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Confidential Draft prepared by the Office of Chief Parliamentary Counsel Victoria

Model Occupational Health and Safety Provisions

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**Model Occupational Health and Safety
Provisions**

Part 1—Preliminary

Division 1—Introduction

1 Citation

This Act may be cited as the *Safe Work Act 2009*.

Jurisdictional note. Appropriate local provisions to be inserted. However a uniform form of citation is suggested. e.g. the *Safe Work Act 2009*. In Victoria a purpose provision will be used in place of the citation provision.

2 Commencement

This Act commences on 1 January 2012.

Jurisdictional note. Appropriate local provisions to be inserted with a view to commencing the model provisions on the same date in each jurisdiction.

Division 2—Objects

3 Objects

(1) The main objects of this Act are:

- (a) to protect workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of hazards and risks arising from work [or from specified types of substances or plant]; and

Jurisdictional note: The words in brackets are optional for jurisdictions.

- (b) to provide for fair and effective workplace representation, consultation, cooperation and issue resolution in relation to occupational health and safety;
- (c) to encourage unions and employer organisations to take a constructive role in promoting improvements in occupational health, safety and welfare practices and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment;
- (d) to promote the provision of advice, information, education and training in relation to occupational health and safety;
- (e) to secure compliance with this Act through effective and appropriate compliance and enforcement measures;
- (f) to ensure appropriate scrutiny and review of actions taken by persons exercising powers and carrying out functions under this Act;

- (g) to provide a framework for continuous improvement and progressively higher standards of occupational health and safety;
 - (h) to maintain and strengthen the national harmonisation of laws relating to occupational health and safety and to facilitate a consistent national approach to occupational health and safety in this jurisdiction.
- (2) In furthering the object in 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 wellbeing from hazards and risks arising from work [or from specified types of substances or plant] as is reasonably practicable.

Jurisdictional note: The words in brackets are optional for jurisdictions.

Division 3—Interpretation

Subdivision 1—Definitions

4 Definitions

In this Act:

authorising authority means:

Jurisdictional note: Each jurisdiction will need to specify the court or tribunal or body to be the authorising authority for that jurisdiction.

Category 1 offence—see section 30.

Category 2 offence—see section 31.

code of practice means a code of practice approved under Part 12.

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

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 another State or Territory, who or which is responsible for administering a corresponding OHS law.

corresponding OHS law means a law of an Australian jurisdiction that is equivalent to this Act or [*other corresponding Acts*].

Jurisdictional note: Each jurisdiction will include its own list of Acts for correspondence, e.g. Dangerous Goods Acts.

demolish includes, deconstruct, decommission and dismantle.

design includes redesign.

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

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

employer organisation means an organisation of employers.

Fair Work Act means the Fair Work Act 2009 of the Commonwealth.

health means physical and psychological health.

inspector means an inspector appointed under Part 8.

officer of a person (other than an individual) (the body) means:

- (a) in the case of a body other than the Crown, a public authority or a local authority, a person:
 - (i) who is a director of the body; or
 - (ii) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking of the body; or
 - (iii) who has the capacity to affect significantly the body's financial standing; or
 - (iv) who is a receiver or manager of any property of the body; or
 - (v) who is a liquidator of the body; or
- (b) in the case of the Crown, a public authority or local authority, a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking of the relevant Government department or that authority,

but does not include a Minister of a State or Territory or the Commonwealth.

official of a union, in Part 6, means a person who holds an office in, or is an employee of, the union.

OHS entry permit means an OHS entry permit issued under Part 6.

OHS entry permit holder means a person who holds an OHS entry permit.

OHS law means:

Jurisdictional note: each jurisdiction will specify the OHS laws for its jurisdiction.

person includes a body corporate, an unincorporated body or association and a partnership.

plant includes:

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

public authority means

Jurisdictional note: Each jurisdiction will determine the public authorities for its jurisdiction.

regulator means

Jurisdictional note: Each jurisdiction will specify the relevant regulator for its jurisdiction.

representative, in relation to a worker, means:

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

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

structure means anything that is constructed and any arrangement of elements, whether fixed or moveable, temporary or permanent, and includes:

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

(c) part of a structure.

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

supply—see section 6.

this Act includes the regulations.

Tribunal means

Jurisdictional note: Each jurisdiction will specify the relevant court or tribunal for its jurisdiction.

union means:

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

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

worker—see section 7.

work group means a work group determined under Part 4.

workplace—see section 8.

Subdivision 2—Other important terms

5 Meaning of *person conducting a business or undertaking*

- (1) For the purposes of this Act a person conducts a ***business or undertaking***:
 - (a) whether the person conducts the business or undertaking alone or in concert with others; and
 - (b) whether or not the business or undertaking is conducted for profit or gain.
- (2) Subject to this Act, a person does not conduct a business or undertaking to the extent that:
 - (a) workers are engaged by the person solely for that person's private or domestic purposes; or
 - (b) the person conducts an activity of a prescribed kind.
- (3) A volunteer association does not conduct a business or undertaking for the purposes of this Act.
- (4) The regulations may specify the circumstances in which a person may be taken to engage, or not to engage, workers solely for the person's private or domestic purposes.
- (5) 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 *or engages* any person to carry out work for the volunteer association.

