



New South Wales

Work Health and Safety Bill 2011

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

The *Occupational Health and Safety Amendment Bill 2011* is cognate with this Bill.

Overview of Bill

This Bill provides the basis for New South Wales' participation in the nationally harmonised system of work health and safety.

The Bill enacts the nationally agreed *Model Work Health and Safety Act* in this State. It will be supplemented by Model Work Health and Safety Regulations and Codes of Practice.

At the Safe Work Australia Members' meeting of 2 December 2010, members agreed to the Explanatory Memorandum to the *Model Work Health and Safety Act* available at:

www.safeworkaustralia.gov.au/AboutSafeWorkAustralia/WhatWeDo/Publications/Pages/ExplanatoryMemorandum.aspx

Outline of provisions

Part 1 Preliminary

The proposed Part (proposed sections 1–12A) sets out the name (also called the short title) of the proposed Act, provides for the commencement of the proposed Act on 1 January 2012, defines certain words and expressions used in the proposed Act, provides for the application of the proposed Act to the Crown and provides for offences to be strict liability offences.

Part 2 Health and safety duties

Division 1 Introductory

Subdivision 1 of Division 1 (proposed sections 13–17) sets out the principles that apply to all duties under the proposed Act. The proposed Subdivision provides that duties are not transferable, that a person may have more than one duty, that more than one person may have the same duty and that a person who has a duty under the proposed Act must eliminate or reduce risks to health and safety so far as is reasonably practicable.

Subdivision 2 of Division 1 (proposed section 18) of the proposed Part sets out the matters to be considered when determining whether a reduction or elimination of a hazard or risk to health and safety is reasonably practicable.

Division 2 Primary duty of care

Clause 19 provides that a person conducting a business or undertaking has a duty of care with respect to the health and safety of workers engaged by the person, caused to be engaged by the person or whose activities in carrying out work are influenced or directed by the person.

Division 3 Further duties of persons conducting businesses or undertakings

Clause 20 provides that a person with management or control of a workplace has a duty, so far as is reasonably practicable, to ensure that 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.

Clause 21 provides that a person with management or control of the fixtures, fittings or plant at a workplace has a duty, so far as is reasonably practicable, to ensure that the fixtures, fittings or plant are without risk to the health and safety of any person.

Clause 22 provides that a person who designs plant, or any substance or structure that is reasonably expected to be used at a workplace, has a duty, so far as is reasonably practicable, to ensure that the plant, substance or structure is designed to be without risks to the health and safety of certain persons.

Clause 23 provides that a person who manufactures plant, or any substance or structure that is reasonably expected to be used at a workplace, has a duty, so far as is reasonably practicable, to ensure that the plant, substance or structure is manufactured to be without risks to the health and safety of certain persons.

Clause 24 provides that a person who imports plant, or any substance or structure that is reasonably expected to be used at a workplace, has a duty, so far as is reasonably practicable, to ensure that the plant, substance or structure that is imported is without risks to the health and safety of certain persons.

Clause 25 provides that a person who supplies plant, or any substance or structure that is reasonably expected to be used at a workplace, has a duty, so far as is reasonably practicable, to ensure that the plant, substance or structure that is supplied is without risks to the health and safety of certain persons.

Clause 26 provides that a person who installs, constructs or commissions plant or a structure that is reasonably expected to be used at a workplace, has a duty, so far as is reasonably practicable, to ensure that the plant or structure that is installed, constructed or commissioned is without risks to the health and safety of certain persons.

Division 4 Duty of officers, workers and other persons

Clause 27 provides that an officer of a person who has a duty under the proposed Act has a duty to exercise due diligence to ensure that the person is complying with that duty.

Clause 28 provides that a worker has a duty, while at work, to take reasonable care for the worker's own health and safety and that of other persons and to comply with reasonable instructions given by, and co-operate with the reasonable policy and procedure of, a person who has a duty under the proposed Act.

Clause 29 provides that a person at a workplace has a duty to take reasonable care for the person's own health and safety and that of other persons and to comply with reasonable instructions given by, a person who has a duty under the proposed Act.

Division 5 Offences and penalties

Clause 30 defines a term that is used in the proposed Division.

Clause 31 creates an offence for a person who has a duty under the proposed Act to engage in conduct that exposes an individual to whom the duty is owed to a risk of death or serious injury or illness if the person is reckless as to the risk.

Clause 32 creates an offence for a person who has a duty under the proposed Act to fail to comply with that duty if that failure exposes an individual to a risk of death or serious injury or illness.

Clause 33 creates an offence for a person who has a duty under the proposed Act to fail to comply with that duty.

Clause 34 provides a number of exceptions to the offence provisions including exemptions for volunteers and unincorporated associations in certain circumstances.

Part 3 Incident notification

The proposed Part (proposed sections 35–39) creates an offence for a person conducting a business or undertaking for failing to notify the regulator of certain incidents (including the death, serious injury or illness of a person or a dangerous incident) arising out of the conduct of the business or undertaking.

The proposed Part also provides that the person with the management or control of a workplace at which such an incident occurs must, so far as is reasonably practicable, ensure that the site where the incident occurred is not disturbed before an inspector arrives or otherwise directs.

Part 4 Authorisations

Clause 40 defines *authorised*, for the purposes of the proposed Part, as authorised by a licence, permit, registration or other authority required by the regulations.

Clause 41 creates an offence with respect to the carrying out of work at a workplace if the regulations require the workplace to be authorised and the workplace is not authorised.

Clause 42 creates offences with respect to the use of plant or a substance if the regulations require that the plant or substance or its design be authorised and the plant, substance or design is not authorised.

Clause 43 creates offences with respect to the carrying out of work if the regulations require that the work be carried out by, or on behalf of, a person who is authorised, and the person is not authorised.

Clause 44 creates offences with respect to the carrying out of work if the regulations require that the work be carried out or supervised by a person who has certain qualifications and the person does not have the qualifications or is not supervised by a person who has the qualifications.

Clause 45 creates an offence for failing to comply with the conditions that apply to an authorisation given under the regulations.

Part 5 Consultation, representation and participation

Division 1 Consultation, co-operation and co-ordination between duty holders

Clause 46 provides that if more than one person has a duty in relation to a matter under the proposed Act, each of the persons must consult, co-ordinate and co-operate with the other persons in relation to that matter.

Division 2 Consultation with workers

Division 2 of Part 5 (proposed sections 47–49) provides for the consultation of workers on matters relating to work health and safety.

Division 3 Health and safety representatives

Subdivision 1 Request for election of health and safety representatives

Subdivision 1 of Division 3 (proposed section 50) provides that a worker may request that a person conducting a business or an undertaking facilitate the election of health and safety representatives for workers who work for the business or undertaking.

Subdivision 2 Determination of work groups

Subdivision 2 of Division 3 (proposed sections 51–54) provides for the determination of work groups. Each work group is to be represented by one or more health and safety representatives.

Subdivision 3 Multiple-business work groups

Subdivision 3 of Division 3 (proposed sections 55–59) provides for the determination of work groups in circumstances where workers are carrying out work for 2 or more persons at one or more workplaces.

Subdivision 4 Election of health and safety representatives

Subdivision 4 of Division 3 (proposed sections 60–67) deals with the election of health and safety representatives including eligibility to be elected, election procedures, eligibility to vote, the term of office of representatives, disqualification of representatives, immunity from liability for acts done in good faith by representatives and the election of deputy health and safety representatives.

Subdivision 5 Powers and functions of health and safety representatives

Subdivision 5 of Division 3 (proposed sections 68 and 69) provides that a health and safety representative for a work group has certain powers and functions relating to work health and safety in respect of that work group, including representing workers in matters relating to health and safety, monitoring compliance with duties under the proposed Act and inquiring into apparent risks to the health and safety of workers.

Subdivision 6 Obligations of persons conducting business or undertaking to health and safety representatives

Subdivision 6 of Division 3 (proposed sections 70–74) deals with consultation between a person conducting a business or undertaking and health and safety representatives for a work group of workers carrying out work for the person.

The person is also required to allow the representatives to attend training in relation to work health and safety, provide financial assistance in certain circumstances and to maintain a list of health and safety representatives for each work group.

Division 4 Health and safety committees

Division 4 (proposed sections 75–79) provides for the establishment and constitution of health and safety committees. A health and safety committee has functions relating to the instigation of, and the development of, measures, standards, rules and procedures to ensure the health and safety of workers. A person conducting a business or undertaking must allow members of the health and safety committee to spend the time that is reasonably necessary to attend committee meetings and to carry out the functions of the committee.

Division 5 Issue resolution

Division 5 (proposed sections 80–82) provides a mechanism for the resolution of disputes relating to work health and safety. If the parties are unable to resolve the issue, and are unable to agree on a dispute resolution procedure, the dispute is to be resolved in accordance with the procedure prescribed by the regulations. If the parties remain unable to resolve the dispute, a party to the dispute may seek the appointment of an inspector to resolve the dispute.

Division 6 Right to cease or direct cessation of unsafe work

Division 6 (proposed sections 83–89) provides circumstances in which a worker may cease, or a health and safety representative may direct a worker to cease, unsafe work. A worker who ceases, or is directed to cease, unsafe work must notify the person conducting the business or undertaking that they have ceased the unsafe work and must remain available to perform other safe and appropriate duties.

Division 7 Provisional improvement notices

Division 7 (proposed sections 90–102) provides for the issue of a provisional improvement notice by a health and safety representative if the representative reasonably believes that a person is contravening provisions of the proposed Act and has consulted with the person. It is an offence for a person to contravene a provisional improvement notice.

The proposed Division also provides that a person who is issued with a provisional improvement notice, or the person conducting the business or undertaking affected by the notice, may apply to the regulator for the appointment of an inspector to review the notice. A notice may be cancelled by the health and safety representative who issued the notice or an inspector appointed by the regulator.

Division 8 Part not apply to prisoners

Division 8 (proposed section 103) provides that nothing in proposed Part 5 (Consultation, representation and participation) applies to a worker who is in lawful detention or custody.

Part 6 Discriminatory, coercive and misleading conduct

Division 1 Prohibition of discriminatory, coercive or misleading conduct

Division 1 (proposed sections 104–109) creates offences relating to engaging in discriminatory conduct for a prohibited reason and encouraging, authorising or assisting in discriminatory conduct for a prohibited reason and defines the terms *discriminatory conduct* and *prohibited reason*. The proposed Division also creates offences relating to coercing or inducing a person to exercise or not to exercise a power under the proposed Act and knowingly or recklessly misrepresenting a persons right or obligations.

Division 2 Criminal proceedings in relation to discriminatory conduct

Division 2 (proposed sections 110 and 111) creates a rebuttable presumption that, in criminal proceedings relating to discriminatory conduct for a prohibited reason, if it is adduced that discriminatory conduct was engaged in for a prohibited reason, that prohibited reason is the dominant reason for the conduct.

If a person is convicted or found guilty of an offence relating to discriminatory conduct for a prohibited reason, the court may order that the offender pay compensation or that a person be reinstated or reemployed, or both.

Division 3 Civil proceedings in relation to discriminatory or coercive conduct

Division 3 (proposed sections 112 and 113) provides that a person affected by discriminatory conduct for a prohibited reason (or his or her agent) may apply to the District Court for an order in relation to the person who has engaged in the conduct. The court may order an injunction, the payment of compensation to the affected person, reinstatement of the affected person or such other order as the court considers appropriate. Such an application must be made within 12 months after the applicant knew, or ought to have known, that the cause of action accrued.

Division 4 General

Division 4 (proposed sections 114 and 115) limits the circumstances in which the District Court may make orders relating to discriminatory conduct for a prohibited reason.

Part 7 Workplace entry by WHS entry permit holders

Division 1 Introductory

Division 1 (proposed section 116) defines certain terms that are used in proposed Part 7.

Division 2 Entry to inquire into suspected contraventions

Division 2 (proposed sections 117–120) provides that a WHS entry permit holder may enter a workplace for the purpose of inquiring into suspected contraventions of the proposed Act and may inspect any work system, plant, substance or structure, inspect employee records and consult with workers in relation to a suspected contravention.

Division 3 Entry to consult and advise workers

Division 3 (proposed sections 121 and 122) provides that a WHS entry permit holder may also enter a workplace for the purpose of consulting and advising on work health and safety and may warn any person whom the permit holder believes is exposed to a serious risk to his or her safety.

Division 4 Requirements for WHS entry permit holders

Division 4 (proposed sections 123–130) creates offences relating to the conduct of WHS entry permit holders including prohibitions on breaching conditions of the permit, failing to have the permit available for inspection and the time and place at which rights granted by the permit may be exercised.

Division 5 WHS entry permits

Division 5 (proposed sections 131–140) contains provisions relating to applications for and the issue of WHS entry permits to an official of a union, including the imposition of conditions on such a permit, the term of a permit and the expiry of the permit. The proposed Division also provides for the revocation of a WHS entry permit in certain circumstances.

Division 6 Dealing with disputes

Division 6 (proposed sections 141–143) establishes a mechanism for resolving disputes arising from the exercise or purported exercise of the right of entry by a WHS entry permit holder. If the parties to the dispute are unable to resolve the matter, the authorising authority (the Industrial Relations Commission) may deal with the matter in any manner it thinks fit, including arbitration. If the authorising authority deals with the dispute by arbitration, the proposed Division creates an offence for contravening an order made under arbitration.

Division 7 Prohibitions

Division 7 (proposed sections 144–148) creates offences relating to the exercise of powers by WHS entry permit holders including refusing or delaying entry of a permit holder or hindering or obstructing a permit holder. The proposed Division also provides that a WHS entry permit holder must not, in exercising or purported exercise of rights, unreasonably delay, hinder or obstruct any person, disrupt any workplace or otherwise act in an improper manner.

Division 8 General

Division 8 (proposed sections 149–151) contains general provisions relating to WHS entry permits including the return of revoked, suspended or expired permits, the keeping of a register of permit holders and the provision of certain information about a permit holder to the authorising authority.

Part 8 The regulator

Division 1 Functions of regulator

Division 1 (proposed sections 152–154) sets out the functions and powers of the regulator. In addition to functions conferred on the regulator by other provisions of the proposed Act, the regulator has functions including advising the Minister of the operation and effectiveness of the proposed Act, monitoring and enforcing compliance with the proposed Act and the promotion and support of education and training on matters relating to work health and safety.

Division 2 Powers of regulator to obtain information

Division 2 (proposed section 155) grants the regulator power to compel a person to provide any information, documents or other evidence that the person may have in relation to a possible contravention of the proposed Act.

Part 9 Securing compliance

Division 1 Appointment of inspectors

Division 1 (proposed sections 156–159) provides for the appointment, identification and accountability of inspectors. The proposed Division also provides for the suspension and ending of the appointment of inspectors.

Division 2 Functions and powers of inspectors

Division 2 (proposed sections 160–162A) sets out the functions and powers of inspectors. The functions and powers of an inspector include providing information and advice about compliance with the proposed Act, assisting in the resolution of

certain issues and the investigation of contraventions of the proposed Act. The powers of an inspector are subject to the conditions specified in the inspector's instrument of appointment and directions from the regulator.

Division 3 Powers relating to entry

Subdivision 1 General powers of entry

Subdivision 1 of Division 3 (proposed sections 163–166A) enables inspectors, and persons assisting inspectors, to enter workplaces to determine whether the proposed Act is being complied with or contravened.

Subdivision 2 Search warrants

Subdivision 2 of Division 3 (proposed section 167) provides for the issue of search warrants.

Subdivision 3 Limitation on entry powers

Subdivision 3 of Division 3 (proposed section 170) prohibits entry into residential premises except with the consent of the person with management or control of the place or under a search warrant.

Subdivision 4 Specific powers on entry

Subdivision 4 of Division 3 (proposed sections 171–181) sets out the powers of inspectors to inspect and seize documents and other things and to deal with seized things.

Division 4 Damage and compensation

Division 4 (proposed sections 182–184) provides that inspectors are to minimise damage caused, and for the payment of compensation for loss or expense incurred, as results of the exercise of a power under the proposed Act.

Division 5 Other matters

Division 5 (proposed sections 185–187) sets out the powers of inspectors to require certain information, take affidavits and examine witnesses at a coronial inquest relating to the death of a worker while carrying out work.

Division 6 Offences in relation to inspectors

Division 6 (proposed sections 188–190) makes it an offence to hinder or obstruct an inspector, impersonate an inspector or assault, threaten or intimidate an inspector.

Part 10 Enforcement measures

Division 1 Improvement notices

Division 1 (proposed sections 191–194) provides for the issue of improvement notices by an inspector if the inspector believes that a person is contravening a provision of the proposed Act. The proposed Division also sets out the contents of an improvements notice and requires compliance with such a notice.

Division 2 Prohibition notices

Division 2 (proposed sections 195–197) provides for the issue of prohibition notices by an inspector if the inspector believes that an activity is occurring, or is likely to occur, at a workplace that involves serious risk to health and safety. The proposed Division also sets out the contents of a prohibition notice and requires compliance with such a notice.

Division 3 Non-disturbance notices

Division 3 (proposed sections 198–201) provides for the issue of a non-disturbance notice by an inspector for the purpose of preserving, or preventing disturbance to, a site for a specified period. The proposed Division also sets out the contents of a non-disturbance notice, requires compliance with such a notice and provides for the issue of a subsequence notice after the expiry of the original notice.

Division 4 General requirements applying to notices

Division 4 (proposed sections 202–210) requires notices to be in writing and provides for changes to a notice by an inspector, the cancellation of a notice by the regulator, the preservation of a notice despite formal irregularities and the manner of issue and display of notices.

Division 5 Remedial action

Division 5 (proposed sections 211–213) grants the regulator power to carry out certain remedial work where a person has been issued with a prohibition notice and has failed to comply with that notice. The regulator may recover the costs of remedial work from the person to whom the notice was issued.

Division 6 Injunctions

Division 6 (proposed sections 214 and 215) authorises the regulator to apply to the District Court for an injunction compelling the person to comply with, or restrain the person from contravening an improvement notice, prohibition notice or non-disturbance notice.

Part 11 Enforceable undertakings

Part 11 (proposed sections 216–222) authorises the regulator to accept undertakings given by a person in connection with a matter relating to a contravention of the proposed Act. If the regulator accepts an undertaking, proceedings can not be brought against a person in relation to an offence under the proposed Act relating to a matter covered by that undertaking. If a person contravenes such an undertaking the regulator may apply to the District Court for an order directing compliance with, or discharging, the undertaking.

Part 12 Review of decisions

Division 1 Reviewable decisions

Division 1 (proposed section 223) provides for the review of certain decisions made under the proposed Act and specifies who is entitled to seek such a review.

Division 2 Internal review

Division 2 (proposed sections 224–228) provides for the review of decisions (other than decisions made by the regulator or delegate of the regulator) by a person appointed by the regulator on the application of certain persons. On review, the decision may be confirmed or varied or may be set aside and substituted and reasons for the outcome of the review must be provided to the applicant.

Division 3 External review

Division 3 (proposed section 229) provides for an application for the review of certain decisions to be made to, and for the review of such a decision by, the Industrial Relations Commission.

Part 13 Legal proceedings

Division 1 General matters

Division 1 (proposed sections 229A–233) sets out the procedure for the commencement and carrying on of proceedings for offences against the proposed Act and provides a limitation on the period in which such proceedings may be brought against a person.

Division 2 Sentencing for offences

Division 2 (proposed sections 234–242) makes provision for the sentencing of a person convicted, or found guilty, of an offence against the proposed Act and for the making of further orders in relation to such an offence including adverse publicity orders, orders for restoration and training orders.

Division 2A Sentencing guidelines

Division 2A (proposed sections 242A–242H) provides for the making of guideline judgements by the District Court that set out the guidelines for the sentencing of offenders. Such guidelines are intended to be indicative only and are not intended to be applied in every case as if they were rules binding on judges but help to ensure consistency in sentencing decisions.

Division 3 Penalty notices

Division 3 (proposed section 243) enables penalty notices to be issued for offences under the proposed Act if they are prescribed by the regulations for that purpose.

Division 4 Offences by bodies corporate

Division 4 (proposed section 244) imputes conduct to a body corporate where a person is acting on behalf of, or with the apparent authority of the body corporate.

Division 5 The Crown

Division 5 (proposed sections 245–248) deals with the application of provisions to the Crown with respect to legal proceedings for offences and identifying officers and the designation of responsible agencies.

Division 6 Public authorities

Division 6 (proposed sections 249–253) deals with the application of provisions to public authorities with respect to legal proceedings for offences, imputing conduct to public authorities, identifying officers and proceedings against successors to public authorities.

Division 7 WHS civil penalty provisions

Division 7 (proposed sections 254–266) provides for proceedings for the contravention of a provision of the proposed Act that are designated as WHS civil penalty provisions. The contravention of such a provision is not an offence and the rules of court applying to civil proceedings are to apply to proceedings for a contravention. The proposed Division also provides for double jeopardy, the commencement of proceedings and the recovery of monetary penalties ordered by the court.

Division 8 Civil liability not affected by this Act

Division 8 (proposed section 267) makes it clear that nothing in the proposed Act confers a right of action in civil proceedings, a defence in civil proceedings or otherwise affects a right of action in respect of the duties or obligations under the proposed Act.

Part 14 General

Division 1 General provisions

Division 1 (proposed section 268–273) deals with the general application of the proposed Act including an offence for giving false or misleading information in purported compliance with the proposed Act, maintaining legal professional privilege, immunity from liability for actions in good faith in execution of powers and functions under the proposed Act, and confidentiality with respect to information and documents obtained under the proposed Act.

Division 2 Codes of practice

Division 2 (proposed sections 274 and 275) provides for the approval of a code of practice and the use of an approved code of practice in proceedings for offences against the proposed Act.

Division 3 Regulation-making powers

Division 3 (proposed section 276) is a standard regulation-making power.

