or her functions or powers under this Act to an SES employee or acting SES employee of the staff of Safe Work Australia.

69 How WHS Ministers give directions etc.

The WHS Ministers are to give a direction, an approval or a refusal for the purposes of a provision of this Act by resolution of the WHS Ministers passed in accordance with the procedures determined by the WHS Ministers.

70 Annual report

The CEO must give to Safe Work Australia and the WHS Ministers the annual report prepared by the CEO and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period.

71 Intergovernmental Agreement to be available on the Internet

The Minister must ensure that a copy of the Intergovernmental Agreement is available on the Department's website.

72 Review of Safe Work Australia's role and functions

Minister must conduct review

- (1) The Minister must cause a review of Safe Work Australia's ongoing role and functions to be conducted.

When review is to start and be completed

- (2) The review must:
 - (a) start 6 years after the commencement of this section; and
 - (b) be completed within 6 months.

Report about review

- (3) The Minister must cause a written report about the review to be prepared.

Parliament to be given report

- (4) The Minister must cause a copy of the report to be laid before each House of Parliament within 15 sitting days after the Minister receives the report.

73 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnotes

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Safe Work Australia Act 2008	84, 2009	18 Sept 2009	s 3–73: 1 Nov 2009 (s 2(1) item 2) Remainder: 18 Sept 2009 (s 2(1) item 1)	
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 1007–1019) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 7, 12)	Sch 3 (items 10, 11)
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 6 (items 70, 71) and Sch 12 (items 32–74) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
as amended by Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
as amended by Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 509): 5 Mar 2016 (s 2(1) item 2)	—
Safe Work Australia Amendment (Role and Functions) Act 2017	86, 2017	16 Aug 2017	17 Aug 2017 (s 2(1) item 1)	Sch 1 (item 9)

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 3	am No 86, 2017
s 4	am No 86, 2017
Part 2	
s 5	am No 62, 2014
s 5A.....	ad No 86, 2017
s 6	am No 86, 2017
s 7	am No 62, 2014
Part 3	
Division 2	
s 11	am No 46, 2011; No 86, 2017
s 12	am No 46, 2011; No 86, 2017
Division 3	
Subdivision A	
s 17	am. No. 46, 2011
s 18	rs No 62, 2014
s 20	am No 62, 2014
Part 4	
Division 1	
s 26	rs No 62, 2014 am No 86, 2017 ed C5
Division 2	
Division 2 heading	rs No 62, 2014
s 27	rs No 62, 2014 am No 86, 2017
s 28	am No 62, 2014; No 86, 2017

Endnote 4—Amendment history

Provision affected	How affected
Division 3	
s 29	am No 62, 2014; No 86, 2017
s 30	am No 62, 2014; No 86, 2017
Division 4	
Division 4 heading	rs No 62, 2014; No 86, 2017
s 31	am No 62, 2014; No 86, 2017
s 32	am No 62, 2014; No 86, 2017
Part 5	
Division 1	
s 33	am No 86, 2017
Division 2	
s 36	am No 62, 2014
s 37	am No 62, 2014; No 86, 2017
s 38	am No 86, 2017
s 40	rep No 62, 2014
Division 3	
s 42	am No 86, 2017
Part 6	
Division 1	
s 43	am No 62, 2014
Division 2	
Subdivision A	
s 45	am No 62, 2014
s 46	am No 126, 2015
s 47	rep No 62, 2014
s 48	am No 62, 2014
Subdivision B	
s 50	am No 46, 2011
s 51	am No 46, 2011
Subdivision C	
s 55	rep No 62, 2014

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 57	am No 62, 2014
Part 7	
s 64	am No 62, 2014
s 65	am No 62, 2014
Part 8	
s 69	rs No 86, 2017
s 70	rs No 62, 2014
	am No 86, 2017

Endnote 5—Editorial changes

In preparing this compilation for registration, the following kinds of editorial change(s) were made under the *Legislation Act 2003*.

Section 26**Kind of editorial change**

Update to reference of a law or a provision

Details of editorial change

Schedule 12 item 35 of the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014* repealed and substituted section 26. Section 26 refers to “the *Public Governance, Performance and Accountability Act*”.

This compilation was editorially changed to insert the year “2013” at the end of the Act title to bring it into line with legislative drafting practice.