6 Meaning of *supply*

- (1) A ***supply*** of a thing includes a supply and a resupply of the thing by way of sale, exchange, lease, hire or hire-purchase, whether as principal or agent.
- (2) A supply of a thing does not include:

- (a) the return of possession of a thing to the owner of the thing at the end of a lease or other agreement; or
 - (b) a prescribed supply.
- (3) A financier is taken not to supply plant, a substance or a structure for the purposes of this Act if the financier:
- (a) has, in the course of the financier's business as a financier, acquired an interest in the plant, substance or structure solely for the purpose of financing its acquisition by a customer from a third person; and
 - (b) has not taken possession of the plant, substance or structure or has taken possession of it solely for the purpose of passing possession to that customer.
- (4) The third person referred to in subsection (3) is taken to supply the plant, substance or structure for the purposes of this Act.
- (5) In this section *financier* means a person who carries on the business of financing the acquisition of plant, a substance or a structure by customers.

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:
- (a) as an employee;
 - (b) as a contractor or sub-contractor;
 - (c) as an employee of a contractor or sub-contractor;
 - (d) as an employee of a labour hire company who has been assigned work in the person's business or undertaking;

- (e) as an outworker;
 - (f) as an apprentice or trainee;
 - (g) as a student gaining work experience;
 - (h) as a volunteer.
- (2) The person conducting the business or undertaking is also a **worker** if the person is an individual who carries out work in that business or undertaking.

8 Meaning of *workplace*

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

Division 4—Application of Act

9 Act binds the Crown

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

Jurisdictional note. Each jurisdiction will enact a provision to ensure that the Crown in right of the jurisdiction and also in all its other capacities is bound by the model provisions.

- (2) To avoid doubt, the Crown is a body corporate for the purposes of this Act.

10 Extra-territorial application

Jurisdictional note: Each jurisdiction may insert a local provision relating to extra-territorial application.

11 Scope

- (1) This Act applies to the storage and handling of dangerous goods even if the dangerous goods are not at a workplace or for use in carrying out work.
- (2) For the purposes of subsection (1):
 - (a) a reference in this Act to work includes a reference to the storage or handling of dangerous goods;
 - (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;
 - (c) a reference to occupational health and safety (however expressed) includes a reference to public health and safety.
- (3) This Act applies to the operation or use of high risk plant, affecting public safety, even if the plant is not situated, operated or used at a workplace or for use in carrying out work.
- (4) For the purposes of subsection (3):
 - (a) a reference in this Act to carrying out work includes a reference to the operation and use of high risk plant affecting public safety;
 - (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;
 - (c) a reference to occupational health and safety (however expressed) includes a reference to public health and safety.

- (5) The operation of this section is subject to any exclusions or modifications prescribed by the regulations.

Jurisdictional note: This provision is optional for jurisdictions. A jurisdiction may use its own definitions of dangerous goods and high risk plant and may choose to regulate high risk plant or dangerous goods or both.

Jurisdictional note: Each jurisdiction may insert local provisions to establish the relationship between the model provisions and other Acts in the jurisdiction. The Commonwealth will need to deal with operation of Commonwealth and State and Territory laws.

Jurisdictional note: The Commonwealth may need to draft provisions to deal with matters relating to national security, defence and federal police operations.

Part 2—Safety Duties

Division 1—Introduction

Subdivision 1—Principles that apply to safety duties

12 Principles that apply to duties of care

This Subdivision sets out the principles that apply to all duties of care owed by persons under this Act.

13 Duties to be non-delegable

A duty is non-delegable.

14 Person may have more than one duty

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

15 More than one person can have a duty

- (1) More than one person can concurrently have the same duty.
- (2) Each duty holder must comply with that duty to the standard required by this Act even if another duty holder has the same duty.
- (3) If more than one person has a duty for the same matter, each person:
 - (a) retains responsibility for the person's duty in relation to the matter; and
 - (b) must discharge the person's duty to the extent that the matter is within the person's capacity to influence and control; and

- (c) must consult, co-operate and co-ordinate activities with all other persons who have a duty in relation to the same matter.

16 The principle of risk management

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

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

Subdivision 2—What is reasonably practicable

17 Determining what is *reasonably practicable* in ensuring health and safety

In determining what is (or was at a particular time) *reasonably practicable* in relation to ensuring health and safety, regard must be had and appropriate weight given to all relevant matters including:

- (a) the likelihood of the hazard or the risk concerned occurring;
- (b) the degree of harm that might result from the hazard or the risk;
- (c) what the person concerned knows, or ought reasonably to know, about—
 - (i) the hazard and the risk;
 - (ii) ways of eliminating or minimising the hazard or the risk;

- (d) the availability and suitability of ways to eliminate or minimise the hazard or the risk;
- (e) the cost of eliminating or minimising the hazard or the risk.