Division 3A Miscellaneous

Division 3A (proposed sections 276A–276C) allows for a regulation to prescribe a specified government department or agency as being the regulator in relation to the application of the proposed Act to a mining workplace or a coal workplace, provides for the review of the proposed Act after 5 years, and provides for the repeal of the *Occupational Health and Safety Act 2000* and the *Occupational Health and Safety Regulation 2001*.

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

Schedule 1 provides for the special application of the proposed Act to the storage and handling of dangerous goods and the operation of high risk plant affecting public safety, even if the dangerous goods or plant are not stored, handled or operated at a workplace.

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

Schedule 2 is not included in NSW.

Schedule 3 Regulation-making powers

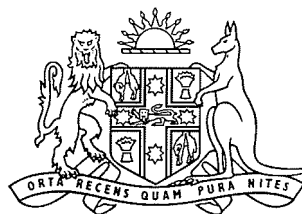
Schedule 3 contains regulation-making powers.

Schedule 4 Savings, transitional and other provisions

Schedule 4 enacts savings and transitional provisions.

Schedule 5 Amendment of other legislation

Schedule 5 amends the legislation specified in the Schedule. Other Acts will require consequential amendment before the commencement of the proposed Act.



New South Wales

Work Health and Safety Bill 2011

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New South Wales

Work Health and Safety Bill 2011

No , 2011

A Bill for

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

See also *Occupational Health and Safety Amendment Bill 2011*.

The Legislature of New South Wales enacts: 1

Part 1 Preliminary 2

Division 1 Introduction 3

1 Name of Act 4

 This Act is the *Work Health and Safety Act 2011*. 5

2 Commencement 6

 This Act commences on 1 January 2012. 7

Division 2 Object 8

3 Object 9

- (1) The main object of this Act is to provide for a balanced and nationally 10
consistent framework to secure the health and safety of workers and 11
workplaces by: 12
- (a) protecting workers and other persons against harm to their health, 13
safety and welfare through the elimination or minimisation of 14
risks arising from work or from specified types of substances or 15
plant, and 16
 - (b) providing for fair and effective workplace representation, 17
consultation, co-operation and issue resolution in relation to 18
work health and safety, and 19
 - (c) encouraging unions and employer organisations to take a 20
constructive role in promoting improvements in work health and 21
safety practices, and assisting persons conducting businesses or 22
undertakings and workers to achieve a healthier and safer 23
working environment, and 24
 - (d) promoting the provision of advice, information, education and 25
training in relation to work health and safety, and 26
 - (e) securing compliance with this Act through effective and 27
appropriate compliance and enforcement measures, and 28
 - (f) ensuring appropriate scrutiny and review of actions taken by 29
persons exercising powers and performing functions under this 30
Act, and 31
 - (g) providing a framework for continuous improvement and 32
progressively higher standards of work health and safety, and 33

- (h) maintaining and strengthening the national harmonisation of laws relating to work health and safety and to facilitate a consistent national approach to work health and safety in this jurisdiction.
- (2) In furthering subsection (1) (a), regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work or from specified types of substances or plant as is reasonably practicable.

Division 3 Interpretation

Subdivision 1 Definitions

4 Definitions

In this Act:

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

authorised, in Part 4—see section 40.

authorising authority means the Industrial Relations Commission.

Category 1 offence—see section 31.

Category 2 offence—see section 32.

Category 3 offence—see section 33.

coal workplace means a place of work to which the *Coal Mine Health and Safety Act 2002* applies.

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

condition includes limitation and restriction.

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

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

corresponding WHS law means:

(a) a law of an Australian jurisdiction that has the same name as this Act, and

(b) a law of an Australian jurisdiction that is prescribed by the regulations as a corresponding WHS law.

court means the court having jurisdiction in the matter concerned.

dangerous incident, in Part 3—see section 37.

demolition includes deconstruction.	1
design , in relation to plant, a substance or a structure includes:	2
(a) design of part of the plant, substance or structure, and	3
(b) redesign or modify a design.	4
disclose , in relation to information, includes divulge or communicate to any person or publish.	5
discriminatory conduct , in Part 6—see section 105.	6
document includes record.	7
employee record , in relation to an employee, has the same meaning as it has in the <i>Privacy Act 1988</i> of the Commonwealth.	8
employer organisation means an organisation of employers.	9
engage in conduct means doing an act or omitting to do an act.	10
Fair Work Act means the <i>Fair Work Act 2009</i> of the Commonwealth.	11
handling includes transport.	12
health means physical and psychological health.	13
health and safety duty —see section 30.	14
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.	15
import means to bring into the jurisdiction from outside Australia.	16
inspector means an inspector appointed under Part 9.	17
internal reviewer means:	18
(a) the regulator, or	19
(b) a person appointed by the regulator under section 225.	20
local authority means a council or county council under the <i>Local Government Act 1993</i> .	21
medical treatment means treatment by a medical practitioner registered under the <i>Health Practitioner Regulation National Law (NSW)</i> .	22
mining workplace means a place of work:	23
(a) that is a mine to which the <i>Mine Health and Safety Act 2004</i> applies, or	24
(b) at which activities under the <i>Petroleum (Onshore) Act 1991</i> or the <i>Petroleum (Offshore) Act 1982</i> are carried out.	25
notifiable incident —see section 35.	26
officer means:	27
(a) an officer within the meaning of section 9 of the <i>Corporations Act 2001</i> of the Commonwealth other than a partner in a partnership, or	28

-
- (b) an officer of the Crown within the meaning of section 247, or 1
- (c) an officer of a public authority within the meaning of section 252, 2
- other than an elected member of a local authority acting in that capacity. 3
- official of a union**, in Part 7—see section 116. 4
- person conducting a business or undertaking**—see section 5. 5
- personal information** has the same meaning as it has in the *Privacy Act 1988* of the Commonwealth. 6
- plant** includes: 7
- (a) any machinery, equipment, appliance, container, implement and 8
- tool, and 9
- (b) any component of any of those things, and 10
- (c) anything fitted or connected to any of those things. 11
- prohibited reason**, in Part 6—see section 106. 12
- public authority** means: 13
- (a) a Division of the Government Service, or 14
- (b) a NSW Government agency, or 15
- (c) a local authority, or 16
- (d) any other public or local authority constituted by or under an Act. 17
- reasonably practicable**, in relation to a duty to ensure health and 18
- safety—see section 18. 19
- regulator** means the WorkCover Authority constituted under the 20
- Workplace Injury Management and Workers Compensation Act 1998*. 21
- Note.** Section 276A authorises the regulations to provide that a reference in any 22
- provision of this Act to the regulator, or to an officer of the regulator, in 23
- connection with the application of the provision to a mining workplace or a coal 24
- workplace, is taken to be or include a reference to a specified government 25
- department or agency, or an officer of a government department or agency, 26
- exercising functions in connection with the administration of the *Mine Health 27*
- and Safety Act 2004*, the *Petroleum (Onshore) Act 1991*, the *Petroleum 28*
- (Offshore) Act 1982* or the *Coal Mine Health and Safety Act 2002*, or a reference 29
- to the Minister administering any of those Acts. 30
- relevant person conducting a business or undertaking**, in Part 7—see 31
- section 116. 32
- relevant union**, in Part 7—see section 116. 33
- relevant worker**, in Part 7—see section 116. 34
- representative**, in relation to a worker, means: 35
- (a) the health and safety representative for the worker, or 36
- (b) a union representing the worker, or 37
- (c) any other person the worker authorises to represent him or her. 38
- 39
-

<i>serious injury or illness</i> , in Part 3—see section 36.	1
<i>State</i> includes Territory.	2
<i>State or Territory industrial law</i> has the same meaning as it has in the Fair Work Act.	3 4
<i>structure</i> means anything that is constructed, whether fixed or moveable, temporary or permanent, and includes:	5 6
(a) buildings, masts, towers, framework, pipelines, transport infrastructure and underground works (shafts or tunnels), and	7 8
(b) any component of a structure, and	9
(c) part of a structure.	10
<i>substance</i> means any natural or artificial substance, whether in the form of a solid, liquid, gas or vapour.	11 12
<i>supply</i> —see section 6.	13
<i>this Act</i> includes the regulations.	14
<i>union</i> means:	15
(a) an employee organisation that is registered, or taken to be registered, under the <i>Fair Work (Registered Organisations) Act 2009</i> of the Commonwealth, or	16 17 18
(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.	19 20 21
<i>volunteer</i> means a person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses).	22 23
<i>WHS entry permit</i> means a WHS entry permit issued under Part 7.	24
<i>WHS entry permit holder</i> means a person who holds a WHS entry permit.	25 26
<i>WHS undertaking</i> means an undertaking given under section 216 (1).	27
<i>work group</i> means a work group determined under Part 5.	28
<i>worker</i> —see section 7.	29
<i>workplace</i> —see section 8.	30

Subdivision 2 Other important terms	31
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5 Meaning of “person conducting a business or undertaking”	32
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(1) For the purposes of this Act, a person conducts a business or undertaking:	33 34
(a) whether the person conducts the business or undertaking alone or with others, and	35 36

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|---|----------------------|
| (b) whether or not the business or undertaking is conducted for profit or gain. | 1
2 |
| (2) A business or undertaking conducted by a person includes a business or undertaking conducted by a partnership or an unincorporated association. | 3
4
5 |
| (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. | 6
7
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9 |
| (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. | 10
11
12 |
| (5) An elected member of a local authority does not in that capacity conduct a business or undertaking. | 13
14 |
| (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. | 15
16
17 |
| (7) A volunteer association does not conduct a business or undertaking for the purposes of this Act. | 18
19 |
| (8) In this section, volunteer association means a group of volunteers working together for one or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association. | 20
21
22
23 |
| 6 Meaning of “supply” | 24 |
| (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. | 25
26
27 |
| (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. | 28
29 |
| (3) A supply of a thing does not include: | 30 |
| (a) the return of possession of a thing to the owner of the thing at the end of a lease or other agreement, or | 31
32 |
| (b) a prescribed supply. | 33 |
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- (4) A financier is taken not to supply plant, a substance or a structure for the purposes of this Act if:
- (a) the financier has, in the course of the financier's business as a financier, acquired ownership of, or another right in, the plant, substance or structure on behalf of a customer of the financier, and
- (b) the action by the financier, that would be a supply but for this subsection, is taken by the financier for, or on behalf of, that customer.
- (5) If subsection (4) applies, the person (other than the financier) who had possession of the plant, substance or structure immediately before the financier's customer obtained possession of the plant, substance or structure is taken for the purposes of this Act to have supplied the plant, substance or structure to the financier's customer.

7 Meaning of "worker"

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

8	Meaning of “workplace”	1
(1)	A <i>workplace</i> 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 3 4
(2)	In this section, <i>place</i> includes:	5
(a)	a vehicle, vessel, aircraft or other mobile structure, and	6
(b)	any waters and any installation on land, on the bed of any waters or floating on any waters.	7 8
9	Examples and notes	9
(1)	An example at the foot of a provision forms part of this Act.	10
(2)	A note at the foot of a provision forms part of this Act.	11
Division 4	Application of Act	12
10	Act binds the Crown	13
(1)	This Act binds the Crown in right of this jurisdiction and, in so far as the legislative power of the Parliament of this jurisdiction permits, the Crown in all its other capacities.	14 15 16
(2)	The Crown is liable for an offence against this Act.	17
(3)	Without limiting subsection (1), the Crown is liable for a contravention of a WHS civil penalty provision.	18 19
11	Extraterritorial application	20
	* * * * *	
	Note. Not required in NSW.	21
12	Scope	22
	* * * * *	
	Note. Not required in NSW.	23
12A	Offences are offences of strict liability	24
	Strict liability applies to each physical element of each offence under this Act unless otherwise stated in the section containing the offence.	25 26

Part 2 Health and safety duties	1
Division 1 Introductory	2
Subdivision 1 Principles that apply to duties	3
13 Principles that apply to duties	4
This Subdivision sets out the principles that apply to all duties that persons have under this Act.	5 6
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.	7 8
14 Duties not transferrable	9
A duty cannot be transferred to another person.	10
15 Person may have more than one duty	11
A person can have more than one duty by virtue of being in more than one class of duty holder.	12 13
16 More than one person can have a duty	14
(1) More than one person can concurrently have the same duty.	15
(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.	16 17
(3) If more than one person has a duty for the same matter, each person:	18
(a) retains responsibility for the person's duty in relation to the matter, and	19 20
(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.	21 22 23 24
17 Management of risks	25
A duty imposed on a person to ensure health and safety requires the person:	26 27
(a) to eliminate risks to health and safety, so far as is reasonably practicable, and	28 29
(b) if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable.	30 31

Subdivision 2 What is reasonably practicable

18 What is “reasonably practicable” in ensuring health and safety

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

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

Division 2 Primary duty of care

19 Primary duty of care

- (1) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of:
 - (a) workers engaged, or caused to be engaged by the person, and
 - (b) workers whose activities in carrying out work are influenced or directed by the person,
 while the workers are at work in the business or undertaking.
- (2) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.
- (3) Without limiting subsections (1) and (2), a person conducting a business or undertaking must ensure, so far as is reasonably practicable:
 - (a) the provision and maintenance of a work environment without risks to health and safety, and
 - (b) the provision and maintenance of safe plant and structures, and

-
- | | | |
|-----|--|-------------------|
| (c) | the provision and maintenance of safe systems of work, and | 1 |
| (d) | the safe use, handling, and storage of plant, structures and substances, and | 2
3 |
| (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 | 4
5
6 |
| (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 | 7
8
9
10 |
| (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. | 11
12
13 |
| (4) | If: | 14 |
| (a) | a worker occupies accommodation that is owned by or under the management or control of the person conducting the business or undertaking, and | 15
16
17 |
| (b) | the occupancy is necessary for the purposes of the worker's engagement because other accommodation is not reasonably available, | 18
19
20 |
| | 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. | 21
22
23 |
| (5) | A self-employed person must ensure, so far as is reasonably practicable, his or her own health and safety while at work. | 24
25 |
| | Note. A self-employed person is also a person conducting a business or undertaking for the purposes of this section. | 26
27 |

Division 3 Further duties of persons conducting businesses or undertakings 28
29

20 Duty of persons conducting businesses or undertakings involving management or control of workplaces 30
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- | | | |
|-----|---|----------------------|
| (1) | In this section, <i>person with management or control of a workplace</i> 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: | 32
33
34
35 |
| (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 | 36
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| (b) | a prescribed person. | 39 |

(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.	1 2 3 4
21	Duty of persons conducting businesses or undertakings involving management or control of fixtures, fittings or plant at workplaces	5 6
(1)	In this section, <i>person with management or control of fixtures, fittings or plant at a workplace</i> 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:	7 8 9 10 11
(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	12 13 14
(b)	a prescribed person.	15
(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.	16 17 18 19
22	Duties of persons conducting businesses or undertakings that design plant, substances or structures	20 21
(1)	This section applies to a person (the <i>designer</i>) who conducts a business or undertaking that designs:	22 23
(a)	plant that is to be used, or could reasonably be expected to be used, as, or at, a workplace, or	24 25
(b)	a substance that is to be used, or could reasonably be expected to be used, at a workplace, or	26 27
(c)	a structure that is to be used, or could reasonably be expected to be used, as, or at, a workplace.	28 29
(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:	30 31 32
(a)	who, at a workplace, use the plant, substance or structure for a purpose for which it was designed, or	33 34
(b)	who handle the substance at a workplace, or	35
(c)	who store the plant or substance at a workplace, or	36
(d)	who construct the structure at a workplace, or	37

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- (e) who carry out any reasonably foreseeable activity at a workplace in relation to:
- (i) the manufacture, assembly or use of the plant for a purpose for which it was designed, or the proper storage, decommissioning, dismantling or disposal of the plant, or
 - (ii) the manufacture or use of the substance for a purpose for which it was designed or the proper handling, storage or disposal of the substance, or
 - (iii) the manufacture, assembly or use of the structure for a purpose for which it was designed or the proper demolition or disposal of the structure, or
- Example.** Inspection, operation, cleaning, maintenance or repair of plant.
- (f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance or structure at the workplace or whose health or safety may be affected by a use or activity referred to in paragraph (a), (b), (c), (d) or (e).
- (3) The designer must carry out, or arrange the carrying out of, any calculations, analysis, testing or examination that may be necessary for the performance of the duty imposed by subsection (2).
- (4) The designer must give adequate information to each person who is provided with the design for the purpose of giving effect to it concerning:
- (a) each purpose for which the plant, substance or structure was designed, and
 - (b) the results of any calculations, analysis, testing or examination referred to in subsection (3), including, in relation to a substance, any hazardous properties of the substance identified by testing, and
 - (c) any conditions necessary to ensure that the plant, substance or structure is without risks to health and safety when used for a purpose for which it was designed or when carrying out any activity referred to in subsection (2) (a)–(e).
- (5) The designer, on request, must, so far as is reasonably practicable, give current relevant information on the matters referred to in subsection (4) to a person who carries out, or is to carry out, any of the activities referred to in subsection (2) (a)–(e).

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

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

Example. Inspection, operation, cleaning, maintenance or repair of plant.
 - (f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance or structure at the workplace or whose health or safety may be affected by a use or activity referred to in paragraph (a), (b), (c), (d) or (e).
- (3) The manufacturer must carry out, or arrange the carrying out of, any calculations, analysis, testing or examination that may be necessary for the performance of the duty imposed by subsection (2).

(4)	The manufacturer must give adequate information to each person to whom the manufacturer provides the plant, substance or structure concerning:	1
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		3
(a)	each purpose for which the plant, substance or structure was designed or manufactured, and	4
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(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	6
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(c)	any conditions necessary to ensure that the plant, substance or structure is without risks to health and safety when used for a purpose for which it was designed or manufactured or when carrying out any activity referred to in subsection (2) (a)–(e).	10
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(5)	The manufacturer, on request, must, so far as is reasonably practicable, give current relevant information on the matters referred to in subsection (4) to a person who carries out, or is to carry out, any of the activities referred to in subsection (2) (a)–(e).	14
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24	Duties of persons conducting businesses or undertakings that import plant, substances or structures	18
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(1)	This section applies to a person (the <i>importer</i>) who conducts a business or undertaking that imports:	20
		21
(a)	plant that is to be used, or could reasonably be expected to be used, as, or at, a workplace, or	22
		23
(b)	a substance that is to be used, or could reasonably be expected to be used, at a workplace, or	24
		25
(c)	a structure that is to be used, or could reasonably be expected to be used, as, or at, a workplace.	26
		27
(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:	28
		29
		30
(a)	who, at a workplace, use the plant, substance or structure for a purpose for which it was designed or manufactured, or	31
		32
(b)	who handle the substance at a workplace, or	33
(c)	who store the plant or substance at a workplace, or	34
(d)	who construct the structure at a workplace, or	35

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|-------|---|----------------------|
| (e) | who carry out any reasonably foreseeable activity at a workplace in relation to: | 1
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| (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 | 3
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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 | 6
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| (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 | 9
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| | Example. Inspection, operation, cleaning, maintenance or repair of plant. | 12
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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). | 14
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| (3) | The importer must: | 18 |
| (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 | 19
20
21 |
| (b) | ensure that the calculations, analysis, testing or examination have been carried out. | 22
23 |
| (4) | The importer must give adequate information to each person to whom the importer provides the plant, substance or structure concerning: | 24
25 |
| (a) | each purpose for which the plant, substance or structure was designed or manufactured, and | 26
27 |
| (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 | 28
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| (c) | any conditions necessary to ensure that the plant, substance or structure is without risks to health and safety when used for a purpose for which it was designed or manufactured or when carrying out any activity referred to in subsection (2) (a)–(e). | 32
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| (5) | The importer, on request, must, so far as is reasonably practicable, give current relevant information on the matters referred to in subsection (4) to a person who carries out, or is to carry out, any of the activities referred to in subsection (2) (a)–(e). | 36
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25	Duties of persons conducting businesses or undertakings that supply plant, substances or structures	1
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(1)	This section applies to a person (the <i>supplier</i>) who conducts a business or undertaking that supplies:	3
		4
(a)	plant that is to be used, or could reasonably be expected to be used, as, or at, a workplace, or	5
		6
(b)	a substance that is to be used, or could reasonably be expected to be used, at a workplace, or	7
		8
(c)	a structure that is to be used, or could reasonably be expected to be used, as, or at, a workplace.	9
		10
(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:	11
		12
		13
(a)	who, at a workplace, use the plant or substance or structure for a purpose for which it was designed or manufactured, or	14
		15
(b)	who handle the substance at a workplace, or	16
(c)	who store the plant or substance at a workplace, or	17
(d)	who construct the structure at a workplace, or	18
(e)	who carry out any reasonably foreseeable activity at a workplace in relation to:	19
		20
(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	21
		22
		23
(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	24
		25
		26
(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	27
		28
		29
	Example. Inspection, storage, operation, cleaning, maintenance or repair of plant.	30
		31
(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).	32
		33
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		35
(3)	The supplier must:	36
(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	37
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	(b) ensure that the calculations, analysis, testing or examination have been carried out.	1 2
(4)	The supplier must give adequate information to each person to whom the supplier supplies the plant, substance or structure concerning:	3 4
	(a) each purpose for which the plant, substance or structure was designed or manufactured, and	5 6
	(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	7 8 9 10
	(c) any conditions necessary to ensure that the plant, substance or structure is without risks to health and safety when used for a purpose for which it was designed or manufactured or when carrying out any activity referred to in subsection (2) (a)–(e).	11 12 13 14
(5)	The supplier, on request, must, so far as is reasonably practicable, give current relevant information on the matters referred to in subsection (4) to a person who carries out, or is to carry out, any of the activities referred to in subsection (2) (a)–(e).	15 16 17 18
26	Duty of persons conducting businesses or undertakings that install, construct or commission plant or structures	19 20
(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.	21 22 23
(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:	24 25 26 27
	(a) who install or construct the plant or structure at a workplace, or	28
	(b) who use the plant or structure at a workplace for a purpose for which it was installed, constructed or commissioned, or	29 30
	(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	31 32 33
	(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).	34 35 36

Division 4 Duty of officers, workers and other persons

27 Duty of officers

- (1) If a person conducting a business or undertaking has a duty or obligation under this Act, an officer of the person conducting the business or undertaking must exercise due diligence to ensure that the person conducting the business or undertaking complies with that duty or obligation.
- (2) Subject to subsection (3), the maximum penalty applicable under Division 5 of this Part for an offence relating to the duty of an officer under this section is the maximum penalty fixed for an officer of a person conducting a business or undertaking for that offence.
- (3) Despite anything to the contrary in section 33, if the duty or obligation of a person conducting a business or undertaking was imposed under a provision other than a provision of Division 2 or 3 of this Part or this Division, the maximum penalty under section 33 for an offence by an officer under section 33 in relation to the duty or obligation is the maximum penalty fixed under the provision creating the duty or obligation for an individual who fails to comply with the duty or obligation.
- (4) An officer of a person conducting a business or undertaking may be convicted or found guilty of an offence under this Act relating to a duty under this section whether or not the person conducting the business or undertaking has been convicted or found guilty of an offence under this Act relating to the duty or obligation.
- (5) In this section, *due diligence* includes taking reasonable steps:
- (a) to acquire and keep up-to-date knowledge of work health and safety matters, and
 - (b) to gain an understanding of the nature of the operations of the business or undertaking of the person conducting the business or undertaking and generally of the hazards and risks associated with those operations, and
 - (c) to ensure that the person conducting the business or undertaking has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking, and
 - (d) to ensure that the person conducting the business or undertaking has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information, and

- (e) to ensure that the person conducting the business or undertaking has, and implements, processes for complying with any duty or obligation of the person conducting the business or undertaking under this Act, and

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

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

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

28 Duties of workers

While at work, a worker must:

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

29 Duties of other persons at the workplace

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

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

Division 5 Offences and penalties

30 Health and safety duty

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

31 Reckless conduct—Category 1

- (1) A person commits a Category 1 offence if:
- (a) the person has a health and safety duty, and
 - (b) the person, without reasonable excuse, engages in conduct that exposes an individual to whom that duty is owed to a risk of death or serious injury or illness, and
 - (c) the person is reckless as to the risk to an individual of death or serious injury or illness.

Maximum penalty:

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

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

A person commits a Category 2 offence if:

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

Maximum penalty:

- (a) in the case of an offence committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$150,000, or

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

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

A person commits a Category 3 offence if:

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

Maximum penalty:

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

34 Exceptions

- (1) A volunteer does not commit an offence under this Division for a failure to comply with a health and safety duty, except a duty under section 28 or 29.
- (2) An unincorporated association does not commit an offence under this Act, and is not liable for a civil penalty under this Act, for a failure to comply with a duty or obligation imposed on the unincorporated association under this Act.
- (3) However:
 - (a) an officer of an unincorporated association (other than a volunteer) may be liable for a failure to comply with a duty under section 27, and
 - (b) a member of an unincorporated association may be liable for failure to comply with a duty under section 28 or 29.

Part 3 Incident notification

35 What is a “notifiable incident”

In this Act, *notifiable incident* means:

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

36 What is a “serious injury or illness”

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

- (a) immediate treatment as an in-patient in a hospital, or
- (b) immediate treatment for:
 - (i) the amputation of any part of his or her body, or
 - (ii) a serious head injury, or
 - (iii) a serious eye injury, or
 - (iv) a serious burn, or
 - (v) the separation of his or her skin from an underlying tissue (such as degloving or scalping), or
 - (vi) a spinal injury, or
 - (vii) the loss of a bodily function, or
 - (viii) serious lacerations, or
- (c) medical treatment within 48 hours of exposure to a substance, and includes any other injury or illness prescribed by the regulations but does not include an illness or injury of a prescribed kind.

37 What is a “dangerous incident”

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

- (a) an uncontrolled escape, spillage or leakage of a substance, or
- (b) an uncontrolled implosion, explosion or fire, or
- (c) an uncontrolled escape of gas or steam, or
- (d) an uncontrolled escape of a pressurised substance, or
- (e) electric shock, or
- (f) the fall or release from a height of any plant, substance or thing, or

-
- (g) the collapse, overturning, failure or malfunction of, or damage to, any plant that is required to be authorised for use in accordance with the regulations, or 1
 - (h) the collapse or partial collapse of a structure, or 2
 - (i) the collapse or failure of an excavation or of any shoring supporting an excavation, or 3
 - (j) the inrush of water, mud or gas in workings, in an underground excavation or tunnel, or 4
 - (k) the interruption of the main system of ventilation in an underground excavation or tunnel, or 5
 - (l) any other event prescribed by the regulations, 6
 - but does not include an incident of a prescribed kind. 7

38 Duty to notify of notifiable incidents 8

- (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. 9
- Maximum penalty: 10
- (a) in the case of an individual—\$10,000, or 11
- (b) in the case of a body corporate—\$50,000. 12
- (2) The notice must be given in accordance with this section and by the fastest possible means. 13
- (3) The notice must be given: 14
- (a) by telephone, or 15
- (b) in writing. 16
- Example.** The written notice can be given by facsimile, email or other electronic means. 17
- (4) A person giving notice by telephone must: 18
- (a) give the details of the incident requested by the regulator, and 19
- (b) if required by the regulator, give a written notice of the incident within 48 hours of that requirement being made. 20
- (5) A written notice must be in a form, or contain the details, approved by the regulator. 21
- (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: 22
- (a) details of the information received, or 23

(b)	an acknowledgement of receiving the notice.	1
(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.	2
	Maximum penalty:	3
	(a) in the case of an individual—\$5,000, or	4
	(b) in the case of a body corporate—\$25,000.	5
(8)	Despite subsection (1), a person is not required to give notice under this section of an incident if:	6
	(a) the person has given notice of the incident in accordance with section 44 (2) of the <i>Workplace Injury Management and Workers Compensation Act 1998</i> , or	7
	(b) the incident occurs at a mine to which the <i>Mine Health and Safety Act 2004</i> applies or at a coal workplace.	8
39	Duty to preserve incident sites	9
(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.	10
	Maximum penalty:	11
	(a) in the case of an individual—\$10,000, or	12
	(b) in the case of a body corporate—\$50,000.	13
(2)	In subsection (1) a reference to a site includes any plant, substance, structure or thing associated with the notifiable incident.	14
(3)	Subsection (1) does not prevent any action:	15
	(a) to assist an injured person, or	16
	(b) to remove a deceased person, or	17
	(c) that is essential to make the site safe or to minimise the risk of a further notifiable incident, or	18
	(d) that is associated with a police investigation, or	19
	(e) for which an inspector or the regulator has given permission.	20
(4)	This section does not apply to a mine to which the <i>Mine Health and Safety Act 2004</i> applies or to a coal workplace.	21

Part 4 Authorisations

40 Meaning of “authorised”

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

41 Requirements for authorisation of workplaces

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

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

Maximum penalty:

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

42 Requirements for authorisation of plant or substance

- (1) A person must not use plant or a substance at a workplace if:

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

Maximum penalty:

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

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

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

Maximum penalty:

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

43	Requirements for authorisation of work	1
(1)	A person must not carry out work at a workplace if:	2
(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	3
(b)	the person, or the person on whose behalf the work is carried out, is not authorised in accordance with the regulations.	4
	Maximum penalty:	5
(a)	in the case of an individual—\$20,000, or	6
(b)	in the case of a body corporate—\$100,000.	7
(2)	A person who conducts a business or undertaking must not direct or allow a worker to carry out work at a workplace if:	8
(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	9
(b)	the person, or the person on whose behalf the work is to be carried out, is not authorised in accordance with the regulations.	10
	Maximum penalty:	11
(a)	in the case of an individual—\$20,000, or	12
(b)	in the case of a body corporate—\$100,000.	13
44	Requirements for prescribed qualifications or experience	14
(1)	A person must not carry out work at a workplace if:	15
(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	16
(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.	17
	Maximum penalty:	18
(a)	in the case of an individual—\$20,000, or	19
(b)	in the case of a body corporate—\$100,000.	20
(2)	A person who conducts a business or undertaking must not direct or allow a worker to carry out work at a workplace if:	21
(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	22

(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.	1 2 3
Maximum penalty:	4
(a) in the case of an individual—\$20,000, or	5
(b) in the case of a body corporate—\$100,000.	6
45 Requirement to comply with conditions of authorisation	7
A person must comply with the conditions of any authorisation given to that person under the regulations.	8 9
Maximum penalty:	10
(a) in the case of an individual—\$20,000, or	11
(b) in the case of a body corporate—\$100,000.	12

Part 5	Consultation, representation and participation	1
Division 1	Consultation, co-operation and co-ordination between duty holders	2 3
46	Duty to consult with other duty holders	4
	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.	5 6 7 8
	Maximum penalty:	9
	(a) in the case of an individual—\$20,000, or	10
	(b) in the case of a body corporate—\$100,000.	11
Division 2	Consultation with workers	12
47	Duty to consult workers	13
(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.	14 15 16 17 18
	Maximum penalty:	19
	(a) in the case of an individual—\$20,000, or	20
	(b) in the case of a body corporate—\$100,000.	21
(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.	22 23 24
(3)	The agreed procedures must not be inconsistent with section 48.	25
48	Nature of consultation	26
(1)	Consultation under this Division requires:	27
	(a) that relevant information about the matter is shared with workers, and	28 29
	(b) that workers be given a reasonable opportunity:	30
	(i) to express their views and to raise work health or safety issues in relation to the matter, and	31 32
	(ii) to contribute to the decision-making process relating to the matter, and	33 34

(c)	that the views of workers are taken into account by the person conducting the business or undertaking, and	1 2
(d)	that the workers consulted are advised of the outcome of the consultation in a timely manner.	3 4
(2)	If the workers are represented by a health and safety representative, the consultation must involve that representative.	5 6
49	When consultation is required	7
	Consultation under this Division is required in relation to the following health and safety matters:	8 9
(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,	10 11 12
(b)	when making decisions about ways to eliminate or minimise those risks,	13 14
(c)	when making decisions about the adequacy of facilities for the welfare of workers,	15 16
(d)	when proposing changes that may affect the health or safety of workers,	17 18
(e)	when making decisions about the procedures for:	19
	(i) consulting with workers, or	20
	(ii) resolving work health or safety issues at the workplace, or	21
	(iii) monitoring the health of workers, or	22
	(iv) monitoring the conditions at any workplace under the management or control of the person conducting the business or undertaking, or	23 24 25
	(v) providing information and training for workers, or	26
(f)	when carrying out any other activity prescribed by the regulations for the purposes of this section.	27 28
Division 3	Health and safety representatives	29
Subdivision 1	Request for election of health and safety representatives	30 31
50	Request for election of health and safety representative	32
	A worker who carries out work for a business or undertaking may ask the person conducting the business or undertaking to facilitate the conduct of an election for one or more health and safety representatives	33 34 35

to represent workers who carry out work for the business or
undertaking.

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Subdivision 2 Determination of work groups

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51 Determination of work groups

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- (1) If a request is made under section 50, the person conducting the
business or undertaking must facilitate the determination of one or more
work groups of workers. 5
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- (2) The purpose of determining a work group is to facilitate the
representation of workers in the work group by one or more health and
safety representatives. 8
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- (3) A work group may be determined for workers at one or more
workplaces. 11
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52 Negotiations for agreement for work group

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- (1) A work group is to be determined by negotiation and agreement
between: 14
15
 - (a) the person conducting the business or undertaking, and 16
 - (b) the workers who will form the work group or their
representatives. 17
18
- (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. 19
20
21
- (3) The purpose of the negotiations is to determine: 22
 - (a) the number and composition of work groups to be represented by
health and safety representatives, and 23
24
 - (b) the number of health and safety representatives and deputy health
and safety representatives (if any) to be elected, and 25
26
 - (c) the workplace or workplaces to which the work groups will
apply, and 27
28
 - (d) the businesses or undertakings to which the work groups will
apply. 29
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- (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. 31
32
33
- (5) The person conducting the business or undertaking must, if asked by a
worker, negotiate with the worker's representative in negotiations under 34
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this section (including negotiations for a variation of an agreement) and must not exclude the representative from those negotiations.

Maximum penalty:

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

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

53 Notice to workers

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

Maximum penalty:

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

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

Maximum penalty:

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

54 Failure of negotiations

- (1) If there is a failure of negotiations (including negotiations concerning the variation of an agreement), any person who is or would be a party to the negotiations may ask the regulator to appoint an inspector for the purposes of this section.
- (2) An inspector appointed under subsection (1) may decide:
 - (a) the matters referred to in section 52 (3), or any of those matters which is the subject of the proposed variation (as the case requires), or
 - (b) that work groups should not be determined or that the agreement should not be varied (as the case requires).

- (3) For the purposes of this section, there is a failure of negotiations if: 1
 - (a) the person conducting the business or undertaking has not taken 2all reasonable steps to commence negotiations with the workers 3and negotiations have not commenced within 14 days after: 4
 - (i) a request is made under section 50, or 5
 - (ii) a party to the agreement requests the variation of the 6agreement, or 7
 - (b) agreement cannot be reached on a matter relating to the 8determination of a work group (or the variation of an agreement 9concerning a work group) within a reasonable time after 10negotiations commence. 11
- (4) A decision under this section is taken to be an agreement under 12section 52. 13

Subdivision 3 Multiple-business work groups 14

55 Determination of work groups of multiple businesses 15

- (1) Work groups may be determined for workers carrying out work for 2 or 16more persons conducting businesses or undertakings at one or more 17workplaces. 18
- (2) The particulars of the work groups are to be determined by negotiation 19and agreement, in accordance with section 56, between each of the 20persons conducting the businesses or undertakings and the workers. 21
- (3) The parties to an agreement concerning the determination of a work 22group or groups may, at any time, negotiate a variation of the 23agreement. 24
- (4) The determination of one or more work groups under this Subdivision 25does not: 26
 - (a) prevent the determination under this Subdivision or 27Subdivision 2 of any other work group of the workers concerned, 28or 29
 - (b) affect any work groups of those workers that have already been 30determined under this Subdivision or Subdivision 2. 31

56 Negotiation of agreement for work groups of multiple businesses 32

- (1) Negotiations concerning work groups under this Subdivision must be 33directed only at the following: 34
 - (a) the number and composition of work groups to be represented by 35health and safety representatives, 36

(b)	the number of health and safety representatives and deputy health and safety representatives (if any) for each work group,	1
(c)	the workplace or workplaces to which the work groups will apply,	2
(d)	the businesses or undertakings to which the work groups will apply.	3
		4
(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.	5
	Maximum penalty:	6
(a)	in the case of an individual—\$10,000, or	7
(b)	in the case of a body corporate—\$50,000.	8
(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.	9
		10
(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.	11
		12
		13
57	Notice to workers	14
(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.	15
	Maximum penalty:	16
(a)	in the case of an individual—\$2,000, or	17
(b)	in the case of a body corporate—\$10,000.	18
(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.	19
	Maximum penalty:	20
(a)	in the case of an individual—\$2,000, or	21
(b)	in the case of a body corporate—\$10,000.	22

58	Withdrawal from negotiations or agreement involving multiple businesses	1
		2
(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.	3
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		6
(2)	If a party withdraws from an agreement concerning a work group under this Subdivision:	7
		8
(a)	the other parties must negotiate a variation to the agreement in accordance with section 56, and	9
		10
(b)	the withdrawal does not affect the validity of the agreement between the other parties in the meantime.	11
		12
59	Effect of Subdivision on other arrangements	13
	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.	14
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	Subdivision 4 Election of health and safety representatives	19
60	Eligibility to be elected	20
	A worker is:	21
(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	22
		23
(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.	24
		25
		26
61	Procedure for election of health and safety representatives	27
(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.	28
		29
(2)	However, an election must comply with the procedures (if any) prescribed by the regulations.	30
		31
(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.	32
		33
		34

(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.	1 2 3 4
	Maximum penalty:	5
(a)	in the case of an individual—\$10,000, or	6
(b)	in the case of a body corporate—\$50,000.	7
62	Eligibility to vote	8
(1)	A health and safety representative for a work group is to be elected by members of that work group.	9 10
(2)	All workers in a work group are entitled to vote for the election of a health and safety representative for that work group.	11 12
63	When election not required	13
	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.	14 15 16 17
64	Term of office of health and safety representative	18
(1)	A health and safety representative for a work group holds office for 3 years.	19 20
(2)	However a person ceases to hold office as a health and safety representative for a work group if:	21 22
(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	23 24 25
(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	26 27
(c)	the person is disqualified under section 65 from acting as a health and safety representative, or	28 29
(d)	the person is removed from that position by a majority of the members of the work group in accordance with the regulations.	30 31
(3)	A health and safety representative is eligible for re-election.	32

65	Disqualification of health and safety representatives	1
(1)	An application may be made to the Industrial Relations Commission to disqualify a health and safety representative on the ground that the representative has:	2
		3
		4
(a)	exercised a power or performed a function as a health and safety representative for an improper purpose, or	5
		6
(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.	7
		8
		9
(2)	The following persons may make an application under this section:	10
(a)	any person adversely affected by:	11
	(i) the exercise of a power or the performance of a function referred to in subsection (1) (a), or	12
		13
	(ii) the use or disclosure of information referred to in subsection (1) (b),	14
		15
(b)	the regulator.	16
(3)	If the Industrial Relations Commission is satisfied that a ground in subsection (1) is made out, the Commission may disqualify the health and safety representative for a specified period or indefinitely.	17
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		19
66	Immunity of health and safety representatives	20
	A health and safety representative is not personally liable for anything done or omitted to be done in good faith:	21
		22
(a)	in exercising a power or performing a function under this Act, or	23
(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.	24
		25
		26
67	Deputy health and safety representatives	27
(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.	28
		29
		30
(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:	31
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		34
(a)	the powers and functions may be exercised or performed by a deputy health and safety representative for the work group, and	35
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| (b) | this Act applies in relation to the deputy health and safety representative as if he or she were the health and safety representative. | 1
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| (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. | 4
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Subdivision 5	Powers and functions of health and safety representatives	7 8
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68	Powers and functions of health and safety representatives	9
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| (1) | The powers and functions of a health and safety representative for a work group are: | 10
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| (a) | to represent the workers in the work group in matters relating to work health and safety, and | 12
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| (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 | 14
15
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| (c) | to investigate complaints from members of the work group relating to work health and safety, and | 18
19 |
| (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. | 20
21
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| (2) | In exercising a power or performing a function, the health and safety representative may: | 23
24 |
| (a) | inspect the workplace or any part of the workplace at which a worker in the work group works: | 25
26 |
| (i) | at any time after giving reasonable notice to the person conducting the business or undertaking at that workplace, and | 27
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29 |
| (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 | 30
31
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33 |
| (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 | 34
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36 |

- (c) with the consent of a worker that the health and safety representative represents, be present at an interview concerning work health and safety between the worker and:
 - (i) an inspector, or
 - (ii) the person conducting the business or undertaking at that workplace or the person's representative, and
 - (d) with the consent of one or more workers that the health and safety representative represents, be present at an interview concerning work health and safety between a group of workers, which includes the workers who gave the consent, and:
 - (i) an inspector, or
 - (ii) the person conducting the business or undertaking at that workplace or the person's representative, and
 - (e) request the establishment of a health and safety committee, and
 - (f) receive information concerning the work health and safety of workers in the work group, and
 - (g) whenever necessary, request the assistance of any person.
- Note.** A health and safety representative also has a power under Division 6 of this Part to direct work to cease in certain circumstances and under Division 7 of this Part to issue provisional improvement notices.
- (3) Despite subsection (2) (f), a health and safety representative is not entitled to have access to any personal or medical information concerning a worker without the worker's consent unless the information is in a form that:
 - (a) does not identify the worker, and
 - (b) could not reasonably be expected to lead to the identification of the worker.
 - (4) Nothing in this Act imposes or is taken to impose a duty on a health and safety representative in that capacity.