Division 2—Primary duty of care

18 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; and
 - (c) workers of a prescribed class,
while the workers are engaged at work in the business or undertaking.
- (2) A self-employed person must ensure, so far as is reasonably practicable, his or her own health and safety while engaged at work in a business or undertaking.
- (3) 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.
- (4) Without limiting subsections (1) to (3), a person conducting a business or undertaking must, so far as is reasonably practicable:
 - (a) provide and maintain a safe and healthy work environment;

- (b) provide and maintain safe plant and structures;
- (c) provide and maintain safe systems of work;
- (d) ensure the safe use, handling, storage and transport of plant, structures and substances;
- (e) provide adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking;
- (f) provide 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;
- (g) ensure 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.

Division 3—Duties related to specific activities

19 Duty of person with management or control of workplace

- (1) This section applies to a person (the *person who has management or control*) whose business or undertaking involves the management or control of a workplace (wholly or in part).

- (2) The person who has 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 safe and without risks to the health of any person.

- (3) In this section *person who has management or control* of a workplace does not include:
- (a) the occupier of domestic premises; or
 - (b) a prescribed person.

20 Duty of person with management or control of fixtures, fittings or plant at a workplace

- (1) This section applies to a person (the *person who has management or control*) whose business or undertaking includes the management or control of fixtures, fittings or plant at a workplace (wholly or in part).
- (2) The person who has management or control of fixtures, fittings or plant in a workplace must ensure, so far as is reasonably practicable, that the fixtures, fittings and plant are safe and without risks to the health of any person.
- (3) In this section *person who has management or control* of fixtures, fittings or plant at a workplace does not include:
- (a) the occupier of a residence; or
 - (b) a prescribed person.

21 Duties of persons who design plant, substances or structures

- (1) This section applies to a person (the *designer*) who conducts a business or undertaking that designs:
- (a) plant or a substance that is to be used or could reasonably be expected to be used at a workplace; or
 - (b) a structure that is to be used as, or at, a workplace.

- (2) The designer must ensure, so far as is reasonably practicable, that the plant, substance or structure is designed to be safe and without risks to the health of persons:
- (a) who, at a workplace, use the plant, substance or structure for a purpose for which it was designed; or
 - (b) who handle the substance at a workplace; or
 - (c) who construct the structure at a workplace; or
 - (d) who carry out any reasonably foreseeable activity at a workplace in relation to:
 - (i) the proper manufacture, assembly, use, decommissioning, dismantling or disposal of the plant; or
 - (ii) the proper manufacture, handling, use or disposal of the substance; or
 - (iii) the proper construction, use or demolition of the structure; or
 - (e) who are in the vicinity of a workplace and whose health and safety may be affected by a use or activity referred to in paragraph (a), (b), (c) or (d).
- (3) The designer must carry out, or arrange the carrying out of, any calculations, analysis, testing and 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 to whom the designer gives the design and who is to give effect to it concerning:

- (a) the purpose or purposes 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); and
 - (c) any conditions necessary to ensure that the plant, substance or structure is safe and without risks to health when used for a purpose for which it was designed or carrying out any activity referred to in subsection (2)(a) to (d).
- (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:
- (a) uses, or is to use, the plant; or
 - (b) handles or uses, or is to use, the substance; or
 - (c) uses, or is to construct, use or demolish, the structure.

22 Duties of persons who manufacture plant, substances or structures

- (1) This section applies to a person (the *manufacturer*) who conducts a business or undertaking that manufactures:
- (a) plant or a substance that is to be used or could reasonably be expected to be used at a workplace; or
 - (b) a structure that is 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 safe and without risks to the health of persons:

- (a) who, at a workplace, use the plant, substance or structure for a purpose for which it was manufactured; or
- (b) who handle the substance at a workplace; or
- (c) who construct the structure at a workplace; or
- (d) who carry out any reasonably foreseeable activity at a workplace in relation to:
 - (i) the proper assembly, use, decommissioning, dismantling or disposal of the plant; or

Example

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

- (ii) the proper handling, use or disposal of the substance; or
 - (iii) the proper construction, use or demolition of the structure; or
 - (e) who are at or in the vicinity of a workplace and whose health and safety may be affected by a use or activity referred to in paragraph (a), (b), (c) or (d).
- (3) The manufacturer must carry out, or arrange the carrying out of, any calculations, analysis, testing and examination that may be necessary for the performance of the duty imposed by subsection (2).
 - (4) The manufacturer must give adequate information to each person to whom the manufacturer provides the plant, substance or structure concerning:
 - (a) the purpose or purposes for which the plant, substance or structure was manufactured; and

- (b) the results of any calculations, analysis, testing or examination referred to in subsection (3); and
 - (c) any conditions necessary to ensure that the plant, substance or structure is safe and without risks to health when used for a purpose for which it was manufactured or carrying out any activity referred to in subsection (2)(a) to (d).
- (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:
- (a) uses, or is to use, the plant; or
 - (b) handles or uses, or is to use, the substance; or
 - (c) uses, or is to construct, use or demolish, the structure.