69 Powers and functions generally limited to the particular work group

- (1) A health and safety representative for a work group may exercise powers and perform functions under this Act only in relation to matters that affect, or may affect, workers in that group.
- (2) Subsection (1) does not apply if:
 - (a) there is a serious risk to health or safety emanating from an immediate or imminent exposure to a hazard that affects or may affect a member of another work group, or

-
- (b) a member of another work group asks for the representative's assistance, 1
 - 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. 2
 - (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. 3

Subdivision 6 Obligations of person conducting business or undertaking to health and safety representatives 4

70 General obligations of person conducting business or undertaking 5

- (1) The person conducting a business or undertaking must: 6
- (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 7
- (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 8
- (c) allow any health and safety representative for the work group to have access to information that the person has relating to: 9
 - (i) hazards (including associated risks) at the workplace affecting workers in the work group, and 10
 - (ii) the health and safety of the workers in the work group, and 11
- (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: 12
 - (i) an inspector, or 13
 - (ii) the person conducting the business or undertaking at that workplace or the person's representative, and 14
- (e) with the consent of one or more workers that the health and safety representative represents, allow the health and safety representative to be present at an interview concerning work health and safety between a group of workers, which includes the workers who gave the consent, and: 15
 - (i) an inspector, or 16

- (ii) the person conducting the business or undertaking at that workplace or the person's representative, and 1
 - (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 2
 - (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 3
 - (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 4
 - (i) provide any other assistance to the health and safety representative for the work group that may be required by the regulations. 5
- Maximum penalty: 6
- (a) in the case of an individual—\$10,000, or 7
 - (b) in the case of a body corporate—\$50,000. 8
- (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. 9
- Maximum penalty: 10
- (a) in the case of an individual—\$10,000, or 11
 - (b) in the case of a body corporate—\$50,000. 12
- (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. 13
- 71 Exceptions from obligations under section 70 (1)** 14
- (1) This section applies despite section 70 (1). 15
 - (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: 16
 - (a) does not identify the worker, and 17

(b)	could not reasonably be expected to lead to the identification of the worker.	1
		2
	Maximum penalty:	3
(a)	in the case of an individual—\$10,000, or	4
(b)	in the case of a body corporate—\$50,000.	5
(3)	The person conducting a business or undertaking is not required to give financial assistance to a health and safety representative for the purpose of the assistance referred to in section 70 (1) (f).	6
		7
		8
(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:	9
		10
		11
(a)	if the assistant has had his or her WHS entry permit revoked, or	12
(b)	during any period that the assistant's WHS entry permit is suspended or the assistant is disqualified from holding a WHS entry permit.	13
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		15
(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.	16
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(6)	If access is refused to a person assisting a health and safety representative under subsection (5), the health and safety representative may ask the regulator to appoint an inspector to assist in resolving the matter.	19
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72	Obligation to train health and safety representatives	23
(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:	24
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		26
		27
(a)	approved by the regulator, and	28
(b)	a course that the health and safety representative is entitled under the regulations to attend, and	29
		30
(c)	subject to subsection (5), chosen by the health and safety representative, in consultation with the person conducting the business or undertaking.	31
		32
		33
(2)	The person conducting the business or undertaking must:	34
(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	35
		36
		37

(b)	pay the course fees and any other reasonable costs associated with the health and safety representative's attendance at the course of training.	1 2 3
(3)	If:	4
(a)	a health and safety representative represents a work group of the workers of more than one business or undertaking, and	5 6
(b)	the person conducting any of those businesses or undertakings has complied with this section in relation to the representative,	7 8
	each of the persons conducting those businesses or undertakings is to be taken to have complied with this section in relation to the representative.	9 10
(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.	11 12 13 14
(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.	15 16 17 18 19
(6)	The inspector may decide the matter in accordance with this section.	20
(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).	21 22 23
	Maximum penalty:	24
(a)	in the case of an individual—\$10,000, or	25
(b)	in the case of a body corporate—\$50,000.	26
73	Obligation to share costs if multiple businesses or undertakings	27
(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:	28 29 30
(a)	the costs of the representative exercising powers and performing functions under this Act, and	31 32
(b)	the costs referred to in section 72 (2) (b),	33
	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.	34 35 36

- (2) An agreement to apportion the costs in another way may be varied at any time by negotiation and agreement between each of the persons conducting the businesses or undertakings.

74 List of health and safety representatives

- (1) A person conducting a business or undertaking must ensure that:
- (a) a list of each health and safety representative and deputy health and safety representative (if any) for each work group of workers carrying out work for the business or undertaking is prepared and kept up to date, and
 - (b) a copy of the up-to-date list is displayed:
 - (i) at the principal place of business of the business or undertaking, and
 - (ii) at any other workplace that is appropriate taking into account the constitution of the relevant work group or work groups,
 in a manner that is readily accessible to workers in the relevant work group or work groups.
- Maximum penalty:
- (a) in the case of an individual—\$2,000, or
 - (b) in the case of a body corporate—\$10,000.
- (2) A person conducting a business or undertaking must provide a copy of the up-to-date list prepared under subsection (1) to the regulator as soon as practicable after it is prepared.

Division 4 Health and safety committees

75 Health and safety committees

- (1) The person conducting a business or undertaking at a workplace must establish a health and safety committee for the business or undertaking or part of the business or undertaking:
- (a) within 2 months after being requested to do so by:
 - (i) a health and safety representative for a work group of workers carrying out work at that workplace, or
 - (ii) 5 or more workers at that workplace, or
 - (b) if required by the regulations to do so, within the time prescribed by the regulations.
- Maximum penalty:
- (a) in the case of an individual—\$5,000, or
 - (b) in the case of a body corporate—\$25,000.

- (2) A person conducting a business or undertaking at a workplace may establish a health and safety committee for the workplace or part of the workplace on the person's own initiative. 1
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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. 4
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76 Constitution of committee 7

- (1) Subject to subsections (2)–(4), the constitution of a health and safety committee may be agreed between the person conducting the business or undertaking and the workers at the workplace. 8
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(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. 11
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(3) If there are 2 or more health and safety representatives at a workplace, those representatives may choose one or more of their number (who consent) to be members of the committee. 13
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(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. 16
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(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. 18
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(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. 21
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(7) A decision of an inspector under this section is taken to be an agreement under this section between the parties. 24
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76A Special provision for coal and mine workplaces 26

- (1) In the case of a coal workplace, a site check inspector and the electrical check inspector (within the meaning of the *Coal Mine Health and Safety Act 2002*) for that workplace must be members of any health and safety committee for that workplace. 27
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Note. The *Coal Mine Health and Safety Act 2002* makes provision for the election or appointment of certain people to carry out inspections and perform other functions on behalf of people who work at a coal workplace. 31
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(2) In the case of a place of work that is a mine within the meaning of the *Mine Health and Safety Act 2004*, a site check inspector (within the meaning of that Act) for the mine must be a member of any health and safety committee for that place of work. 34
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Note. The *Mine Health and Safety Act 2004* makes provision for the election or appointment of certain persons to carry out inspections and perform other functions on behalf of persons who work at mines within the meaning of that Act. 38
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77	Functions of committee	1
	The functions of a health and safety committee are:	2
	(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	3 4 5 6
	(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	7 8 9
	(c) any other functions prescribed by the regulations or agreed between the person conducting the business or undertaking and the committee.	10 11 12
78	Meetings of committee	13
	A health and safety committee must meet:	14
	(a) at least once every 3 months, and	15
	(b) at any reasonable time at the request of at least half of the members of the committee.	16 17
79	Duties of person conducting business or undertaking	18
	(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.	19 20 21 22
	Maximum penalty:	23
	(a) in the case of an individual—\$10,000, or	24
	(b) in the case of a body corporate—\$50,000.	25
	(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.	26 27 28 29
	(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:	30 31 32
	(a) hazards (including associated risks) at the workplace, and	33
	(b) the health and safety of the workers at the workplace.	34
	Maximum penalty:	35
	(a) in the case of an individual—\$10,000, or	36
	(b) in the case of a body corporate—\$50,000.	37

(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:	1
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		4
(a)	does not identify the worker, and	5
(b)	could not reasonably be expected to lead to the identification of the worker.	6
		7
	Maximum penalty:	8
(a)	in the case of an individual—\$10,000, or	9
(b)	in the case of a body corporate—\$50,000.	10
Division 5	Issue resolution	11
80	Parties to an issue	12
(1)	In this Division, <i>parties</i> , in relation to an issue, means the following:	13
(a)	the person conducting the business or undertaking or the person's representative,	14
		15
(b)	if the issue involves more than one business or undertaking, the person conducting each business or undertaking or the person's representative,	16
		17
		18
(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,	19
		20
		21
(d)	if the worker or workers affected by the issue are not in a work group, the worker or workers or their representative.	22
		23
(2)	A person conducting a business or undertaking must ensure that the person's representative (if any) for the purposes of this Division:	24
		25
(a)	is not a health and safety representative, and	26
(b)	has an appropriate level of seniority, and is sufficiently competent, to act as the person's representative.	27
		28
81	Resolution of health and safety issues	29
(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.	30
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(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.	33
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(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.	1 2
82	Referral of issue to regulator for resolution by inspector	3
(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.	4 5
(2)	A party to the issue may ask the regulator to appoint an inspector to attend the workplace to assist in resolving the issue.	6 7
(3)	A request to the regulator under this section does not prevent:	8
(a)	a worker from exercising the right under Division 6 of this Part to cease work, or	9 10
(b)	a health and safety representative from issuing a provisional improvement notice or a direction under Division 6 of this Part to cease work.	11 12 13
(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.	14 15 16
Division 6	Right to cease or direct cessation of unsafe work	17
83	Definition of "cease work under this Division"	18
	In this Division, <i>cease work under this Division</i> means:	19
(a)	to cease, or refuse, to carry out work under section 84, or	20
(b)	to cease work on a direction under section 85.	21
84	Right of worker to cease unsafe work	22
	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.	23 24 25 26
85	Health and safety representative may direct that unsafe work cease	27
(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.	28 29 30 31 32

(2)	However, the health and safety representative must not give a worker a direction to cease work unless the matter is not resolved after:	1
		2
(a)	consulting about the matter with the person conducting the business or undertaking for whom the workers are carrying out work, and	3
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		5
(b)	attempting to resolve the matter as an issue under Division 5 of this Part.	6
		7
(3)	The health and safety representative may direct the worker to cease work without carrying out that consultation or attempting to resolve the matter as an issue under Division 5 of this Part if the risk is so serious and immediate or imminent that it is not reasonable to consult before giving the direction.	8
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(4)	The health and safety representative must carry out the consultation as soon as practicable after giving a direction under subsection (3).	13
		14
(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.	15
		16
		17
(6)	A health and safety representative cannot give a direction under this section unless the representative has:	18
		19
(a)	completed initial training prescribed by the regulations referred to in section 72 (1) (b), or	20
		21
(b)	previously completed that training when acting as a health and safety representative for another work group, or	22
		23
(c)	completed training equivalent to that training under a corresponding WHS law.	24
		25
86	Worker to notify if ceases work	26
	A worker who ceases work under this Division must:	27
(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	28
		29
		30
		31
(b)	remain available to carry out suitable alternative work.	32
87	Alternative work	33
	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.	34
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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.

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.	1 2
(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.	3 4 5 6
91	Provisional improvement notice to be in writing	7
	A provisional improvement notice must be in writing.	8
92	Contents of provisional improvement notice	9
	A provisional improvement notice must state:	10
(a)	that the health and safety representative believes the person:	11
(i)	is contravening a provision of this Act, or	12
(ii)	has contravened a provision of this Act in circumstances that make it likely that the contravention will continue or be repeated, and	13 14 15
(b)	the provision the representative believes is being, or has been, contravened, and	16 17
(c)	briefly, how the provision is being, or has been contravened, and	18
(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.	19 20 21
93	Provisional improvement notice may give directions to remedy contravention	22 23
(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.	24 25 26 27
(2)	A direction included in a provisional improvement notice may:	28
(a)	refer to a code of practice, and	29
(b)	offer the person to whom it is issued a choice of ways in which to remedy the contravention.	30 31
94	Minor changes to provisional improvement notice	32
	A health and safety representative may make minor changes to a provisional improvement notice:	33 34
(a)	for clarification, or	35

(b)	to correct errors or references, or	1
(c)	to reflect changes of address or other circumstances.	2
95	Issue of provisional improvement notice	3
	A provisional improvement notice may be issued to a person in accordance with section 209.	4 5
96	Health and safety representative may cancel notice	6
	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.	7 8 9
97	Display of provisional improvement notice	10
(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.	11 12 13 14
	Maximum penalty:	15
(a)	in the case of an individual—\$5,000, or	16
(b)	in the case of a body corporate—\$25,000.	17
(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.	18 19 20
	Maximum penalty:	21
(a)	in the case of an individual—\$5,000, or	22
(b)	in the case of a body corporate—\$25,000.	23
98	Formal irregularities or defects in notice	24
	A provisional improvement notice is not invalid only because of:	25
(a)	a formal defect or irregularity in the notice unless the defect or irregularity causes or is likely to cause substantial injustice, or	26 27
(b)	a failure to use the correct name of the person to whom the notice is issued if the notice sufficiently identifies the person.	28 29
99	Offence to contravene a provisional improvement notice	30
(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.	31 32 33

- (2) The person must comply with the provisional improvement notice within the time specified in the notice. 1
Maximum penalty: 2
(a) in the case of an individual—\$50,000, or 3
(b) in the case of a body corporate—\$250,000. 4
- 100 Request for review of provisional improvement notice** 5
- (1) Within 7 days after a provisional improvement notice is issued to a person: 6
(a) the person to whom it was issued, or 7
(b) if the person is a worker, the person conducting the business or undertaking at the workplace at which the worker carries out work, 8
may ask the regulator to appoint an inspector to review the notice. 9
- (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. 10
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- 101 Regulator to appoint inspector to review notice** 17
- (1) The regulator must ensure that an inspector attends the workplace as soon as practicable after a request is made under section 100. 18
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- (2) The inspector must review the provisional improvement notice and inquire into the circumstances that are the subject of the provisional improvement notice. 20
21
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- (3) An inspector may review a provisional improvement notice even if the period for compliance with the notice has expired. 23
24
- 102 Decision of inspector on review of provisional improvement notice** 25
- (1) After reviewing the provisional improvement notice, the inspector must: 26
27
(a) confirm the provisional improvement notice, or 28
(b) confirm the provisional improvement notice with changes, or 29
(c) cancel the provisional improvement notice. 30
- (2) The inspector must give a copy of his or her decision to: 31
(a) the applicant for the review of the provisional improvement notice, and 32
(b) the health and safety representative who issued the notice. 33
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- (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

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103 Part does not apply to prisoners

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

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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.
Maximum penalty:
(a) in the case of an individual—\$100,000, or
(b) in the case of a body corporate—\$500,000.
- (2) A person commits an offence under subsection (1) only if the reason referred to in section 106 was the dominant reason for the discriminatory conduct.

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

105 What is “discriminatory conduct”

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

106 What is a “prohibited reason”

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

- (a) is, has been or proposes to be a health and safety representative or a member of a health and safety committee, or
- (b) undertakes, has undertaken or proposes to undertake another role under this Act, or
- (c) exercises a power or performs a function or has exercised a power or performed a function or proposes to exercise a power or perform a function as a health and safety representative or as a member of a health and safety committee, or
- (d) exercises, has exercised or proposes to exercise a power under this Act or exercises, has exercised or proposes to exercise a power under this Act in a particular way, or
- (e) performs, has performed or proposes to perform a function under this Act or performs, has performed or proposes to perform a function under this Act in a particular way, or
- (f) refrains from, has refrained from or proposes to refrain from exercising a power or performing a function under this Act or refrains from, has refrained from or proposes to refrain from exercising a power or performing a function under this Act in a particular way, or
- (g) assists or has assisted or proposes to assist, or gives or has given or proposes to give any information to any person exercising a power or performing a function under this Act, or
- (h) raises or has raised or proposes to raise an issue or concern about work health and safety with:
 - (i) the person conducting a business or undertaking, or
 - (ii) an inspector, or
 - (iii) a WHS entry permit holder, or
 - (iv) a health and safety representative, or
 - (v) a member of a health and safety committee, or
 - (vi) another worker, or
 - (vii) any other person who has a duty under this Act in relation to the matter, or
 - (viii) any other person exercising a power or performing a function under this Act, or
- (i) is involved in, has been involved in or proposes to be involved in resolving a work health and safety issue under this Act, or

(j)	is taking action, has taken action or proposes to take action to seek compliance by any person with any duty or obligation under this Act.	1 2 3
107	Prohibition of requesting, instructing, inducing, encouraging, authorising or assisting discriminatory conduct	4 5
	A person must not request, instruct, induce, encourage, authorise or assist another person to engage in discriminatory conduct in contravention of section 104.	6 7 8
	Maximum penalty:	9
(a)	in the case of an individual—\$100,000, or	10
(b)	in the case of a body corporate—\$500,000.	11
	Note. Civil proceedings may be brought under Division 3 of this Part if a person requested, instructed, induced, encouraged, authorised or assisted another person to engage in discriminatory conduct for a prohibited reason.	12 13 14
108	Prohibition of coercion or inducement	15
(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:	16 17 18
(a)	to exercise or not to exercise a power, or to propose to exercise or not to exercise a power, under this Act, or	19 20
(b)	to perform or not to perform a function, or to propose to perform or not to perform a function, under this Act, or	21 22
(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	23 24 25
(d)	to refrain from seeking, or continuing to undertake, a role under this Act.	26 27
	Maximum penalty:	28
(a)	in the case of an individual—\$100,000, or	29
(b)	in the case of a body corporate—\$500,000.	30
	Note. Civil proceedings may be brought under Division 3 of this Part in relation to a contravention of this section.	31 32
(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.	33 34 35
(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.	36 37 38

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- (4) In this section, *emergency services worker* includes an officer, employee or member of any of the following:
- (a) the Ambulance Service of NSW,
 - (b) Fire and Rescue NSW,
 - (c) the NSW Rural Fire Service,
 - (d) the NSW Police Force,
 - (e) the State Emergency Service,
 - (f) the NSW Volunteer Rescue Association Inc,
 - (g) the New South Wales Mines Rescue Brigade established under the *Coal Industry Act 2001*,
 - (h) an accredited rescue unit within the meaning of the *State Emergency and Rescue Management Act 1989*.

109 Misrepresentation

- (1) A person must not knowingly or recklessly make a false or misleading representation to another person about that other person's:
- (a) rights or obligations under this Act, or
 - (b) ability to initiate, or participate in, a process or proceedings under this Act, or
 - (c) ability to make a complaint or inquiry to a person or body empowered under this Act to seek compliance with this Act.
- Maximum penalty:
- (a) in the case of an individual—\$100,000, or
 - (b) in the case of a body corporate—\$500,000.
- (2) Subsection (1) does not apply if the person to whom the representation is made would not be expected to rely on it.

Division 2 Criminal proceedings in relation to discriminatory conduct

110 Proof of discriminatory conduct

- (1) This section applies if in proceedings for an offence of contravening section 104 or 107, the prosecution:
- (a) proves that the discriminatory conduct was engaged in, and
 - (b) proves that a circumstance referred to in section 106 (a)–(j) existed at the time the discriminatory conduct was engaged in, and

(c)	adduces evidence that the discriminatory conduct was engaged in for a prohibited reason.	1 2
(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 4 5 6
(3)	To avoid doubt, the burden of proof on the accused under subsection (2) is a legal burden of proof.	7 8
111	Order for compensation or reinstatement	9
	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:	10 11 12
(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,	13 14 15
(b)	in relation to a person who was or is an employee or prospective employee, an order that:	16 17
(i)	the person be reinstated or reemployed in his or her former position or, if that position is not available, in a similar position, or	18 19 20
(ii)	the person be employed in the position for which he or she had applied or a similar position.	21 22
Division 3	Civil proceedings in relation to discriminatory or coercive conduct	23 24
112	Civil proceedings in relation to engaging in or inducing discriminatory or coercive conduct	25 26
(1)	An eligible person may apply to the District Court for an order under this section.	27 28
(2)	The District Court may make one or more of the orders set out in subsection (3) in relation to a person who has:	29 30
(a)	engaged in discriminatory conduct for a prohibited reason, or	31
(b)	requested, instructed, induced, encouraged, authorised or assisted another person to engage in discriminatory conduct for a prohibited reason, or	32 33 34
(c)	contravened section 108.	35

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| (3) | For the purposes of subsection (2), the orders that the District Court may make are: | 1
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| (a) | an injunction, | 3 |
| (b) | in the case of conduct referred to in subsection (2) (a) or (b), an order that the person pay (within a specified period) the compensation to the person who was the subject of the discriminatory conduct that the District Court considers appropriate, | 4
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| (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: | 9
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11 |
| (i) | the worker be reinstated or reemployed in his or her former position or, if that position is not available, in a similar position, or | 12
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| (ii) | the prospective worker be employed in the position for which he or she had applied or a similar position, | 15
16 |
| (d) | any other order that the District Court considers appropriate. | 17 |
| (4) | For the purposes of this section, a person may be found to have engaged in discriminatory conduct for a prohibited reason only if a reason referred to in section 106 was a substantial reason for the conduct. | 18
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| (5) | Nothing in this section is to be construed as limiting any other power of the District Court. | 21
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| (6) | For the purposes of this section, each of the following is an <i>eligible person</i> : | 23
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| (a) | a person affected by the contravention, | 25 |
| (b) | a person authorised as a representative by a person referred to in paragraph (a). | 26
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| 113 | Procedure for civil actions for discriminatory conduct | 28 |
| (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. | 29
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| (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. | 32
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| (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: | 1 |
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| (a) | the conduct was reasonable in the circumstances, and | 3 |
| (b) | a substantial reason for the conduct was to comply with the requirements of this Act or a corresponding WHS law. | 4 |
| | | 5 |
| (4) | To avoid doubt, the burden of proof on the defendant under subsections (2) and (3) is a legal burden of proof. | 6 |
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Division 4 General 8

114 General provisions relating to orders 9

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| (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. | 10 |
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| (2) | If the District Court makes an order under section 112 in a proceeding in relation to conduct referred to in section 112 (2) (a) or (b), the court cannot make an order under section 111 in a proceeding for an offence under section 104 or 107 in relation to the same conduct. | 14 |
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| (3) | If the court makes an order under section 111 in a proceeding for an offence under section 104 or 107, the District Court cannot make an order under section 112 in a proceeding in relation to conduct referred to in section 112 (2) (a) or (b) that is the same conduct. | 18 |
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115 Prohibition of multiple actions 22

A person cannot: 23

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| (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 | 24 |
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| (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 | 29 |
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| (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. | 32 |
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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 relation to WHS civil penalty provisions.

Division 1 Introductory

116 Definitions

In this Part:

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

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

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

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

- (a) who is a member, or eligible to be a member, of a relevant union, and
- (b) whose industrial interests the relevant union is entitled to represent, and
- (c) who works at that workplace.

Division 2 Entry to inquire into suspected contraventions

117 Entry to inquire into suspected contraventions

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

118 Rights that may be exercised while at workplace

- (1) While at the workplace under this Division, the WHS entry permit holder may do all or any of the following in relation to the suspected contravention of this Act:
 - (a) inspect any work system, plant, substance, structure or other thing relevant to the suspected contravention,
 - (b) consult with the relevant workers in relation to the suspected contravention,

(c)	consult with the relevant person conducting a business or undertaking about the suspected contravention,	1 2
(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:	3 4 5 6
	(i) is kept at the workplace, or	7
	(ii) is accessible from a computer that is kept at the workplace,	8
(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.	9 10 11 12
(2)	However, the relevant person conducting the business or undertaking is not required under subsection (1) (d) to allow the WHS entry permit holder to inspect or make copies of a document if to do so would contravene a law of the Commonwealth or a law of a State.	13 14 15 16
(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).	17 18 19
	WHS civil penalty provision.	20
	Maximum penalty:	21
	(a) in the case of an individual—\$10,000, or	22
	(b) in the case of a body corporate—\$50,000.	23
(4)	Subsection (3) places an evidential burden on the defendant to show a reasonable excuse.	24 25
	Notes.	26
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.	27 28 29
2	The use or disclosure of personal information obtained under this section is regulated under the <i>Privacy Act 1988</i> of the Commonwealth.	30 31
119	Notice of entry	32
(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:	33 34 35
	(a) the relevant person conducting a business or undertaking, and	36
	(b) the person with management or control of the workplace.	37
(2)	Subsection (1) does not apply if to give the notice would:	38
	(a) defeat the purpose of the entry to the workplace, or	39

	(b) unreasonably delay the WHS entry permit holder in an urgent case.	1 2
	(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.	3 4 5
120	Entry to inspect employee records or information held by another person	6 7
	(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.	8 9 10
	(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:	11 12 13
	(a) employee records that are directly relevant to a suspected contravention, or	14 15
	(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.	16 17 18
	(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.	19 20 21
	(4) The notice must comply with the regulations.	22
	(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.	23 24
	Note. The use or disclosure of personal information obtained under this section is regulated under the <i>Privacy Act 1988</i> of the Commonwealth.	25 26
Division 3	Entry to consult and advise workers	27
121	Entry to consult and advise workers	28
	(1) A WHS entry permit holder may enter a workplace to consult on work health and safety matters with, and provide advice on those matters to, one or more relevant workers who wish to participate in the discussions.	29 30 31
	(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.	32 33 34 35 36

122	Notice of entry	1
(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 3 4
(2)	The notice must comply with the regulations.	5
(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.	6 7
Division 4	Requirements for WHS entry permit holders	8
123	Contravening WHS entry permit conditions	9
	A WHS entry permit holder must not contravene a condition imposed on the WHS entry permit.	10 11
	WHS civil penalty provision.	12
	Maximum penalty: \$10,000.	13
124	WHS entry permit holder must also hold permit under other law	14
	A WHS entry permit holder must not enter a workplace unless he or she also holds an entry permit under the Fair Work Act or the <i>Industrial Relations Act 1996</i> .	15 16 17
	WHS civil penalty provision.	18
	Maximum penalty: \$10,000.	19
125	WHS entry permit to be available for inspection	20
	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.	21 22 23 24
	WHS civil penalty provision.	25
	Maximum penalty: \$10,000.	26
126	When right may be exercised	27
	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.	28 29
	WHS civil penalty provision.	30
	Maximum penalty: \$10,000.	31

127	Where the right may be exercised	1
	A WHS entry permit holder may exercise a right of entry to a workplace only in relation to:	2
		3
	(a) the area of the workplace where the relevant workers work, or	4
	(b) any other work area that directly affects the health or safety of those workers.	5
		6
128	Work health and safety requirements	7
	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:	8
		9
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	(a) any work health and safety requirement that applies to the workplace, and	13
		14
	(b) any other legislated requirement that applies to that type of workplace.	15
		16
	WHS civil penalty provision.	17
	Maximum penalty: \$10,000.	18
129	Residential premises	19
	A WHS entry permit holder must not enter any part of a workplace that is used only for residential purposes.	20
		21
	WHS civil penalty provision.	22
	Maximum penalty: \$10,000.	23
130	WHS entry permit holder not required to disclose names of workers	24
	(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.	25
		26
		27
		28
	(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.	29
		30
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		32
Division 5	WHS entry permits	33
131	Application for WHS entry permit	34
	(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.	35
		36

(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:	1
		2
		3
(a)	is an official of the union, and	4
(b)	has satisfactorily completed the prescribed training, and	5
(c)	holds, or will hold, an entry permit under:	6
	(i) the Fair Work Act, or,	7
	(ii) the <i>Industrial Relations Act 1996</i> .	8
132	Consideration of application	9
	In considering whether to issue a WHS entry permit, the authorising authority must take into account:	10
		11
(a)	the object of this Act, and	12
(b)	the object of allowing union right of entry to workplaces for work health and safety purposes.	13
		14
133	Eligibility criteria	15
	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:	16
		17
		18
(a)	is an official of the union, and	19
(b)	has satisfactorily completed the prescribed training, and	20
(c)	holds, or will hold, an entry permit under:	21
	(i) the Fair Work Act, or	22
	(ii) the <i>Industrial Relations Act 1996</i> .	23
134	Issue of WHS entry permit	24
	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.	25
		26
		27
135	Conditions on WHS entry permit	28
	The authorising authority may impose conditions on a WHS entry permit.	29
		30
136	Term of WHS entry permit	31
	A WHS entry permit has effect for a term of 3 years from the date it is issued.	32
		33

137 Expiry of WHS entry permit

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

138 Application to revoke WHS entry permit

- (1) The following persons may apply to the authorising authority for a WHS entry permit held by a person to be revoked:
- (a) the regulator,
 - (b) the relevant person conducting a business or undertaking,
 - (c) any other person in relation to whom the WHS entry permit holder has exercised or purported to exercise a right under this Part,
 - (d) any other person affected by the exercise or purported exercise of a right under this Part by a WHS entry permit holder.
- (2) The grounds for an application for revocation of a WHS entry permit are:
- (a) that the permit holder no longer satisfies the eligibility criteria for a WHS entry permit or an entry permit under a corresponding WHS law, or the Fair Work Act or the *Workplace Relations Act 1996* of the Commonwealth or the *Industrial Relations Act 1996*, or

-
- (b) that the permit holder has contravened any condition of the WHS entry permit, or 1
2
- (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 3
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- (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. 5
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- (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. 9
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- (4) The person who holds the WHS entry permit and the union that the WHS entry permit holder represents are parties to the application. 12
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- 139 Authorising authority must permit WHS entry permit holder to show cause** 14
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- (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: 16
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- (a) give the WHS entry permit holder written notice (a *show cause notice*), and 19
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- (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. 21
22
23
- (2) The show cause notice must: 24
- (a) contain a statement to the effect that the WHS entry permit holder may, not later than 21 days after the day the WHS entry permit holder is given the notice, give the authorising authority written reasons explaining why the WHS entry permit should not be revoked, and 25
26
27
28
29
- (b) be accompanied by a summary of the reasons for the application, and 30
31
- (c) if applicable, be accompanied by a notice of suspension of the permit. 32
33
- 140 Determination of application** 34
- (1) If the authorising authority is satisfied on the balance of probabilities about any of the matters in section 138 (2), it may make one or more of the following orders: 35
36
37
- (a) an order imposing conditions on the WHS entry permit, 38

(b)	an order suspending the WHS entry permit,	1
(c)	an order revoking the WHS entry permit,	2
(d)	an order about the future issue of a WHS entry permit to the person whose WHS entry permit is revoked,	3
(e)	an order imposing any alternative action the authorising authority considers appropriate.	5
(2)	In deciding what action to take under subsection (1), in relation to a person, the authorising authority must take into account:	7
(a)	the seriousness of any findings of the authorising authority having regard to the object of this Act, and	9
(b)	any other matters the authority considers relevant.	11
Division 6	Dealing with disputes	12
141	Application for assistance of inspector to resolve dispute	13
	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.	14
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		16
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142	Authorising authority may deal with a dispute about a right of entry under this Act	18
		19
(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).	20
		21
		22
		23
(2)	The authorising authority may deal with the dispute in any manner it thinks fit, including by means of mediation, conciliation or arbitration.	24
		25
(3)	If the authorising authority deals with the dispute by arbitration, it may make one or more of the following orders:	26
		27
(a)	an order imposing conditions on a WHS entry permit,	28
(b)	an order suspending a WHS entry permit,	29
(c)	an order revoking a WHS entry permit,	30
(d)	an order about the future issue of WHS entry permits to one or more persons,	31
		32
(e)	any other order it considers appropriate.	33
(4)	The authorising authority may deal with the dispute:	34
(a)	on its own initiative, or	35

(b)	on application by any of the following to whom the dispute relates:	1
		2
(i)	a WHS entry permit holder,	3
(ii)	the relevant union,	4
(iii)	the relevant person conducting a business or undertaking,	5
(iv)	any other person in relation to whom the WHS entry permit holder has exercised or purported to exercise the right of entry,	6
		7
		8
(v)	any other person affected by the exercise or purported exercise of the right of entry by a WHS entry permit holder,	9
		10
		11
(vi)	the regulator.	12
(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.	13
		14
		15
		16
143	Contravening order made to deal with dispute	17
	A person must not contravene an order under section 142 (3).	18
	WHS civil penalty provision.	19
	Maximum penalty:	20
(a)	in the case of an individual—\$10,000, or	21
(b)	in the case of a body corporate—\$50,000.	22
Division 7	Prohibitions	23
144	Person must not refuse or delay entry of WHS entry permit holder	24
(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.	25
		26
		27
	WHS civil penalty provision.	28
	Maximum penalty:	29
(a)	in the case of an individual—\$10,000, or	30
(b)	in the case of a body corporate—\$50,000.	31
(2)	Subsection (1) places an evidential burden on the accused to show a reasonable excuse.	32
		33

145	Person must not hinder or obstruct WHS entry permit holder	1
	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.	2
	WHS civil penalty provision.	3
	Maximum penalty:	4
	(a) in the case of an individual—\$10,000, or	5
	(b) in the case of a body corporate—\$50,000.	6
146	WHS entry permit holder must not delay, hinder or obstruct any person or disrupt work at workplace	7
	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.	8
	WHS civil penalty provision.	9
	Maximum penalty:	10
	(a) in the case of an individual—\$10,000, or	11
	(b) in the case of a body corporate—\$50,000.	12
147	Misrepresentations about things authorised by this Part	13
(1)	A person must not take action:	14
(a)	with the intention of giving the impression, or	15
(b)	reckless as to whether the impression is given,	16
	that the doing of a thing is authorised by this Part if it is not so authorised.	17
	WHS civil penalty provision.	18
	Maximum penalty:	19
	(a) in the case of an individual—\$10,000, or	20
	(b) in the case of a body corporate—\$50,000.	21
(2)	Subsection (1) does not apply if the person reasonably believes that the doing of the thing is authorised.	22
148	Unauthorised use or disclosure of information or documents	23
	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	24

for a purpose that is not related to the inquiry or rectifying the suspected
contravention, unless:

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

WHS civil penalty provision.

Maximum penalty:

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

Division 8 General
149 Return of WHS entry permits

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

- (a) the permit is revoked or suspended,
- (b) the permit expires.

WHS civil penalty provision.

Maximum penalty: \$2,000.

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

- (a) the person, or the person's union, applies to the authorising authority for the return of the permit, and
- (b) the permit has not expired.

150 Union to provide information to authorising authority

The relevant union must advise the authorising authority if:

- (a) the WHS entry permit holder resigns from or otherwise leaves the union, or
- (b) the WHS entry permit holder has had any entry permit granted under a corresponding WHS law, or the Fair Work Act or the *Workplace Relations Act 1996* of the Commonwealth or the *Industrial Relations Act 1996* (no matter when in force) cancelled or suspended, or
- (c) the union ceases to be:
 - (i) an organisation that is registered, or taken to be registered, under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth, or
 - (ii) an association of employees or independent contractors, or both, that is registered or recognised as such an association (however described) under the *Industrial Relations Act 1996*.

WHS civil penalty provision.

Maximum penalty:

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

Clause 151	Work Health and Safety Bill 2011
Part 7	Workplace entry by WHS entry permit holders

151	Register of WHS entry permit holders	1
	The authorising authority must keep available for public access an up-to-date register of WHS entry permit holders in accordance with the regulations.	2
		3
		4

Part 8 The regulator

Division 1 Functions of regulator

152 Functions of regulator

The regulator has the following functions:

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

153 Powers of regulator

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

154 Delegation by regulator

* * * * *

Note. Not required in NSW.

Division 2 Powers of regulator to obtain information

155 Powers of regulator to obtain information

- (1) This section applies if the regulator has reasonable grounds to believe that a person is capable of giving information, providing documents or giving evidence in relation to a possible contravention of this Act or that will assist the regulator to monitor or enforce compliance with this Act.
- (2) The regulator may, by written notice served on the person, require the person to do one or more of the following:
- (a) to give the regulator, in writing signed by the person (or in the case of a body corporate, by a competent officer of the body corporate) and within the time and in the manner specified in the notice, that information of which the person has knowledge,
 - (b) to produce to the regulator, in accordance with the notice, those documents,
 - (c) to appear before a person appointed by the regulator on a day, and at a time and place, specified in the notice (being a day, time and place that are reasonable in the circumstances) and give either orally or in writing that evidence and produce those documents.
- (3) The notice must:
- (a) state that the requirement is made under this section, and
 - (b) contain a statement to the effect that a failure to comply with a requirement is an offence, and
 - (c) if the notice requires the person to provide information or documents or answer questions:
 - (i) contain a statement about the effect of sections 172 and 269, and
 - (ii) state that the person may attend with a legal practitioner.
- (4) The regulator must not make a requirement under subsection (2) (c) unless the regulator has taken all reasonable steps to obtain the information under subsections (2) (a) and (b) and has been unable to do so.
- (5) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under this section.
- Maximum penalty:
- (a) in the case of an individual—\$10,000, or
 - (b) in the case of a body corporate—\$50,000.

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- | | | |
|-----|--|---|
| (6) | Subsection (5) places an evidential burden on the accused to show a reasonable excuse. | 1 |
| | | 2 |
| (7) | Section 172 (with any necessary changes) applies to a requirement under this section. | 3 |
| | | 4 |

Part 9 Securing compliance

Division 1 Appointment of inspectors

156 Appointment of inspectors

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

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

156A Special provision for mining and coal workplace inspectors

- (1) An inspector appointed under section 156 (an ***appointed inspector***) is not authorised to exercise functions under this Act in relation to a mining workplace or a coal workplace.
- (2) A person who is a government official under the *Mine Health and Safety Act 2004* is an inspector (a ***mines WHS inspector***) for the purposes of this Act. A mines WHS inspector is only authorised to exercise functions under this Act in relation to a mining workplace, but may exercise compliance powers in relation to premises other than a mining workplace for the purpose of investigating any matter under this Act in relation to a mining workplace.
- (3) A person who is a government official under the *Coal Mine Health and Safety Act 2002* is an inspector (a ***coal mines WHS inspector***) for the purposes of this Act. A coal mines WHS inspector is only authorised to exercise functions under this Act in relation to a coal workplace, but may exercise compliance powers in relation to premises other than a coal workplace for the purpose of investigating any matter under this Act in relation to a coal workplace.
- (4) An inspector's identity card for a mines WHS inspector or coal mines WHS inspector is to be issued by the Minister or a person authorised by the Minister, instead of by the regulator.
- (5) A single identity card may be issued to a person in relation to functions to be exercised as an inspector under this Act and functions to be exercised under the *Coal Mine Health and Safety Act 2002* or the *Mine Health and Safety Act 2004*, or both.

157	Identity cards	1
(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 3 4
(2)	An inspector must produce his or her identity card for inspection on request when exercising compliance powers.	5 6
(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.	7 8 9
158	Accountability of inspectors	10
(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.	11 12 13 14
(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.	15 16 17 18 19
159	Suspension and ending of appointment of inspectors	20
(1)	The regulator may suspend or end the appointment of an inspector.	21
(2)	A person's appointment as an inspector ends when the person ceases to be eligible for appointment as an inspector.	22 23
Division 2	Functions and powers of inspectors	24
160	Functions and powers of inspectors	25
	An inspector has the following functions and powers under this Act:	26
(a)	to provide information and advice about compliance with this Act,	27 28
(b)	to assist in the resolution of:	29
(i)	work health and safety issues at workplaces, and	30
(ii)	issues related to access to a workplace by an assistant to a health and safety representative, and	31 32
(iii)	issues related to the exercise or purported exercise of a right of entry under Part 7,	33 34
(c)	to review disputed provisional improvement notices,	35

(d)	to require compliance with this Act through the issuing of notices,	1 2
(e)	to investigate contraventions of this Act and assist in the prosecution of offences,	3 4
(f)	to attend coronial inquests in relation to work-related deaths and examine witnesses.	5 6
161	Conditions on inspectors' compliance powers	7
	An inspector's compliance powers are subject to any conditions specified in the instrument of the inspector's appointment.	8 9
162	Inspectors subject to regulator's directions	10
(1)	An inspector is subject to the regulator's directions in the exercise of the inspector's compliance powers.	11 12
(2)	A direction under subsection (1) may be of a general nature or may relate to a specified matter or specified class of matter.	13 14
162A	Exercise of inspector functions outside area of jurisdiction	15
(1)	This section applies if an inspector, in good faith, exercises functions under any relevant legislation in relation to a workplace that is not a workplace in relation to which the inspector has authority.	16 17 18
(2)	An inspector must, as soon as practicable after becoming aware of exercising functions in relation to such a workplace, either:	19 20
(a)	notify the appropriate authority in writing of the functions so exercised, or	21 22
(b)	if the regulations require the inspector to notify another specified person—notify that specified person.	23 24
(3)	An appropriate authority may, by notice in writing, direct an inspector not to exercise functions in relation to an activity, work, plant or place if it becomes aware that the inspector is exercising, or has exercised, such functions in relation to that activity, work, plant or place and is not authorised to do so.	25 26 27 28 29
(4)	If an inspector (<i>the relevant inspector</i>) ceases, or is required to cease, exercising functions because of this section:	30 31
(a)	the appropriate authority or an appropriate inspector may continue to exercise any functions commenced by the relevant inspector as if the functions had been exercised by the appropriate authority or the appropriate inspector, and	32 33 34 35

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| (b) | the appropriate authority or an appropriate inspector may continue any relevant investigation and any subsequent proceedings that the authority or inspector has power to continue. | 1
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| (5) | For the purposes of the relevant legislation and any proceedings: | 4 |
| (a) | any function previously exercised by the relevant inspector relating to the activity, work, plant or place concerned is taken to have been exercised by the appropriate authority or an appropriate inspector, and the relevant legislation applies accordingly, and | 5
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| (b) | any notice issued by the relevant inspector relating to the activity, work, plant or place concerned is taken to have been issued by the appropriate authority or an appropriate inspector, and can be enforced or otherwise dealt with as if the applicable relevant legislation authorised its issue, and | 10
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| (c) | any evidence collected by the relevant inspector relating to the activity, work, plant or place concerned is taken to have been collected by the appropriate authority or an appropriate inspector for the purposes of determining its admissibility in subsequent proceedings. | 15
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| (6) | The regulations may require a person notified under subsection (2) (b) to give notice of the matters so notified to the appropriate authority. | 20
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| (7) | In this section: | 22 |
| | <i>appropriate authority</i> means: | 23 |
| (a) | in relation to a workplace to which this Act applies that is not a mining workplace or a coal workplace—the regulator, or | 24
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| (b) | in relation to a mining workplace—the Chief Inspector appointed under the <i>Mine Health and Safety Act 2004</i> , or, if the regulations specify another person, that person, or | 26
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| (c) | in relation to a coal workplace—the Chief Inspector appointed under the <i>Coal Mine Health and Safety Act 2002</i> , or, if the regulations specify another person, that person. | 29
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| | <i>appropriate inspector</i> means: | 32 |
| (a) | in relation to a workplace to which this Act applies and that is not a mining workplace or a coal workplace—an inspector appointed under Division 1, or | 33
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| (b) | in relation to a mining workplace—a person who is an inspector under this Act because the person is a government official under the <i>Mine Health and Safety Act 2004</i> , or | 36
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- (c) in relation to a coal workplace—a person who is an inspector under this Act because the person is a government official under the *Coal Mine Health and Safety Act 2002*.

inspector means:

- (a) an inspector appointed under Division 1, or
- (b) a person who is an inspector under this Act because the person is a government official under the *Mine Health and Safety Act 2004*, or
- (c) a person who is an inspector under this Act because the person is a government official under the *Coal Mine Health and Safety Act 2002*.

relevant legislation means any of the following Acts and the regulations made under those Acts:

- (a) this Act,
- (b) the *Mine Health and Safety Act 2004*,
- (c) the *Coal Mine Health and Safety Act 2002*,
- (d) the *Petroleum (Onshore) Act 1991*,
- (e) the *Petroleum (Offshore) Act 1982*.

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.