23 Duties of persons who import plant, substances or structures

- (1) This section applies to a person (the *importer*) who conducts a business or undertaking that imports:
- (a) plant or a substance that is to be used or could reasonably be expected to be used at a workplace; or
 - (b) a structure that is to be used as, or at, a workplace.
- (2) The importer must ensure, so far as is reasonably practicable, that the plant, substance or structure is safe and without risks to the health 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 construct the structure at a workplace;
or
- (d) who carry out any reasonably foreseeable activity at a workplace in relation to:
 - (i) the proper assembly, use, decommissioning, dismantling or disposal of the plant; or

Example

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

- (ii) the proper handling, use or disposal of the substance; or
 - (iii) the proper construction, use or demolition of the structure; or
 - (e) who are at or in the vicinity of a workplace and whose health and safety may be affected by a use or activity referred to in paragraph (a), (b), (c) or (d).
- (3) The importer must:
- (a) carry out, or arrange the carrying out of, any analysis, testing and examination that may be necessary for the performance of the duty imposed by subsection (2); or
 - (b) ensure that the analysis, testing or examination has been carried out.
- (4) The importer must give adequate information to each person to whom the importer provides the plant, substance or structure concerning:
- (a) the purpose or purposes for which the plant, substance or structure was designed or manufactured; and

- (b) the results of any analysis, testing or examination referred to in subsection (3); and
 - (c) any conditions necessary to ensure that the plant, substance or structure is safe and without risks to health when used for a purpose for which it was designed or manufactured or carrying out any activity referred to in subsection (2)(a) to (d).
- (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:
- (a) uses, or is to use, the plant; or
 - (b) handles or uses, or is to use, the substance; or
 - (c) uses, or is to construct, use or demolish, the structure.

24 Duties of persons who supply plant, substances and structures

- (1) This section applies to a person (the *supplier*) who conducts a business or undertaking that supplies:
- (a) plant or a substance that is to be used or could reasonably be expected to be used at a workplace; or
 - (b) a structure that is to be used as, or at, a workplace.
- (2) The supplier must ensure, so far as is reasonably practicable, that the plant, substance or structure is safe and without risks to the health of persons:
- (a) who, at a workplace, use the plant or substance or structure for a purpose for which it was designed or manufactured; or
 - (b) who handle the substance at a workplace; or

- (c) who construct the structure at a workplace;
or
- (d) who carry out any reasonably foreseeable activity at a workplace in relation to:
 - (i) the proper assembly, use, decommissioning, dismantling or disposal of the plant; or

Example

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

- (ii) the proper handling, use or disposal of the substance; or
 - (iii) the proper construction, use or demolition of the structure; or
 - (e) who are at or in the vicinity of a workplace and whose health and safety may be affected by a use or activity referred to in paragraph (a), (b), (c) or (d).
- (3) The supplier must:
- (a) carry out, or arrange the carrying out of, any analysis, testing and examination that may be necessary for the performance of the duty imposed by subsection (2); or
 - (b) ensure that the analysis, testing or examination has been carried out.
- (4) The supplier must give adequate information to each person to whom the supplier supplies the plant, substance or structure concerning:
- (a) the purpose or purposes for which the plant, substance or structure was designed or manufactured; and
 - (b) the results of any analysis, testing or examination referred to in subsection (3);
and

- (c) any conditions necessary to ensure that the plant, substance or structure is safe and without risks to health when used for a purpose for which it was designed or manufactured or carrying out any activity referred to in subsection (2)(a) to (d).
- (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:
 - (a) uses, or is to use, the plant; or
 - (b) handles or uses, or is to use, the substance; or
 - (c) uses, or is to construct, use or demolish, the structure.

25 Duty of person installing, constructing or commissioning plant or structure

- (1) This section applies to a person who conducts a business or undertaking that installs, constructs or commissions plant or a structure that is to be used or could reasonably be expected to be used as, or at, a workplace.
- (2) The person must ensure, so far as is reasonably practicable, that the way in which the plant or structure is installed, constructed or commissioned makes the plant or structure safe and without risks to the health of persons:
 - (a) who install or construct the plant or structure at a workplace; or
 - (b) who use the plant or structure at a workplace for a purpose for which it was installed, constructed or commissioned; or
 - (c) who carry out any reasonably foreseeable activity at a workplace in relation to the proper use, decommissioning or dismantling of the plant or structure; or

- (d) who are at or in the vicinity of a workplace and whose health and safety may be affected by a use or activity referred to in paragraph (a), (b) or (c).

Division 4—Officers, workers and other persons

26 Duty of officers

If a person other than an individual (the *body*) has a duty under this Act, an officer of that body must exercise due diligence to ensure that the body complies with that duty.

27 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) co-operate with any reasonable instruction given by the person conducting the business or undertaking to comply with this Act.

28 Duties of other persons at the workplace

A person at a workplace (other than a person who 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) co-operate with any reasonable instruction given by the person conducting the business or undertaking to comply with this Act.

Division 5—Offences and penalties

29 Safety duty

In this Division a safety duty is a duty imposed under Division 2, 3 or 4.

30 Failure to comply with safety duty—Category 1

A person commits a Category 1 offence if:

- (a) the person has a safety duty; and
- (b) the person fails to comply with the duty; and
- (c) the person is reckless about whether the failure causes serious harm to anyone; and
- (d) the failure causes the death or serious illness of, or serious injury to, a person or a high risk of the death or serious illness of, or serious injury to, a person.