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| (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: | 1
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| (a) | the relevant person conducting a business or undertaking at the workplace, | 4
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| (b) | the person with management or control of the workplace, | 6 |
| (c) | any health and safety representative for workers carrying out work for that business or undertaking at the workplace. | 7
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| (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. | 9
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| (4) | In this section, <i>relevant person conducting a business or undertaking</i> means the person conducting any business or undertaking in relation to which the inspector is exercising the powers of entry. | 12
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165 General powers on entry

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| (1) | An inspector who enters a workplace under this Division may do all or any of the following: | 15
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| (a) | inspect, examine and make inquiries at the workplace, | 18 |
| (b) | inspect and examine anything (including a document) at the workplace, | 19
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| (c) | bring to the workplace and use any equipment or materials that may be required, | 21
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| (d) | take measurements, conduct tests and make sketches or recordings (including photographs, films, audio, video, digital or other recordings), | 23
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| (e) | take and remove for analysis a sample of any substance or thing without paying for it, | 26
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| (f) | require a person at the workplace to give the inspector reasonable help to exercise the inspector's powers under paragraphs (a) to (e), | 28
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| (g) | exercise any compliance power or other power that is reasonably necessary to be exercised by the inspector for the purposes of this Act. | 31
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| (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. | 34
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| | Maximum penalty: | 37 |
| (a) | in the case of an individual—\$10,000, or | 38 |
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(b)	in the case of a body corporate—\$50,000.	1
(3)	Subsection (2) places an evidential burden on the accused to show a reasonable excuse.	2 3
165A	Special powers of entry for coal and mining workplaces	4
(1)	An authorised representative of an industrial organisation of employees may, for the purpose of investigating any suspected breach of the <i>Coal Mine Health and Safety Act 2002</i> or the <i>Mine Health and Safety Act 2004</i> , enter any premises the representative has reason to believe is a place of work where members of that organisation (or persons who are eligible to be members of that organisation) work.	5 6 7 8 9 10
(2)	For the purpose of investigating any suspected breach of the <i>Coal Mine Health and Safety Act 2002</i> or the <i>Mine Health and Safety Act 2004</i> an authorised representative who enters premises under this section may do any of the following:	11 12 13 14
(a)	make searches and inspections (and take photographs and make video and audio recordings),	15 16
(b)	require the occupier of those premises to provide the authorised representative with such assistance and facilities as is or are reasonably necessary to enable the representative to exercise his or her functions under this section,	17 18 19 20
(c)	require the production of and inspect any documents in or about those premises that directly affect or directly deal with the work health and safety of employees working at those premises,	21 22 23
(d)	take copies of or extracts from any such documents.	24
166	Persons assisting inspectors	25
(1)	A person (the <i>assistant</i>), including an interpreter, may accompany the inspector entering a workplace under section 165 to assist the inspector if the inspector considers the assistance is necessary.	26 27 28
(2)	The assistant:	29
(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	30 31 32
(b)	must not do anything that the inspector does not have power to do, except as permitted under a search warrant.	33 34
(3)	Anything done lawfully by the assistant is taken for all purposes to have been done by the inspector.	35 36

166A	Special provision for coal and mining workplaces—consultation with employee representative	1
		2
(1)	An inspector who is proposing to enter a coal workplace or a workplace that is a mine within the meaning of the <i>Mine Health and Safety Act 2004</i> in connection with a matter that may affect the health, safety or welfare of employees at the workplace:	3
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(a)	must, to the extent that it is practicable, consult a representative of the employees or an industrial organisation of employees whose members are employed at the workplace, and	7
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(b)	must, if requested to do so by the representative, take the representative on any such inspection.	10
		11
(2)	In the case of a coal workplace, the representative of the employees referred to in this section should, to the extent practicable, be a site check inspector elected under the <i>Coal Mine Health and Safety Act 2002</i> for that workplace.	12
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(3)	In the case of a workplace that is a mine within the meaning of the <i>Mine Health and Safety Act 2004</i> , the representative of the employees referred to in this section should, to the extent practicable, be a site check inspector elected under that Act for that mine.	16
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Subdivision 2	Search warrants	20
167	Search warrant	21
(1)	An inspector may apply to an authorised officer for a search warrant if the inspector believes on reasonable grounds that a provision of this Act has been or is being or is about to be contravened in or about any premises.	22
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(2)	An authorised officer to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the inspector named in the warrant to enter the premises and to search the premises for evidence of a contravention of this Act.	26
		27
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(3)	Division 4 of Part 5 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> applies to a search warrant issued under this section.	31
		32
		33
(4)	In this section:	34
	authorised officer has the same meaning as it has in the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> .	35
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168	Announcement before entry on warrant	1
	* * * * *	
	Note. Not required in NSW.	2
169	Copy of warrant to be given to person with management or control of place	3
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	Note. Not required in NSW.	5
	Subdivision 3 Limitation on entry powers	6
170	Places used for residential purposes	7
	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:	8
	(a) with the consent of the person with management or control of the place, or	9
	(b) under the authority conferred by a search warrant, or	10
	(c) for the purpose only of gaining access to a suspected workplace, but only:	11
	(i) if the inspector reasonably believes that no reasonable alternative access is available, and	12
	(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.	13
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	Subdivision 4 Specific powers on entry	22
171	Power to require production of documents and answers to questions	23
	(1) An inspector who enters a workplace under this Division may:	24
	(a) require a person to tell the inspector who has custody of, or access to, a document, or	25
	(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	26
	(c) require a person at the workplace to answer any questions put by the inspector.	27
	(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.	28
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| (3) | An interview conducted by an inspector under subsection (1) (c) must be conducted in private if: | 1 |
| | (a) the inspector considers it appropriate, or | 2 |
| | (b) the person being interviewed so requests. | 3 |
| (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. | 4 |
| (5) | Subsection (3) may be invoked during an interview by: | 5 |
| | (a) the inspector, or | 6 |
| | (b) the person being interviewed, | 7 |
| | in which case the subsection applies to the remainder of the interview. | 8 |
| (6) | A person must not, without reasonable excuse, refuse or fail to comply with a requirement under this section. | 9 |
| | Maximum penalty: | 10 |
| | (a) in the case of an individual—\$10,000, or | 11 |
| | (b) in the case of a body corporate—\$50,000. | 12 |
| | Note. See sections 172 and 173 in relation to self-incrimination and section 269 in relation to legal professional privilege. | 13 |
| (7) | Subsection (6) places an evidential burden on the accused to show a reasonable excuse. | 14 |
| 172 | Abrogation of privilege against self-incrimination | 15 |
| (1) | A person is not excused from answering a question or providing information or a document under this Part on the ground that the answer to the question, or the information or document, may tend to incriminate the person or expose the person to a penalty. | 16 |
| (2) | However, the answer to a question or information or a document provided by an individual is not admissible as evidence against that individual in civil or criminal proceedings other than proceedings arising out of the false or misleading nature of the answer, information or document. | 17 |
| 173 | Warning to be given | 18 |
| (1) | Before requiring a person to answer a question or provide information or a document under this Part, an inspector must: | 19 |
| | (a) identify himself or herself to the person as an inspector by producing the inspector's identity card or in some other way, and | 20 |

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- (b) warn the person that failure to comply with the requirement or to answer the question, without reasonable excuse, would constitute an offence, and 1
- (c) warn the person about the effect of section 172, and 2
- (d) advise the person about the effect of section 269. 3
- (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). 4
- (3) Nothing in this section prevents an inspector from obtaining and using evidence given to the inspector voluntarily by any person. 5
- 174 Powers to copy and retain documents** 6
- (1) An inspector may: 7
- (a) make copies of, or take extracts from, a document given to the inspector in accordance with a requirement under this Act, and 8
- (b) keep that document for the period that the inspector considers necessary. 9
- (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: 10
- (a) the person who produced the document, 11
- (b) the owner of the document, 12
- (c) a person authorised by a person referred to in paragraph (a) or (b). 13
- 175 Power to seize evidence etc** 14
- (1) An inspector who enters a workplace under this Part may: 15
- (a) seize anything (including a document) at the place if the inspector reasonably believes the thing is evidence of an offence against this Act, or 16
- (b) take and remove for analysis, testing or examination a sample of any substance or thing without paying for it. 17
- (2) An inspector who enters a place with a search warrant may seize the evidence for which the warrant was issued. 18
- (3) An inspector may also seize anything else at the place if the inspector reasonably believes: 19
- (a) the thing is evidence of an offence against this Act, and 20

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- (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed or used to continue or repeat the offence.

176 Inspector's power to seize dangerous workplaces and things

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

177 Powers supporting seizure

- (1) Having seized a thing, an inspector may:
- (a) move the thing from the place where it was seized (the *place of seizure*), or
 - (b) leave the thing at the place of seizure but take reasonable action to restrict access to it, or
- Examples**
- Sealing a thing and marking it to show access to it is restricted.
- Sealing the entrance to a room where the seized thing is situated and marking it to show access to it is restricted.
- (c) if the thing is plant or a structure—dismantle or cause to be dismantled the plant or structure.
- (2) If an inspector restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing or something restricting access to the thing without an inspector's approval.
- Maximum penalty:
- (a) in the case of an individual—\$10,000, or
 - (b) in the case of a body corporate—\$50,000.
- (3) To enable a thing to be seized, an inspector may require the person in control of it:
- (a) to take it to a stated reasonable place by a stated reasonable time, and
 - (b) if necessary, to remain in control of it at the stated place for a reasonable time.

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- (4) The requirement: 1
- (a) must be made by written notice, or 2
- (b) if for any reason it is not practicable to give the notice, may be 3
made orally and confirmed by written notice as soon as 4
practicable. 5
- (5) A further requirement may be made under this section in relation to the 6
same thing if it is necessary and reasonable to make the further 7
requirement. 8
- (6) The person must not, without reasonable excuse, refuse or fail to 9
comply with a requirement under subsection (3) or (5). 10
Maximum penalty: 11
- (a) in the case of an individual—\$10,000, or 12
- (b) in the case of a body corporate—\$50,000. 13
- (7) Subsection (6) places an evidential burden on the accused to show a 14
reasonable excuse. 15
- 178 Receipt for seized things** 16
- (1) As soon as practicable after an inspector seizes a thing, the inspector 17
must give a receipt for it to the person from whom it was seized. 18
- (2) However, if for any reason it is not practicable to comply with 19
subsection (1), the inspector must leave the receipt in a conspicuous 20
position and in a reasonably secure way at the place of seizure. 21
- (3) The receipt must describe generally each thing seized and its condition. 22
- (4) This section does not apply to a thing if it is impracticable or would be 23
unreasonable to give the receipt required by this section (given the 24
thing's nature, condition and value). 25
- 179 Forfeiture of seized things** 26
- (1) A seized thing is forfeited to the State if the regulator: 27
- (a) cannot find the person entitled to the thing after making 28
reasonable inquiries, or 29
- (b) cannot return it to the person entitled to it, after making 30
reasonable efforts, or 31
- (c) reasonably believes it is necessary to forfeit the thing to prevent 32
it being used to commit an offence against this Act. 33
- (2) Subsection (1) (a) does not require the regulator to make inquiries if it 34
would be unreasonable to make inquiries to find the person entitled to 35
the thing. 36

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| (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. | 1
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| (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. | 4
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| (5) | Subsection (4) does not apply if: | 7 |
| (a) | the regulator cannot find the person entitled to the thing, after making reasonable inquiries, or | 8
9 |
| (b) | it is impracticable or would be unreasonable to give the notice. | 10 |
| (6) | The notice must state: | 11 |
| (a) | the reasons for the decision, and | 12 |
| (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 | 13
14 |
| (c) | how the person may apply for the review, and | 15 |
| (d) | that the person may apply for a stay of the decision if the person applies for a review. | 16
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| (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. | 18
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| (8) | Any costs reasonably incurred by the State in storing or disposing of a thing forfeited under subsection (1) (c) may be recovered in a court of competent jurisdiction as a debt due to the State from that person. | 21
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| (9) | In this section, <i>person entitled</i> 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. | 24
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| 180 | Return of seized things | 27 |
| (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. | 28
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| (2) | The regulator must return the thing to the applicant under subsection (1) unless the regulator has reasonable grounds to retain the thing. | 31
32 |
| (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. | 33
34
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| (4) | In this section, <i>person entitled</i> to a thing means the person entitled to possess the thing or the owner of the thing. | 36
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181	Access to seized things	1
(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:	2
		3
		4
	(a) the person from whom the thing was seized,	5
	(b) the owner of the thing,	6
	(c) a person authorised by a person referred to in paragraph (a) or (b).	7
(2)	Subsection (1) does not apply if it is impracticable or would be unreasonable to allow inspection or copying.	8
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Division 4	Damage and compensation	10
182	Damage etc to be minimised	11
	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.	12
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183	Inspector to give notice of damage	16
(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.	17
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(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.	20
		21
		22
(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.	23
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		25
(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.	26
		27
		28
(5)	This section does not apply to damage the inspector reasonably believes is trivial.	29
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184	Compensation	31
(1)	A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under Division 3 of this Part.	32
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| (2) | Compensation may be claimed and ordered in a proceeding: | 1 |
| (a) | brought in a court of competent jurisdiction, or | 2 |
| (b) | for an offence against this Act brought against the person claiming compensation. | 3 |
| | | 4 |
| (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. | 5 |
| | | 6 |
| (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. | 7 |
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Division 5 Other matters 10

185 Power to require name and address 11

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| (1) | An inspector may require a person to provide the person's name and residential address if: | 12 |
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| (a) | the inspector finds the person committing an offence against this Act, or | 14 |
| | | 15 |
| (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. | 16 |
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| | | 18 |
| (2) | When asking a person to provide his or her name and residential address, the inspector must: | 19 |
| | | 20 |
| (a) | tell the person the reason for the requirement to provide their name and residential address, and | 21 |
| | | 22 |
| (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. | 23 |
| | | 24 |
| (3) | If the inspector reasonably believes that the name or residential address is false, the inspector may ask the person to give evidence of its correctness. It is not an offence for a person to fail to give that evidence. | 25 |
| | | 26 |
| | | 27 |
| (4) | A person must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1). | 28 |
| | | 29 |
| | Maximum penalty: \$10,000. | 30 |
| (5) | Subsection (4) places an evidential burden on the accused to show a reasonable excuse. | 31 |
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186 Inspector may take affidavits 33

An inspector is authorised to take affidavits for any purpose relating or incidental to the exercise of his or her compliance powers.	34
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187 Attendance of inspector at coronial inquests	1
An inspector may attend and has authority to examine witnesses at any	2
inquest into the cause of death of a worker while carrying out work.	3
 Division 6 Offences in relation to inspectors	4
 188 Offence to hinder or obstruct inspector	5
A person must not intentionally hinder or obstruct an inspector in	6
exercising his or her compliance powers, or induce or attempt to induce	7
any other person to do so.	8
Maximum penalty:	9
(a) in the case of an individual—\$10,000, or	10
(b) in the case of a body corporate—\$50,000.	11
 189 Offence to impersonate inspector	12
A person who is not an inspector must not, in any way, hold himself or	13
herself out to be an inspector.	14
Maximum penalty: \$10,000.	15
 190 Offence to assault, threaten or intimidate inspector	16
A person must not directly or indirectly assault, threaten or intimidate,	17
or attempt to assault, threaten or intimidate, an inspector or a person	18
assisting an inspector.	19
Maximum penalty:	20
(a) in the case of an individual—\$50,000 or imprisonment for	21
2 years or both, or	22
(b) in the case of a body corporate—\$250,000.	23

Part 10 Enforcement measures

Division 1 Improvement notices

191 Issue of improvement notices

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

192 Contents of improvement notices

- (1) An improvement notice must state:
 - (a) that the inspector believes the person:
 - (i) is contravening a provision of this Act, or
 - (ii) has contravened a provision in circumstances that make it likely that the contravention will continue or be repeated, and
 - (b) the provision the inspector believes is being, or has been, contravened, and
 - (c) briefly, how the provision is being, or has been, contravened, and
 - (d) the day by which the person is required to remedy the contravention or likely contravention.
- (2) An improvement notice may include directions concerning the measures to be taken to remedy the contravention or prevent the likely contravention, or the matters or activities causing the contravention or likely contravention, to which the notice relates.
- (3) The day stated for compliance with the improvement notice must be reasonable in all the circumstances.

193	Compliance with improvement notice	1
	The person to whom an improvement notice is issued must comply with the notice within the period specified in the notice.	2
	Maximum penalty:	3
	(a) in the case of an individual—\$50,000, or	4
	(b) in the case of a body corporate—\$250,000.	5
194	Extension of time for compliance with improvement notices	6
(1)	This section applies if a person has been issued with an improvement notice.	7
(2)	An inspector may, by written notice given to the person, extend the compliance period for the improvement notice.	8
(3)	However, the inspector may extend the compliance period only if the period has not ended.	9
(4)	In this section:	10
	<i>compliance period</i> means the period stated in the improvement notice under section 192, and includes that period as extended under this section.	11
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	Division 2 Prohibition notices	18
195	Power to issue prohibition notice	19
(1)	This section applies if an inspector reasonably believes that:	20
(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	21
(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.	22
(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.	23
(3)	The direction may be given orally, but must be confirmed by written notice (a <i>prohibition notice</i>) issued to the person as soon as practicable.	24
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196	Contents of prohibition notice	1
(1)	A prohibition notice must state:	2
(a)	that the inspector believes that grounds for the issue of the prohibition notice exist and the basis for that belief, and	3
(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	5
(c)	the provision of this Act that the inspector believes is being, or is likely to be, contravened by that activity.	8
(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).	10
(3)	Without limiting section 195, a prohibition notice that prohibits the carrying on of an activity in a specified way may do so by specifying one or more of the following:	14
(a)	a workplace, or part of a workplace, at which the activity is not to be carried out,	17
(b)	anything that is not to be used in connection with the activity,	19
(c)	any procedure that is not to be followed in connection with the activity.	20
197	Compliance with prohibition notice	22
	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.	23
	Maximum penalty:	24
(a)	in the case of an individual—\$100,000, or	25
(b)	in the case of a body corporate—\$500,000.	26
Division 3	Non-disturbance notices	28
198	Issue of non-disturbance notice	29
	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.	30
		31
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199	Contents of non-disturbance notice	1
(1)	A non-disturbance notice may require the person to:	2
(a)	preserve the site at which a notifiable incident has occurred for a specified period, or	3
(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.	4
(2)	A non-disturbance notice must specify the period (of no more than 7 days) for which it applies and set out:	5
(a)	the obligations of the person to whom the notice is issued, and	6
(b)	the measures to be taken to preserve a site or prevent disturbance of a site, and	7
(c)	the penalty for contravening the notice.	8
(3)	In subsection (1) a reference to a site includes any plant, substance, structure or thing associated with the site.	9
(4)	A non-disturbance notice does not prevent any action:	10
(a)	to assist an injured person, or	11
(b)	to remove a deceased person, or	12
(c)	that is essential to make the site safe or to prevent a further incident, or	13
(d)	that is associated with a police investigation, or	14
(e)	for which an inspector has given permission.	15
200	Compliance with non-disturbance notice	16
(1)	A person must not, without reasonable excuse, refuse or fail to comply with a non-disturbance notice issued to the person.	17
	Maximum penalty:	18
(a)	in the case of an individual—\$50,000, or	19
(b)	in the case of a body corporate—\$250,000.	20
(2)	Subsection (1) places an evidential burden on the accused to show a reasonable excuse.	21
201	Issue of subsequent notices	22
	If an inspector considers it necessary to do so, he or she may issue one or more subsequent non-disturbance notices to a person, whether before or after the expiry of the previous notice, each of which must comply with section 199.	23

Division 4	General requirements applying to notices	1
202	Application of Division	2
	In this Division, <i>notice</i> means improvement notice, prohibition notice or non-disturbance notice.	3 4
203	Notice to be in writing	5
	A notice must be in writing.	6
204	Directions in notices	7
	A direction included in an improvement notice or prohibition notice may:	8 9
	(a) refer to a code of practice, and	10
	(b) offer the person to whom it is issued a choice of ways in which to remedy the contravention.	11 12
205	Recommendations in notice	13
	(1) An improvement notice or prohibition notice may include recommendations.	14 15
	(2) It is not an offence to fail to comply with recommendations in a notice.	16
206	Changes to notice by inspector	17
	(1) An inspector may make minor changes to a notice:	18
	(a) for clarification, or	19
	(b) to correct errors or references, or	20
	(c) to reflect changes of address or other circumstances.	21
	(2) An inspector may also, in accordance with section 194, extend the compliance period for an improvement notice.	22 23
207	Regulator may vary or cancel notice	24
	Except as provided in section 206, a notice issued by an inspector may only be varied or cancelled by the regulator.	25 26
208	Formal irregularities or defects in notice	27
	A notice is not invalid only because of:	28
	(a) a formal defect or irregularity in the notice unless the defect or irregularity causes or is likely to cause substantial injustice, or	29 30
	(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.	31 32 33

209	Issue and giving of notice	1
(1)	A notice may be issued or given to a person:	2
(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	3
(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	4
(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	5
(d)	in a prescribed manner.	6
(2)	The regulations may prescribe:	7
(a)	the manner of issuing a notice, and	8
(b)	the steps a person to whom a notice is issued must take to bring it to the attention of other persons.	9
210	Display of notice	10
(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.	11
	Maximum penalty:	12
(a)	in the case of an individual—\$5,000, or	13
(b)	in the case of a body corporate—\$25,000.	14
(2)	A person must not intentionally remove, destroy, damage or deface a notice displayed under subsection (1) while the notice is in force.	15
	Maximum penalty:	16
(a)	in the case of an individual—\$5,000, or	17
(b)	in the case of a body corporate—\$25,000.	18
Division 5	Remedial action	19
211	When regulator may carry out action	20
(1)	This section applies if a person to whom a prohibition notice is issued fails to take reasonable steps to comply with the notice.	21

(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:	1
		2
		3
(a)	the regulator's intention to take that action, and	4
(b)	the owner's or person's liability for the costs of that action.	5
212	Power of the regulator to take other remedial action	6
(1)	This section applies if the regulator reasonably believes that:	7
(a)	circumstances in which a prohibition notice can be issued exist, and	8
		9
(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.	10
		11
		12
(2)	The regulator may take any remedial action necessary to make the workplace safe.	13
		14
213	Costs of remedial or other action	15
	The regulator may recover the reasonable costs of any remedial action taken under:	16
		17
(a)	section 211 from the person to whom the notice is issued, or	18
(b)	section 212 from any person to whom the prohibition notice could have been issued in relation to the matter,	19
		20
	as a debt due to the regulator.	21
Division 6	Injunctions	22
214	Application of Division	23
	In this Division, <i>notice</i> means improvement notice, prohibition notice or non-disturbance notice.	24
		25
215	Injunctions for noncompliance with notices	26
(1)	The regulator may apply to the District Court for an injunction:	27
(a)	compelling a person to comply with a notice, or	28
(b)	restraining a person from contravening a notice.	29
(2)	The regulator may do so:	30
(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	31
		32
		33
(b)	whether any period for compliance with the notice has expired.	34

Part 11 Enforceable undertakings

216	Regulator may accept WHS undertakings	2
(1)	The regulator may accept a written undertaking (a <i>WHS undertaking</i>) given by a person in connection with a matter relating to a contravention or alleged contravention by the person of this Act.	3
	Note. Section 230 (3) requires the regulator to publish guidelines in relation to the acceptance of WHS undertakings.	4
(2)	A WHS undertaking cannot be accepted for a contravention or alleged contravention that is a Category 1 offence.	5
(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.	6
217	Notice of decision and reasons for decision	7
(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.	8
(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.	9
218	When a WHS undertaking is enforceable	10
	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.	11
219	Compliance with WHS undertaking	12
	A person must not contravene a WHS undertaking made by that person that is in effect.	13
	Maximum penalty:	14
(a)	in the case of an individual—\$50,000, or	15
(b)	in the case of a body corporate—\$250,000.	16
220	Contravention of WHS undertaking	17
(1)	The regulator may apply to the District Court for an order if a person contravenes a WHS undertaking.	18

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- (2) If the Court is satisfied that the person who made the WHS undertaking has contravened the undertaking, the Court, in addition to the imposition of any penalty, may make one or both of the following orders:
- (a) an order directing the person to comply with the undertaking,
 - (b) an order discharging the undertaking.
- (3) In addition to the orders referred to in subsection (2), the Court may make any other order that the Court considers appropriate in the circumstances, including orders directing the person to pay to the State:
- (a) the costs of the proceedings, and
 - (b) the reasonable costs of the regulator in monitoring compliance with the WHS undertaking in the future.
- (4) Nothing in this section prevents proceedings being brought for the contravention or alleged contravention of this Act to which the WHS undertaking relates.
- Note.** Section 222 specifies circumstances affecting proceedings for a contravention for which a WHS undertaking has been given.
- 221 Withdrawal or variation of WHS undertaking**
- (1) A person who has made a WHS undertaking may at any time, with the written agreement of the regulator:
- (a) withdraw the undertaking, or
 - (b) vary the undertaking.
- (2) However, the provisions of the undertaking cannot be varied to provide for a different alleged contravention of the Act.
- (3) The regulator must publish, on the regulator's website, notice of the withdrawal or variation of a WHS undertaking.
- 222 Proceeding for alleged contravention**
- (1) Subject to this section, no proceedings for a contravention or alleged contravention of this Act may be brought against a person if a WHS undertaking is in effect in relation to that contravention.
- (2) No proceedings may be brought for a contravention or alleged contravention of this Act against a person who has made a WHS undertaking in relation to that contravention and has completely discharged the WHS undertaking.