Penalty:

31 Failure to comply with safety duty—Category 2

A person commits a Category 2 offence if:

- (a) the person has a safety duty; and
- (b) the person fails to comply with the duty; and
- (c) the failure causes a high risk of the death or serious illness of, or serious injury to, a person.

Penalty:

32 Failure to comply with safety duty—Category 3

A person commits a Category 3 offence if:

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

Penalty:

Jurisdictional note: A jurisdiction will adjust the penalty provisions to fit the manner of creating offences in its jurisdiction eg use of "maximum penalty" rather than "penalty".

33 Exception for members of local authorities and volunteers

An elected member of a local authority or a volunteer is not liable for an offence under this Division for a failure to comply with a safety duty.

Part 3—Other Obligations

Division 1—Incident notification

34 What is a notifiable incident

In this Division *notifiable incident* means:

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

35 What is a serious injury or illness

In this Division *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 medical 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) the separation of his or her skin from an underlying tissue (such as de-gloving or scalping); or
 - (v) a spinal injury; or
 - (vi) the loss of a bodily function; or
 - (vii) serious lacerations; or
- (c) medical treatment within 48 hours of exposure to a substance; or

(d) any other injury or illness prescribed by the regulations,

but does not include an illness or injury of a prescribed kind.

Jurisdictional note: Jurisdictions may define what is meant by medical treatment.

36 What is a dangerous incident

In this Division a *dangerous incident* is an incident that exposes a worker or any other person in the immediate vicinity of the workplace to an immediate or imminent risk to health or safety through:

- (a) an uncontrolled escape, spillage or leakage of a hazardous or potentially hazardous substance;
- (b) an uncontrolled implosion, explosion or fire;
- (c) an uncontrolled escape of gas or steam;
- (d) electric shock;
- (e) the fall or release from a height of any plant, substance or object;
- (f) the collapse, overturning, failure or malfunction of, or damage to, any plant that must not be used unless authorised in accordance with the regulations;
- (g) the collapse or partial collapse of a structure;
- (h) the collapse or failure of an excavation or of any shoring supporting an excavation;
- (i) the inrush of water, mud or gas in workings, in an underground excavation or tunnel;
- (j) the interruption of the main system of ventilation in an underground excavation or tunnel;

(k) any other event prescribed by the regulations,

but does not include an incident of a prescribed kind.

37 Duty to notify of notifiable incidents

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

Penalty:

(2) The notice must be given in accordance with the regulations and by the fastest possible means.

Jurisdictional note: A jurisdiction may amend this reporting requirement (if necessary) to remove duplicate reporting arrangements. under local laws.

38 Duty to preserve incident sites

(1) The person who has management or control of a workplace at which a notifiable incident has occurred must ensure that the site where the incident occurred is not disturbed until an inspector arrives at the site or such earlier time as an inspector directs.

Penalty:

(2) In subsection (1) a reference to a site includes any plant, substance or thing associated with the incident.

(3) Subsection (1) does not prevent any action:

- (a) to assist an injured person;
- (b) to remove a deceased person;
- (c) that is essential to make the site safe or to prevent a further incident;
- (d) that is associated with a police investigation;

- (e) for which an inspector has given permission.

Division 2—Requirements for authorisations

39 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 to be authorised; and
- (b) the workplace is not authorised in accordance with the regulations.

Penalty:

40 Requirements for authorisation of plant or substance

- (1) A person must not 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.

Penalty:

- (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.

Penalty:

41 Requirements for authorisation of work or activities

- (1) A person must not carry out work, or an activity, at a workplace if:
 - (a) the regulations require the work or activity, or class of work or activity, to be carried out by a person who is authorised; and
 - (b) the person is not authorised in accordance with the regulations.

Penalty:

- (2) A person who conducts a business or undertaking must not direct or allow a worker to carry out work, or an activity, at a workplace if:
 - (a) the regulations require the work or activity, or class of work or activity, to be carried out by a person who is authorised; and
 - (b) the person is not authorised in accordance with the regulations.

Penalty:

42 Requirements for prescribed qualifications or experience

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

Penalty:

- (2) A person who conducts a business or undertaking must not direct or allow a worker to carry out work, or an activity, at a workplace if:
 - (a) the regulations require the work or activity, or class of work or activity, to be carried out by, or under the supervision of, a person who has prescribed qualifications or experience; and
 - (b) the worker does not have the prescribed qualifications or experience or the work or activity is not carried out under the supervision of a person who has the prescribed qualifications or experience.

Penalty:

43 Requirements for authorisation

- (1) A person must not carry out work, or an activity, at a workplace if:
 - (a) the regulations require the work or activity, or class of work or activity, to be carried out by or on behalf of a person who holds an authorisation for that work or activity, or class of work or activity; and
 - (b) the person or the person on whose behalf the work or activity is carried out does not hold the authorisation for that work or activity, or class of work or activity, in accordance with the regulations.

Penalty:

- (2) A person who conducts a business or undertaking must not direct or allow a worker to carry out work, or an activity, at a workplace if:
 - (a) the regulations require the work or activity, or class of work or activity to be carried out

- by or on behalf of a person who holds an authorisation for that work or activity; and
- (b) the person or the person on whose behalf the work or activity is carried out does not hold an authorisation for that work or activity; or class of work or activity, in accordance with the regulations.

Penalty:

44 Requirement to comply with conditions of authorisation

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

Penalty:

Part 4—Consultation, Participation and Representation

Division 1—Consultation

45 Duty to consult

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 about matters affecting or likely to affect their health and safety at work.

Penalty:

46 Nature of consultation

- (1) Consultation under this Division requires:
 - (a) the sharing of relevant information about the matter with the workers; and
 - (b) that workers be given a reasonable opportunity—
 - (i) to express their views and to raise occupational health and safety issues in relation to the matter; and
 - (ii) to contribute to the resolution of the matter; and
 - (c) that the views of workers are taken into account by the person conducting the business or undertaking; and
 - (d) that the persons consulted are advised of the outcome of the consultations in a timely manner.

- (2) If the workers are represented by a health and safety representative, the consultation must involve that representative (with or without the direct involvement of the workers).
- (3) If the person conducting the business or undertaking and the workers have agreed to procedures for undertaking consultations, the consultation must be undertaken in accordance with those procedures.
- (4) The agreed procedures must not be inconsistent with subsection (1) or (2).

47 When consultation is required

Consultation under this Division is required in respect of the following health and safety matters:

- (a) when identifying hazards and assessing risks arising from the work carried out or to be carried out by the business or undertaking;
- (b) when making decisions about ways to eliminate or minimise those risks;
- (c) when making decisions about the adequacy of facilities for the welfare of workers;
- (d) when proposing changes that may affect the health or safety of workers;
- (e) when making decisions about the procedures for:
 - (i) resolving health or safety issues;
 - (ii) monitoring the health of workers;
 - (iii) monitoring the conditions at any workplace under the management or control of the person conducting the business or undertaking;
 - (iv) the provision of information and training for workers;

- (f) when making decisions about the procedures for consultation with workers;
- (g) when carrying out any other activity prescribed by the regulations for the purposes of this section.

Division 2—Health and safety representatives

Subdivision 1—Election of health and safety representatives

48 Request for election of health and safety representative

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

49 Determination of work groups

- (1) If a request is made under section 48, the person conducting the business or undertaking must facilitate the determination of one or more work groups of workers.
- (2) The purpose of determining a work group is to facilitate the representation of workers in the work group by one or more health and safety representatives.
- (3) A work group may be determined for workers at one or more workplaces.
- (4) A work group may be determined for workers engaged in 2 or more businesses or undertakings.

50 Negotiations for agreement for work group

- (1) A work group is to be determined by negotiation and agreement between:
 - (a) a person conducting the business or undertaking; and
 - (b) the workers who will form the work group or their representatives.
- (2) The person conducting the business or undertaking must commence negotiations with the workers within a reasonable time after a request is made under section 48.
- (3) The purpose of the negotiations is to determine:
 - (a) the number and composition of work groups to be represented by health and safety representatives;
 - (b) the number of health and safety representatives and deputy health and safety representatives (if any) to be elected;
 - (c) the workplace or workplaces to which the work groups will apply;
 - (d) the businesses or undertakings to which the work groups will apply.
- (4) If a request is made for a work group to be determined for workers engaged in 2 or more businesses or undertakings, each of the persons conducting the businesses or undertakings must comply with this section.
- (5) The regulations may prescribe the matters that must be taken into account in negotiations for and determination of work groups and variations of work groups.

51 Notice to workers

The person conducting a business or undertaking involved in negotiations to determine a work group must, as soon as practicable after the

negotiations are completed, notify the workers of the outcome of the negotiations and of any work groups determined by agreement.

Penalty:

52 Failure of negotiations

- (1) If negotiations have not commenced within a reasonable time after a request is made under section 48, any person who would be a party to the negotiations may refer the issue for determination by the regulator.
- (2) If agreement cannot be reached on a matter relating to the designation of a work group within a reasonable time after negotiations commence any party to the negotiations may refer the issue for determination by the regulator.
- (3) A determination under this section is taken to be an agreement under section 50.

53 Election of health and safety representatives to be held

The person to whom the request is made under section 48 must facilitate an election for health and safety representatives:

- (a) as soon as practicable after the relevant work group or work groups are established; or
- (b) as soon as reasonably practicable after the request is received, if work groups are already established.

Penalty:

54 Eligibility to be elected

A person is:

- (a) eligible to be elected as a health and safety representative for a work group only if he or she is a member of that work group; and

- (b) not eligible to be elected as a health and safety representative if he or she is disqualified under section 59 from acting as a health and safety representative.

55 Procedure for election of health and safety representatives

- (1) The workers in a work group may determine how an election of a health and safety representative for the work group is to be conducted.
- (2) However, an election is to be conducted in accordance with the procedures (if any) prescribed by the regulations.
- (3) If a majority of the workers in a work group so determine, the election may be conducted with the assistance of a union or other person or organisation.

56 Eligibility to vote

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

57 When election not required

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

58 Term of office of health and safety representative

- (1) A health and safety representative for a work group holds office for 3 years.