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| (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. | 1
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| (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. | 4
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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*).

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.
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.

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable 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 seized thing)	The person entitled to the thing.
6	Section 180 (return of seized things)	The person entitled to the thing.
7	Section 191 (issue of improvement notice)	(1) The person to whom the notice was issued. (2) A person conducting a business or undertaking whose interests are affected by the decision. (3) A worker whose interests are affected by the decision. (4) A health and safety representative who represents a worker whose interests are affected by the decision.

Item	Provision under which reviewable decision is made		Eligible person in relation to reviewable 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.
		(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 non-disturbance notice)	(1)	The person to whom the notice was issued.

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
		(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.
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.

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable 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:		1
			2
	(a) making, suspending, revoking or refusing to make an order, determination or decision,		3
			4
	(b) giving, suspending, revoking or refusing to give a direction, approval, consent or permission,		5
			6
	(c) issuing, suspending, revoking or refusing to issue an authorisation,		7
			8
	(d) imposing a condition,		9
	(e) making a declaration, demand or requirement,		10
	(f) retaining, or refusing to deliver up, a thing, or		11
	(g) doing or refusing to do any other act or thing.		12
(3)	In this section <i>person entitled</i> 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.		13
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			15
	Note. Decisions under the regulations that will be reviewable decisions will be set out in the regulations.		16
			17

Division 2 Internal review

224 Application for internal review

- (1) An eligible person in relation to a reviewable decision, other than a decision made by the regulator or a delegate of the regulator, may apply to the regulator for review (an *internal review*) of the decision within:
 - (a) the prescribed time after the day on which the decision first came to the eligible person's notice, or
 - (b) such longer period as the regulator allows.
- (2) The application must be made in the manner and form required by the regulator.
- (3) For the purposes of this section, the *prescribed time* is:
 - (a) in the case of a decision to issue an improvement notice the period specified in the notice for compliance with the notice or 14 days, whichever is the lesser, and
 - (b) in any other case, 14 days.

225 Internal reviewer

- (1) The regulator may appoint a person or body to review decisions on applications under this Division.
- (2) The person who made the decision cannot be an internal reviewer in relation to that decision.

226 Decision of internal reviewer

- (1) The internal reviewer must review the reviewable decision and make a decision as soon as is reasonably practicable and within 14 days after the application for internal review is received.
- (2) The decision may be:
 - (a) to confirm or vary the reviewable decision, or
 - (b) to set aside the reviewable decision and substitute another decision that the internal reviewer considers appropriate.
- (3) If the internal reviewer seeks further information from the applicant, the 14-day period ceases to run until the applicant provides the information to the internal reviewer.
- (4) The applicant must provide the further information within the time (being not less than 7 days) specified by the internal reviewer in the request for information.

(5)	If the applicant does not provide the further information within the required time, the decision is taken to have been confirmed by the internal reviewer at the end of that time.	1 2 3
(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.	4 5 6
227	Decision on internal review	7
	As soon as practicable after reviewing the decision, the internal reviewer must give the applicant in writing:	8 9
	(a) the decision on the internal review, and	10
	(b) the reasons for the decision.	11
228	Stays of reviewable decisions	12
(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.	13 14 15
(2)	If an application is made for internal review of a decision to issue a prohibition notice or a non-disturbance notice, the reviewer may stay the operation of the decision.	16 17 18
(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.	19 20 21
(4)	The reviewer must make a decision on an application for a stay within one working day after the reviewer receives the application.	22 23
(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.	24 25 26
(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:	27 28
	(a) the end of the prescribed period for applying for an external review of the decision made on the internal review,	29 30
	(b) an application for external review is made.	31
Division 3	External review	32
229	Application for external review	33
(1)	An eligible person may apply to the Industrial Relations Commission for review (an <i>external review</i>) of:	34 35
	(a) a reviewable decision made by the regulator, or	36

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| (b) | a decision made, or taken to have been made, on an internal review. | 1 |
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| (2) | The application must be made: | 3 |
| (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 | 4 |
| | | 5 |
| | | 6 |
| (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 | 7 |
| | | 8 |
| (c) | if the regulator is required by the Industrial Relations Commission to give the eligible person a statement of reasons, within 14 days after the day on which the statement is provided. | 9 |
| | | 10 |
| | | 11 |
| (3) | The Industrial Relations Commission may stay the operation of a decision that is the subject of an external review pending a decision on the review. | 12 |
| | | 13 |
| | | 14 |
| (4) | The Industrial Relations Commission may, on an external review, confirm, vary or revoke the decision concerned. | 15 |
| | | 16 |

Part 13 Legal proceedings

Division 1 General matters

229A Part extends to mines and coal workplaces

- (1) This Part extends to proceedings in connection with the *Coal Mine Health and Safety Act 2002* or the *Mine Health and Safety Act 2004* or the regulations under either of those Acts.
- (2) For the purposes of those proceedings:
 - (a) a reference in this Part to this Act or the regulations includes a reference to those Acts or those regulations, and
 - (b) a reference in this Part to the regulator is a reference to the Department of Primary Industries.
- (3) The regulations may make provision modifying the application of this Part to proceedings in connection with the *Coal Mine Health and Safety Act 2002* or the *Mine Health and Safety Act 2004* and the regulations under those Acts.

229B Procedure for offences

- (1) Except as provided by this section, proceedings for an offence against this Act or the regulations are to be dealt with summarily:
 - (a) before the Local Court, or
 - (b) before the District Court in its summary jurisdiction.
- (2) The maximum monetary penalty that may be imposed in those proceedings by the Local Court is \$50,000, despite any higher maximum monetary penalty provided in relation to the offence.
- (3) Part 5 of Chapter 4 of the *Criminal Procedure Act 1986* applies to proceedings for an offence taken before the District Court in its summary jurisdiction.
- (4) Proceedings for an offence under section 31 (Reckless conduct—Category 1) committed by an individual are to be taken on indictment.

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 the court amends the charge, warrant or summons.	1 2 3
(3)	The regulator must issue, and publish on the regulator's website, general guidelines for or in relation to:	4 5
	(a) the prosecution of offences under this Act, and	6
	(b) the acceptance of WHS undertakings under this Act.	7
(4)	Nothing in this section affects the ability of the Director of Public Prosecutions to bring proceedings for an offence against this Act.	8 9
231	Procedure if prosecution is not brought	10
(1)	If:	11
	(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	12 13 14
	(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,	15 16 17
	the person may make a written request to the regulator that a prosecution be brought.	18 19
(2)	Within 3 months after the regulator receives a request the regulator must:	20 21
	(a) advise the person (in writing):	22
	(i) whether the investigation is complete, and	23
	(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	24 25 26
	(b) advise the person who the applicant believes committed the offence of the application and of the matters set out in paragraph (a).	27 28 29
(3)	If the regulator advises the person that a prosecution for a Category 1 or Category 2 offence will not be brought, the regulator must:	30 31
	(a) advise the person that the person may ask the regulator to refer the matter to the Director of Public Prosecutions for consideration, and	32 33 34
	(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.	35 36 37

(4)	The Director of Public Prosecutions must consider the matter and advise (in writing) the regulator within 1 month as to whether the Director considers that a prosecution should be brought.	1 2 3
(5)	The regulator must ensure a copy of the advice is given to:	4
(a)	the person who made the request, and	5
(b)	the person who the applicant believes committed the offence.	6
(6)	If the regulator declines to follow the advice of the Director of Public Prosecutions to bring proceedings, the regulator must give written reasons for the decision to any person to whom a copy of the advice is given under subsection (5).	7 8 9 10
(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.	11 12
232	Limitation period for prosecutions	13
(1)	Proceedings for an offence against this Act may be brought within the latest of the following periods to occur:	14 15
(a)	within 2 years after the offence first comes to the notice of the regulator,	16 17
(b)	within 1 year after a coronial report was made or a coronial inquiry or inquest ended, if it appeared from the report or the proceedings at the inquiry or inquest that an offence had been committed against this Act,	18 19 20 21
(c)	if a WHS undertaking has been given in relation to the offence, within 6 months after:	22 23
(i)	the WHS undertaking is contravened, or	24
(ii)	it comes to the notice of the regulator that the WHS undertaking has been contravened, or	25 26
(iii)	the regulator has agreed under section 221 to the withdrawal of the WHS undertaking.	27 28
(2)	A proceeding for a Category 1 offence may be brought after the end of the applicable limitation period in subsection (1) if fresh evidence relevant to the offence is discovered and the court is satisfied that the evidence could not reasonably have been discovered within the relevant limitation period.	29 30 31 32 33
233	Multiple contraventions of health and safety duty provision	34
(1)	2 or more contraventions of a health and safety duty provision by a person that arise out of the same factual circumstances may be charged as a single offence or as separate offences.	35 36 37

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| (2) | This section does not authorise contraventions of 2 or more health and safety duty provisions to be charged as a single offence. | 1
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| (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. | 3
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| (4) | In this section <i>health and safety duty provision</i> means a provision of Division 2, 3 or 4 of Part 2. | 6
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Division 2 Sentencing for offences 8

234 Application of this Division 9

This Division applies if a court convicts a person, or finds a person guilty (the *offender*), of an offence against this Act. 10
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235 Orders generally 12

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| (1) | One or more orders may be made under this Division against the offender. | 13
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| (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. | 15
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236 Adverse publicity orders 18

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| (1) | The court may make an order (an <i>adverse publicity order</i>) in relation to the offender requiring the offender: | 19
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| (a) | to take either or both of the following actions within the period specified in the order: | 21
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| (i) | to publicise, in the way specified in the order, the offence, its consequences, the penalty imposed and any other related matter, and | 23
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| (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 | 26
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| (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. | 30
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| (2) | The court may make an adverse publicity order on its own initiative or on the application of the person prosecuting the offence. | 33
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| (3) | If the offender fails to give evidence to the regulator in accordance with subsection (1) (b), the regulator, or a person authorised in writing by the regulator, may take the action or actions specified in the order. | 35
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(4)	However, if:	1
(a)	the offender gives evidence to the regulator in accordance with subsection (1) (b), and	2
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(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,	4
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	the regulator may apply to the court for an order authorising the regulator, or a person authorised in writing by the regulator, to take the action or actions.	7
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(5)	If the regulator or a person authorised in writing by the regulator takes an action or actions in accordance with subsection (3) or an order under subsection (4), the regulator is entitled to recover from the offender, by action in a court of competent jurisdiction, an amount in relation to the reasonable expenses of taking the action or actions as a debt due to the regulator.	10
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237	Orders for restoration	16
(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.	17
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(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.	21
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238	Work health and safety project orders	24
(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.	25
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(2)	The order may specify conditions that must be complied with in undertaking the specified project.	28
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239	Release on the giving of a court-ordered WHS undertaking	30
(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 <i>court-ordered WHS undertaking</i>).	31
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- (2) A court-ordered WHS undertaking must specify the following conditions: 1
- (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, 2
- (b) that the offender does not commit, during the period of the adjournment, any offence against this Act, 3
- (c) that the offender observes any special conditions imposed by the court. 4
- (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. 5
- (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. 6
- (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. 7
- 240 Injunctions** 8
- 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. 9
- Note.** An injunction may also be obtained under section 215 for noncompliance with a non-disturbance notice, improvement notice or prohibition notice. 10
- 241 Training orders** 11
- The court may make an order requiring the person to undertake or arrange for one or more workers to undertake a specified course of training. 12
- 242 Offence to fail to comply with order** 13
- (1) A person must not, without reasonable excuse, fail to comply with an order under this Division. 14
- Maximum penalty: 15
- (a) in the case of an individual—\$50,000, or 16
- (b) in the case of a body corporate—\$250,000. 17
- (2) Subsection (1) places an evidential burden on the accused to show a reasonable excuse. 18
- (3) This section does not apply to an order or injunction under section 239 or 240. 19

Division 2A Sentencing guidelines

242A Definitions

In this Division:

guideline judgment means a judgment of the District Court containing guidelines to be taken into account by the Local Court or the District Court in sentencing persons convicted of an offence being:

- (a) guidelines that apply generally, or
- (b) guidelines that apply to particular courts or classes of courts, to particular offences or classes of offences, to particular penalties or classes of penalties or to particular classes of persons convicted of an offence (but not to particular persons).

guideline proceedings means proceedings under section 242B on an application for a guideline judgment referred to in that section.

offence means an offence under this Act or the regulations.

State peak council has the meaning that it has in the *Industrial Relations Act 1996*.

242B Guideline judgments on application of Attorney General

- (1) The District Court may give a guideline judgment on application of the Attorney General.
- (2) An application for a guideline judgment may include submissions in relation to the framing of the guidelines.
- (3) An application is not to be made in any proceedings before the District Court in relation to any particular person.
- (4) The powers and jurisdiction of the District Court to give a guideline judgment in proceedings under this section in relation to an offence are the same as the powers and jurisdiction that the Court of Criminal Appeal has to give a guideline judgment in a proceeding under section 37A of the *Crimes (Sentencing Procedure) Act 1999*.
- (5) A guideline judgment under this section may be given separately or may be included in any judgment of the District Court that it considers appropriate.

242C Peak councils may intervene

- (1) A State peak council, or a representative of a State peak council who is an Australian legal practitioner, may appear in guideline proceedings.
- (2) Without limiting subsection (1), a State peak council or its representative may do either or both of the following:
 - (a) make submissions in relation to the framing of the guidelines,

(b)	assist the District Court in relation to any relevant matter.	1
242D	Court may give persons or organisations leave to appear	2
(1)	The District Court may grant leave to any person, organisation or government department or agency (or a representative of any person, organisation, department or agency who is an Australian legal practitioner) to appear in guideline proceedings.	3 4 5 6
(2)	Without limiting subsection (1), any person, organisation, government department or agency that is granted leave to appear (or its representative, if any) may do either or both of the following:	7 8 9
(a)	make submissions in relation to the framing of the guidelines,	10
(b)	assist the District Court in relation to any relevant matter.	11
(3)	This section does not apply to State peak councils.	12
242E	Alteration of guideline judgments	13
	A guideline judgment given in proceedings under this Division may be reviewed, varied or revoked in a subsequent guideline judgment of the District Court, whether made under this Division or apart from it.	14 15 16
242F	Discretion of Court preserved	17
	Nothing in this Division:	18
(a)	limits any power or jurisdiction of the District Court to give a guideline judgment that the District Court has apart from this Division, or	19 20 21
(b)	requires the District Court to give any guideline judgment under this Division if it considers it inappropriate to do so.	22 23
242G	Rules of court	24
	Rules of the District Court may be made under the <i>District Court Act 1973</i> in relation to applications, and proceedings to determine applications, under this Division.	25 26 27
242H	Use of evidence in giving guideline judgments	28
(1)	Nothing in section 12 of the <i>Criminal Appeal Act 1912</i> limits the evidence or other matters that the District Court may take into consideration in giving a guideline judgment (whether or not on an application under this Division) and the District Court may inform itself as it sees fit.	29 30 31 32 33

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- (2) The District Court must not increase a sentence in any appeal by reason of, or in consideration of, any evidence that is used by the District Court in giving a guideline judgment in the appeal but was not given in the original proceedings.

Division 3 Penalty notices

243 Penalty notices

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice under this section is declared to be a penalty notice for the purposes of the *Fines Act 1996*.
- (4) A penalty notice may be served personally or by post.
- (5) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (6) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (7) The regulations may:
- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
 - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (8) The amount of a penalty prescribed under this section for an offence is not to exceed 20% of the maximum amount of penalty that could be imposed for the offence by a court.
- (9) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in relation to offences.

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- (10) In this section, *authorised officer* means a member of staff of the regulator authorised in writing by the regulator as an authorised officer for the purposes of this section.

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Division 4 Offences by bodies corporate

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244 Imputing conduct to bodies corporate

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- (1) For the purposes of this Act, any conduct engaged in on behalf of a body corporate by an employee, agent or officer of the body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is conduct also engaged in by the body corporate.
- (2) If an offence under this Act requires proof of knowledge, intention or recklessness, it is sufficient in proceedings against a body corporate for that offence to prove that the person referred to in subsection (1) had the relevant knowledge, intention or recklessness.
- (3) If for an offence against this Act mistake of fact is relevant to determining liability, it is sufficient in proceedings against a body corporate for that offence if the person referred to in subsection (1) made that mistake of fact.

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Division 5 The Crown

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245 Offences and the Crown

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- (1) If the Crown is guilty of an offence against this Act, the penalty to be imposed on the Crown is the penalty applicable to a body corporate.
- (2) For the purposes of this Act, any conduct engaged in on behalf of the Crown by an employee, agent or officer of the Crown acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is conduct also engaged in by the Crown.
- (3) If an offence under this Act requires proof of knowledge, intention or recklessness, it is sufficient in proceedings against the Crown for that offence to prove that the person referred to in subsection (2) had the relevant knowledge, intention or recklessness.
- (4) If for an offence against this Act mistake of fact is relevant to determining liability, it is sufficient in proceedings against the Crown for that offence if the person referred to in subsection (2) made that mistake of fact.

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246	WHS civil penalty provisions and the Crown	1
(1)	If the Crown contravenes a WHS civil penalty provision, the monetary penalty to be imposed on the Crown is the penalty applicable to a body corporate.	2 3 4
(2)	For the purposes of a WHS civil penalty provision, any conduct engaged in on behalf of the Crown by an employee, agent or officer of the Crown acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is conduct also engaged in by the Crown.	5 6 7 8 9
(3)	If a WHS civil penalty provision requires proof of knowledge, it is sufficient in proceedings against the Crown for a contravention of that provision to prove that the person referred to in subsection (2) had that knowledge.	10 11 12 13
247	Officers	14
(1)	A person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking of the Crown is taken to be an officer of the Crown for the purposes of this Act.	15 16 17
(2)	A Minister of a State or the Commonwealth is not in that capacity an officer for the purposes of this Act.	18 19
248	Responsible agency for the Crown	20
(1)	A provisional improvement notice, improvement notice, prohibition notice, non-disturbance notice, penalty notice or notice of entry under Part 7 to be given to or served on the Crown under this Act may be given to or served on the responsible agency.	21 22 23 24
(2)	If a penalty notice is to be served on the Crown for an offence against this Act, the responsible agency may be specified in the penalty notice.	25 26
(3)	If proceedings are brought against the Crown for an offence against this Act or in relation to a contravention of this Act, the responsible agency in relation to the offence or contravention may be specified in any document initiating, or relating to, the proceedings.	27 28 29 30
(4)	The responsible agency in relation to an offence or a contravention of this Act is entitled to act in proceedings against the Crown for the offence or relating to the contravention and, subject to any relevant rules of court, the procedural rights and obligations of the Crown as the accused or defendant in the proceedings are conferred or imposed on the responsible agency.	31 32 33 34 35 36
(5)	The person prosecuting the offence or bringing the proceedings may change the responsible agency during the proceedings with the court's leave.	37 38 39

(6)	In this section, the responsible agency:	1
(a)	in relation to a notice referred to in subsection (1) is:	2
(i)	in the case of a provisional improvement notice, improvement notice or penalty notice, the agency of the Crown the acts or omissions of which are alleged to contravene this Act,	3 4 5 6
(ii)	in the case of a prohibition notice, the agency of the Crown which has control over the activity referred to in section 195 (1) (a) or (b),	7 8 9
(iii)	in the case of a non-disturbance notice, the agency of the Crown with the management and control of the workplace,	10 11
(iv)	in the case of a notice of entry under Part 7, the agency of the Crown conducting the relevant business or undertaking or with the management and control of the workplace, and	12 13 14
(b)	in relation to an offence or proceedings for a contravention of this Act, is the agency of the Crown:	15 16
(i)	the acts or omissions of which are alleged to constitute the offence or contravention, or	17 18
(ii)	if that agency has ceased to exist, that is the successor of that agency, or	19 20
(iii)	if that agency has ceased to exist and there is no clear successor, that the court declares to be the responsible agency.	21 22 23
Division 6	Public authorities	24
249	Application to public authorities that are bodies corporate	25
	This Division applies only to public authorities that are bodies corporate.	26 27
250	Proceedings against public authorities	28
(1)	Proceedings may be brought under this Act against a public authority in its own name.	29 30
(2)	Nothing in this Division affects any privileges that a public authority may have under the Crown.	31 32
251	Imputing conduct to public authorities	33
(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	34 35 36

	within his or her actual or apparent authority, is conduct also engaged in by the public authority.	1 2
(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 4 5 6
(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.	7 8 9 10
252	Officer of public authority	11
	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.	12 13 14 15
253	Proceedings against successors to public authorities	16
(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.	17 18 19 20 21
(2)	A penalty notice served on a public authority for an offence against this Act is taken to be a penalty notice served on its successor if the successor is a public authority.	22 23 24
(3)	Similarly, any penalty paid by a public authority in relation to an penalty notice is taken to be a penalty paid by its successor if the successor is a public authority.	25 26 27
Division 7	WHS civil penalty provisions	28
254	When is a provision a WHS civil penalty provision	29
(1)	A subsection of Part 7 (or a section of Part 7 that is not divided into subsections) is a <i>WHS civil penalty provision</i> if:	30 31
(a)	the words “WHS civil penalty provision” and one or more amounts by way of monetary penalty are set out at the foot of the subsection (or section), or	32 33 34
(b)	another provision of Part 7 specifies that the subsection (or section) is a WHS civil penalty provision.	35 36

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- (2) A subclause of the regulations (or a clause of the regulations that is not divided into subclauses) is **a WHS civil penalty provision** if:
- (a) the words “WHS civil penalty provision” and one or more amounts by way of monetary penalty are set out at the foot of the subclause (or clause), or
- (b) another provision of the regulations specifies that the subclause (or clause) is a WHS civil penalty provision.
- 255 Proceedings for contravention of WHS civil penalty provision**
- Subject to this Division, proceedings may be brought in the Local Court or the District Court against a person for a contravention of a WHS civil penalty provision.
- 256 Involvement in contravention treated in same way as actual contravention**
- (1) A person who is involved in a contravention of a WHS civil penalty provision is taken to have contravened that provision.
- (2) A person is **involved in** a contravention of a civil penalty provision if, and only if, the person:
- (a) has aided, abetted, counselled or procured the contravention, or
- (b) has induced the contravention, whether by threats or promises or otherwise, or
- (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention, or
- (d) has conspired with others to effect the contravention.
- 257 Contravening a civil penalty provision is not an offence**
- A contravention of a WHS civil penalty provision is not an offence.
- 258 Civil proceeding rules and procedure to apply**
- A court must apply the rules of evidence and procedure for civil proceedings when hearing proceedings for a contravention of a WHS civil penalty provision.
- 259 Proceeding for a contravention of a WHS civil penalty provision**
- (1) In a proceeding for a contravention of a WHS civil penalty provision, if the court is satisfied that a person has contravened a WHS civil penalty provision, the court may:
- (a) order the person to pay a monetary penalty that the court considers appropriate, and

	(b) make any other order that the court considers appropriate, including an injunction.	1 2
	(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.	3 4 5 6
260	Proceedings may be brought by the regulator or an inspector	7
	Proceedings for a contravention of a WHS civil penalty provision may only be brought by:	8 9
	(a) the regulator, or	10
	(b) an inspector with the written authorisation of the regulator (either generally or in a particular case).	11 12
261	Limitation period for WHS civil penalty proceedings	13
	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.	14 15 16
262	Recovery of a monetary penalty	17
	If the court orders a person to pay a monetary penalty:	18
	(a) the penalty is payable to the State, and	19
	(b) the State may enforce the order as if it were a judgment of the court.	20 21
263	Civil double jeopardy	22
	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.	23 24 25 26 27
264	Criminal proceedings during civil proceedings	28
	(1) Proceedings against a person for a contravention of a WHS civil penalty provision are stayed if:	29 30
	(a) criminal proceedings are commenced or have already commenced against the person for an offence, and	31 32
	(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.	33 34 35

- (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.

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265 Criminal proceedings after civil proceedings

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Criminal proceedings may be commenced against a person for conduct that is substantially the same as conduct constituting a contravention of a WHS civil penalty provision regardless of whether an order has been made against the person under section 259.

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266 Evidence given in proceedings for contravention of WHS civil penalty provision not admissible in criminal proceedings

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- (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

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267 Civil liability not affected by this Act

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Except as provided in Part 6 and Part 7 and Division 7 of this Part, nothing in this Act is to be construed as:

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- (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

- (1) A person must not give information in complying or purportedly complying with this Act that the person knows:

- (a) to be false or misleading in a material particular, or
- (b) omits any matter or thing without which the information is misleading.

Maximum penalty:

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

- (2) A person must not produce a document in complying or purportedly complying with this Act that the person knows to be false or misleading in a material particular without:

- (a) indicating the respect in which it is false or misleading and, if practicable, providing correct information, or
- (b) accompanying the document with a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:
 - (i) stating that the document is, to the knowledge of the firstmentioned person, false or misleading in a material particular, and
 - (ii) setting out, or referring to, the material particular in which the document is, to the knowledge of the firstmentioned person, false or misleading.

Maximum penalty:

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

- (3) Subsection (2) places an evidential burden on the accused to show that the accused had indicated the extent to which the document was false or misleading or that the accompanying document sufficiently explained the extent to which the document was false or misleading.

269 Act does not affect legal professional privilege

Nothing in this Act requires a person to produce a document that would disclose information, or otherwise provide information, that is the subject of legal professional privilege.

270	Immunity from liability	1
(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 3 4 5
(2)	A civil liability that would, but for subsection (1), attach to a person, attaches instead to the State.	6 7
271	Confidentiality of information	8
(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).	9 10 11
(2)	The person must not do any of the following:	12
(a)	disclose to anyone else:	13
(i)	the information, or	14
(ii)	the contents of or information contained in the document,	15
(b)	give access to the document to anyone else,	16
(c)	use the information or document for any purpose.	17
	Maximum penalty:	18
(a)	in the case of an individual—\$10,000, or	19
(b)	in the case of a body corporate—\$50,000.	20
(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:	21 22
(a)	about a person, with the person’s consent, or	23
(b)	that is necessary for the exercise of a power or function under this Act, or	24 25
(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:	26 27 28
(i)	is necessary for administering, or monitoring or enforcing compliance with, this Act, or	29 30
(ii)	is necessary for the administration or enforcement of another Act prescribed by the regulations, or	31 32
(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	33 34 35 36
(iv)	is necessary for the recognition of authorisations under a corresponding WHS law, or	37 38

(v)	is required for the exercise of a power or function under a corresponding WHS law, or	1
(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	2
(e)	that is required or authorised under a law, or	3
(f)	to a Minister.	4
(4)	A person must not intentionally disclose to another person the name of an individual who has made a complaint in relation to that other person unless:	5
(a)	the disclosure is made with the consent of the complainant, or	6
(b)	the disclosure is required under a law.	7
	Maximum penalty:	8
(a)	in the case of an individual—\$10,000, or	9
(b)	in the case of a body corporate—\$50,000.	10
272	No contracting out	11
	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.	12
273	Person not to levy workers	13
	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.	14
	Maximum penalty:	15
(a)	in the case of an individual—\$5,000, or	16
(b)	in the case of a body corporate—\$25,000.	17
Division 2	Codes of practice	18
274	Approved codes of practice	19
(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.	20
(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:	21

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- (a) the Governments of the Commonwealth and each State and Territory, and 1
2
- (b) unions, and 3
- (c) employer organisations. 4
- (3) A code of practice may apply, adopt or incorporate any matter contained 5
in a document formulated, issued or published by a person or body 6
whether: 7
- (a) with or without modification, or 8
- (b) as in force at a particular time or from time to time. 9
- (4) An approval of a code of practice, or a variation or revocation of an 10
approved code of practice, takes effect when notice of it is published in 11
the Gazette or on such later date as is specified in the approval, variation 12
or revocation. 13
- (5) As soon as practicable after approving a code of practice, or varying or 14
revoking an approved code of practice, the Minister must ensure that 15
notice of the approval, variation or revocation is published in the 16
Gazette and a newspaper circulating generally throughout the State. 17
- (6) The regulator must ensure that a copy of: 18
- (a) each code of practice that is currently approved, and 19
- (b) each document applied, adopted or incorporated (to any extent) 20
by an approved code of practice, 21
- is available for inspection by members of the public without charge at 22
the office of the regulator during normal business hours. 23
- 275 Use of codes of practice in proceedings** 24
- (1) This section applies in a proceeding for an offence against this Act. 25
- (2) An approved code of practice is admissible in the proceeding as 26
evidence of whether or not a duty or obligation under this Act has been 27
complied with. 28
- (3) The court may: 29
- (a) have regard to the code as evidence of what is known about a 30
hazard or risk, risk assessment or risk control to which the code 31
relates, and 32
- (b) rely on the code in determining what is reasonably practicable in 33
the circumstances to which the code relates. 34
- Note.** See section 18 for the meaning of *reasonably practicable*. 35

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- (4) Nothing in this section prevents a person from introducing evidence of compliance with this Act in a manner that is different from the code but provides a standard of work health and safety that is equivalent to or higher than the standard required in the code.

Division 3 Regulation-making powers

276 Regulation-making powers

- (1) The Governor may make regulations in relation to:
- (a) any matter relating to work health and safety, and
 - (b) any matter or thing required or permitted by this Act to be prescribed or that is necessary or convenient to be prescribed to give effect to this Act.
- (2) Without limiting subsection (1), the regulations may make provision for or in relation to matters set out in Schedule 3.
- (3) The regulations may:
- (a) be of general or limited application, or
 - (b) differ according to differences in time, place or circumstance, or
 - (c) leave any matter or thing to be, from time to time, determined, applied or approved by the regulator, an inspector or any other prescribed person or body of persons, or
 - (d) apply, adopt or incorporate any matter contained in any document formulated, issued or published by a person or body whether:
 - (i) with or without modification, or
 - (ii) as in force at a particular time or as in force or remade from time to time, or
 - (e) prescribe exemptions from complying with any of the regulations on the terms and conditions (if any) prescribed, or
 - (f) allow the regulator to provide exemptions from complying with any of the regulations on the terms and conditions (if any) prescribed or, if the regulations allow, on the terms and conditions (if any) determined by the regulator, or
 - (g) prescribe fees for doing any act or providing any service for the purposes of this Act and prescribe the circumstances and way in which fees can be refunded, waived or reduced, or
 - (h) prescribe a penalty for any contravention of the regulations not exceeding \$30,000.

Division 3A Miscellaneous

**276A Application of Act to mining workplaces and coal workplaces—
 references to regulator**

The regulations may provide that a reference in any provision of this Act to the regulator, or to an officer of the regulator, in connection with the application of the provision to a mining workplace or a coal workplace, is taken to be or include a reference to a specified government department or agency, or an officer of a government department or agency, exercising functions in connection with the administration of the *Mine Health and Safety Act 2004*, the *Petroleum (Onshore) Act 1991*, the *Petroleum (Offshore) Act 1982* or the *Coal Mine Health and Safety Act 2002*, or a reference to the Minister administering any of those Acts.

276B Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

276C Repeals

The following are repealed:

Occupational Health and Safety Act 2000

Occupational Health and Safety Regulation 2001

Schedule 1	Application of Act to dangerous goods and high risk plant	1
		2
1	This Act applies to the storage and handling of dangerous goods even if the dangerous goods are not at a workplace or for use in carrying out work.	3
		4
		5
2	For the purposes of clause 1:	6
	(a) a reference in this Act to carrying out work includes a reference to the storage or handling of dangerous goods, and	7
		8
	(b) a reference in this Act to a workplace includes a reference to the premises at or in which the dangerous goods are stored or handled, and	9
		10
		11
	(c) a reference in this Act to work health and safety (however expressed) includes a reference to public health and safety.	12
		13
3	This Act applies to the operation or use of high risk plant, affecting public safety, even if the plant is not situated, operated or used at a workplace or for use in carrying out work.	14
		15
		16
4	For the purposes of clause 3:	17
	(a) a reference in this Act to carrying out work includes a reference to the operation and use of high risk plant affecting public safety, and	18
		19
		20
	(b) a reference in this Act to a workplace includes a reference to any high risk plant affecting public safety and the premises at or in which the plant is situated or used, and	21
		22
		23
	(c) a reference in this Act to work health and safety (however expressed) includes a reference to public health and safety.	24
		25
5	The operation of this Schedule is subject to any exclusions or modifications prescribed by the regulations.	26
		27
6	In this Schedule:	28
	<i>dangerous goods</i> means anything prescribed as dangerous goods.	29
	<i>high risk plant</i> means plant prescribed as high risk plant.	30

Schedule 2	The regulator and local tripartite consultation arrangements and other local arrangements
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Schedule 2	The regulator and local tripartite	1
	consultation arrangements and other	2
	local arrangements	3
* * * * *		
Note.	Not required in NSW.	4

Schedule 3	Regulation-making powers	1
1	Duties	2
(1)	Matters relating to the way in which duties imposed by this Act are to be performed.	3 4
(2)	Matters relating to the regulation or prohibition of specified activities or a specified class of activities:	5 6
(a)	at workplaces or a specified class of workplaces, or	7
(b)	by a specified class of persons on whom duties or obligations are imposed by this Act,	8 9
	to eliminate or minimise risks to health and safety.	10
(3)	Imposing duties on persons in relation to any matter provided for under the regulations.	11 12
2	Incidents	13
	Matters relating to incidents at workplaces including:	14
(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	15 16 17
(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.	18 19 20
3	Plant, substances or structures	21
	Matters relating to plant, substances or structures, including:	22
(a)	regulating the storage and handling of plant, substances and structures, and	23 24
(b)	regulating or requiring:	25
(i)	the examination, testing, labelling, maintenance or repair of plant and structures, or	26 27
(ii)	the examination, testing, analysis or labelling of any substance.	28 29
4	Protection and welfare of workers	30
	Matters relating to the protection and welfare of workers including:	31
(a)	regulating or requiring the provision and use of protective clothing or equipment, or rescue equipment, in specified circumstances, and	32 33 34

(b)	regulating or requiring the provision of specified facilities for the welfare of workers at the workplace, and	1 2
(c)	matters relating to health and safety in relation to accommodation provided to workers.	3 4
5	Hazards and risks	5
	Matters relating to hazards and risks including:	6
(a)	the prescribing of standards relating to the use of or exposure to any physical, biological, chemical or psychological hazard, and	7 8
(b)	matters relating to safety cases, safety management plans and safety management systems (however described), and	9 10
(c)	matters relating to measures to control risks.	11
6	Records and notices	12
(1)	The keeping and availability of records of health and safety representatives and deputy health and safety representatives.	13 14
(2)	The keeping of records in relation to incidents.	15
(3)	The keeping of records of specified activities, matters or things to be kept by specified persons.	16 17
(4)	The giving of notice of or information about specified activities, matters or things to the regulator, an inspector or other specified person.	18 19
7	Authorisations	20
(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:	21 22 23
(a)	applications for the grant, issue, renewal, variation, suspension and cancellation of authorisations, including the minimum age to be eligible for an authorisation, and	24 25 26
(b)	the evidence and information to be provided in relation to applications including the provision of statutory declarations, and	27 28
(c)	exemptions, and	29
(d)	variations of authorisations by the regulator whether on application or otherwise, and	30 31
(e)	authorisation of persons as trainers and assessors, and	32
(f)	examination of applicants for authorisations, and	33
(g)	conditions of authorisations, and	34
(h)	fees for applications for the grant, issue, renewal and variation of authorisations.	35 36

(2)	The recognition of authorisations under corresponding WHS laws and exceptions to recognition.	1 2
(3)	The sharing of information with corresponding regulators relating to the grant, issue, renewal, variation, suspension or cancellation of authorisations.	3 4 5
8	Work groups	6
	Matters relating to work groups and variation of work groups and agreements or variations of agreements relating to the determination of work groups.	7 8 9
9	Health and safety committees and health and safety representatives	10
	Matters relating to health and safety committees and health and safety representatives.	11 12
10	Issue resolution	13
	Matters relating to issue resolution including:	14
(a)	the minimum requirements for an agreed procedure for resolving an issue, and	15 16
(b)	the requirements for a default issue resolution procedure where there is no agreed procedure.	17 18
11	WHS entry permits	19
	Matters relating to WHS entry permits, including providing for:	20
(a)	eligibility for WHS entry permits, and	21
(b)	procedures for applications for WHS entry permits and objections to applications for WHS entry permits, and	22 23
(c)	conditions of WHS entry permits, and	24
(d)	the form of WHS entry permits, and	25
(e)	requirements for training, and	26
(f)	records of WHS entry permits.	27
12	Identity cards	28
	Matters relating to identity cards.	29
13	Forfeiture	30
	Matters relating to:	31
(a)	costs of forfeiture and disposal of forfeited things, and	32
(b)	disposal of seized things and forfeited things.	33

14 Review of decisions

Matters relating to the review of decisions under the regulations including:

- (a) prescribing decisions as reviewable decisions for the purposes of Part 12 or for the purposes of the regulations, and
- (b) prescribing procedures for internal and external review of decisions under the regulations, and
- (c) conferring jurisdiction on the Local Court or the Industrial Relations Commission to conduct reviews under the regulations.

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Schedule 4	Savings, transitional and other provisions	1
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Part 1	General	3
1	Regulations	4
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:	5
	this Act	6
		7
(2)	Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	8
		9
(3)	To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:	10
		11
		12
(a)	to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	13
		14
		15
(b)	to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	16
		17
		18
Part 2	Provision consequent on enactment of this Act	19
2	Definition	20
	In this Part:	21
	<i>OHS Act</i> means the <i>Occupational Health and Safety Act 2000</i> .	22
3	Industry codes of practice	23
	An industry code of practice approved and in force under Part 4 of the OHS Act immediately before the repeal of that Act is taken to be an approved code of practice under Part 14 of this Act.	24
		25
		26
4	Improvement or prohibition notices	27
(1)	An improvement notice or provisional improvement notice may be issued under this Act in relation to a contravention of the OHS Act or the regulations under the OHS Act that occurred before the commencement of this Act.	28
		29
		30
		31
(2)	An improvement notice or prohibition notice issued under the OHS Act and in force on the commencement of this Act is taken to be an improvement notice or prohibition notice issued under this Act.	32
		33
		34

(3)	Any appeal, review or other proceeding pending under the OHS Act in relation to an improvement notice or prohibition notice issued under the OHS Act is taken to be a proceeding pending under the corresponding provision of this Act.	1 2 3 4
5	Inspectors	5
(1)	A person appointed as an inspector under the OHS Act and holding office on the repeal of the OHS Act is taken to be appointed as an inspector under this Act, subject to the regulations under this Schedule.	6 7 8
(2)	An identification card issued to the inspector under the OHS Act is taken to be an identity card issued under this Act until its replacement under this Act, and may be used by the inspector even though it refers to provisions of the OHS Act.	9 10 11 12
6	Investigative powers and related matters	13
	Part 9 (Securing compliance) extends to the exercise of powers in connection with the OHS Act or a regulation under the OHS Act in relation to offences committed against the OHS Act or the regulation before its repeal or in relation to any other matter that continues to have any force or effect (except as provided by or under this Schedule).	14 15 16 17 18
7	Criminal and other proceedings for offences under OHS Act	19
(1)	Part 13 (Legal proceedings) extends (subject to this clause) to proceedings in connection with the OHS Act in relation to offences committed against the OHS Act before its repeal or in relation to any related matter that continues to have force or effect.	20 21 22 23
(2)	This clause applies whether any such proceedings are pending on the repeal of the OHS Act or whether the proceedings are instituted after that repeal.	24 25 26
(3)	Part 13 applies with such modifications as are prescribed by the regulations or as are necessary for the purposes of applying that Part to any such proceedings.	27 28 29
8	Sentencing guidelines	30
	A guideline judgement given under Division 4 of Part 7 of the OHS Act and in force immediately before the repeal of that Division is taken to be a guideline judgement given under Division 2A of Part 13 of this Act.	31 32 33
9	Existing notices, exemptions etc	34
	A notice, direction, order, requirement or exemption that:	35
(a)	is given, issued or made under the OHS Act, and	36

(b) is in force on the repeal of the OHS Act,	1
has effect for the purposes of any corresponding provision of or made	2
under this Act, unless this Act or the regulations otherwise provide.	3

10 General saving 4

Anything done under the OHS Act or a provision of the OHS Act that	5
has any force or effect immediately before its repeal is taken to have	6
been done under the corresponding provision of this Act, subject to any	7
express or implied provision to the contrary in this Act or the	8
regulations made under this Act.	9

Schedule 5	Amendment of other legislation	1
5.1	Criminal Procedure Regulation 2010	2
	Clause 103 Offences not within jurisdiction of District Court	3
	Insert “, and section 31 of the <i>Work Health and Safety Act 2011</i> ,” after “ <i>Crimes Act 1900</i> ”.	4
		5
5.2	Fines Act 1996 No 99	6
	Schedule 1 Statutory provisions under which penalty notices issued	7
	Omit “ <i>Occupational Health and Safety Act 2000</i> , section 108”.	8