- (2) However a person ceases to hold office as a health and safety representative for a work group if:
 - (a) the person resigns as a health and safety representative for the work group by written notice given to the person conducting the relevant business or undertaking; or
 - (b) the person ceases to be a worker in the work group for which he or she was elected as a health and safety representative; or
 - (c) the person is disqualified under section 59 from acting as a health and safety representative; or
 - (d) if the person is removed from that position by a majority of the members of the work group in accordance with the regulations.
- (3) A health and safety representative is eligible for re-election.

59 Disqualification of health and safety representatives

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

- (ii) the use or disclosure of information referred to in subsection (1)(b);
- (b) the regulator.
- (3) If the Tribunal is satisfied that a ground in subsection (1) is made out, the Tribunal may disqualify the health and safety representative for a specified period or permanently.

60 Immunity of health and safety representatives

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

- (a) in performing a function under this Act; or
- (b) in the reasonable belief that the act or omission was in the performance of a function under this Act.

61 Deputy health and safety representatives

- (1) Each deputy health and safety representative for a work group is to be elected in the same way as a health and safety representative for the work group.
- (2) If the health and safety representative for a work group ceases to hold office or is unable (because of absence or any other reason) to perform the functions of a health and safety representative under this Act:
 - (a) the functions may be exercised by a deputy health and safety representative (if any) for the work group; and
 - (b) this Act (other than this section) applies in relation to the deputy health and safety representative accordingly.
- (3) Sections 58, 59, 60 and 65 apply to deputy health and safety representatives in the same way as they apply to health and safety representatives.

Subdivision 2—Functions and powers of health and safety representatives

62 Functions of health and safety representatives

- (1) The functions of a health and safety representative for a work group are:
 - (a) to represent the workers in the work group in matters relating to health and safety at work;
 - (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;
 - (c) to investigate complaints from members of the work group relating to occupational health and safety;
 - (d) to inquire into anything that appears to be a risk to the health and safety of workers in the work group, arising from the conduct of the business or undertaking.
- (2) In performing a function, the health and safety representative may:
 - (a) inspect the workplace or any part of the workplace at which a worker in the work group works:
 - (i) at any time after giving reasonable notice to the person conducting the business or undertaking at that workplace; and
 - (ii) immediately in the event of an incident or any situation involving an immediate or imminent risk to the health or safety of any person;

- (b) accompany an inspector during an inspection of the workplace or part of the workplace at which a worker in the work group works;
- (c) if a worker or workers in the work group consent, be present at an interview concerning occupational health and safety between:
 - (i) the worker or workers in the work group and an inspector; or
 - (ii) the worker or workers in the work group and the person conducting the business or undertaking at that workplace or the person's representative;
- (d) request the establishment of a health and safety committee;
- (e) receive information concerning the occupational health and safety of workers in the work group;
- (f) whenever necessary, request the assistance of any person.

Note

A health and safety representative also has powers under Division 6 of this Part to issue provisional improvement notices and under Division 5 of this Part to direct work to cease in certain circumstances.

- (3) Nothing in this Act imposes or is taken to impose a duty on a health and safety representative in that capacity.

63 Functions generally limited to the particular work group

A health and safety representative for a work group may perform functions under this Act only in respect of matters that affect, or may affect, workers in that group, unless:

- (a) there is an immediate or imminent risk to health or safety that affects or may affect a member of another work group; or
 - (b) a member of another work group asks for the representative's assistance,
- and the health and safety representative (and any deputy health and safety representative) for that other work group is found, after reasonable inquiry, to be unavailable.

Subdivision 3—Obligations of person conducting business or undertaking to health and safety representatives

64 General obligations of person conducting business or undertaking

- (1) The person conducting a business or undertaking must:
 - (a) consult on occupational health and safety matters with any health and safety representative for a work group of workers carrying out work for the business or undertaking;
 - (b) allow any health and safety representative for the work group to have access to information that the person has relating to:
 - (i) actual or potential hazards (including associated risks) at the workplace; and
 - (ii) the health and safety of the workers in the work group;
 - (c) if a worker or workers in the work group consents, allow a health and safety representative for the work group to be present at an interview concerning occupational health and safety between—

- (i) the worker or workers and an inspector;
and
- (ii) the worker or workers and the person
conducting the business or undertaking
or the person's representative;
- (d) 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
perform his or her functions under this Act;
- (e) 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;
- (f) 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;
- (g) provide any other assistance to the health and
safety representative for the work group that
may be required by the regulations.

Penalty:

- (2) Despite subsection (1), the person conducting a
business or undertaking must not allow a health
and safety representative to have access to any
medical information concerning a worker without
the worker's consent unless the information is in a
form:
 - (a) that does not identify the worker; or
 - (b) from which the worker's identity cannot
reasonably be ascertained.

Penalty:

- (3) Any time that a health and safety representative spends for the purposes of performing his or her functions under this Act must be with such pay as he or she would otherwise be entitled to receive for performing his or her normal duties during that period.
- (4) Despite subsection (1), 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 if the assistant has had his or her OHS entry permit revoked or suspended or is disqualified from holding an OHS entry permit.

65 Obligation to train health and safety representatives

- (1) A person conducting the business or undertaking must, if requested by a health and safety representative for a work group, allow the health and safety representative to attend a course of training in occupational health and safety.
- (2) The course of training must be:
 - (a) approved by the regulator; and
 - (b) a course that the health and safety representative is entitled under the regulations to attend; and
 - (c) subject to subsection (6), chosen by the health and safety representative, in consultation with the person conducting the business or undertaking.
- (3) The person conducting the business or undertaking must:
 - (a) within a reasonable time after the request is made, allow the health and safety representative time off work to attend the course of training; and

(b) pay the reasonable costs associated with the health and safety representative's attendance at the course of training.

(4) If:

(a) a health and safety representative represents a work group of the workers of more than one business or undertaking; and

(b) the person conducting any of those businesses or undertakings has complied with this section in respect of the representative,

each of the persons conducting those businesses or undertakings is to be taken to have complied with this section in respect of the representative.

(5) Any time that a health and safety representative is given off work to attend the course of training must be with such pay as he or she would otherwise be entitled to receive for performing his or her normal duties during that period.

(6) If agreement cannot be reached between the person conducting the business or undertaking and the health and safety representative within a reasonable time as to the matters set out in subsection (3), either party may refer the matter to the regulator for determination.

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

Penalty:

66 Obligation to share costs if multiple businesses or undertakings

(1) If a health and safety representative, or deputy health and safety representative (if any),

represents a work group of the workers carrying out work in more than one business or undertaking—

(a) the costs of the representative exercising powers under this Part; and

(b) the costs mentioned in section 65(3)(b)—

for which any of the persons conducting those businesses or undertakings are liable must be apportioned equally between each of those persons unless they agree otherwise.

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

67 List of health and safety representatives

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 list is displayed in a prominent place:

(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.

Penalty:

Division 3—Health and safety committees

68 Health and safety committees

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

Penalty:

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

Note

If a health and safety committee is not required to be established, other consultation procedures can be established for a workplace—see Division 1 of this Part.

69 Constitution of committee

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

number (who consent) to be members of the committee.

- (4) At least half of the members of the committee must be workers who are not nominated by the person conducting the business or undertaking.
- (5) If agreement is not reached under this section within a reasonable time any party may refer the matter to the regulator for determination.
- (6) A determination of the regulator under this section is deemed to be an agreement under this section between the parties.

70 Functions of committee

The functions of a health and safety committee are—

- (a) to facilitate co-operation between the person conducting a business or undertaking and workers in instigating, developing and carrying out measures designed to ensure the health and safety at work of the workers; and
- (b) to formulate, review and disseminate (in other languages if appropriate) to the workers the standards, rules and procedures relating to health and safety that are to be carried out or complied with at the workplace; and
- (c) such other functions as are prescribed by the regulations or agreed between the person conducting the business or undertaking and the committee.

71 Meetings of committee

A health and safety committee must meet:

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

72 Duties of person conducting business or undertaking

- (1) The person conducting a business or undertaking must allow the health and safety committee for a workplace to have access to information that the person has relating to:
 - (a) actual or potential hazards (including associated risks) at the workplace; and
 - (b) the health and safety of the workers at the workplace.
- (2) Despite subsection (1), the person conducting a business or undertaking must not allow the health and safety committee to have access to any medical information concerning a worker without the worker's consent unless the information is in a form:
 - (a) that does not identify the worker; or
 - (b) from which the worker's identity cannot reasonably be ascertained.

Penalty:

- (3) The person conducting a business or undertaking must allow each member of the health and safety committee to spend such time as is reasonably necessary to attend meetings of the committee or to carry out functions as a member of the committee.
- (4) Any time that a member of a health and safety committee spends for the purposes set out in subsection (3) must be with such pay as he or she would otherwise be entitled to receive for performing his or her normal duties during that period.

Division 4—Issue resolution

73 Resolution of health and safety issues

- (1) This section applies if an issue about occupational health and safety arises at a workplace or from the conduct of a business or undertaking and the issue is not resolved after consultation between the parties.
- (2) The parties to the issue are:
 - (a) the person conducting the business or undertaking or the person's representative; and
 - (b) if the issue involves more than one business or undertaking, the person conducting each business or undertaking or the person's representative; and
 - (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; and
 - (d) if the worker or workers affected by the issue are not in a work group, the worker or workers or their representative.
- (3) 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.
- (4) A person conducting a business or undertaking must ensure that the person's representative (if any) for the purposes of this section:
 - (a) is not a health and safety representative; and
 - (b) has an appropriate level of seniority, and is sufficiently competent, to act as the person's representative.

- (5) A representative of a party to an issue may enter the workplace for the purposes of resolving the issue.

74 Referral of issue to regulator for resolution

- (1) This section applies if an issue has not been resolved after reasonable efforts have been taken to achieve an effective resolution of the issue.
- (2) A party to the issue may ask the regulator to arrange for an inspector to attend the workplace to assist in resolving the issue.
- (3) A request to the regulator under this section does not prevent:
 - (a) a worker from exercising the right under Division 5 to cease work; or
 - (b) a health and safety representative from issuing a provisional improvement notice or a direction to cease work under this Part.
- (4) On attending a workplace under this section, an inspector may exercise any of the inspector's powers under Part 8 in relation to the workplace.

Division 5—Right to cease or direct cessation of unsafe work

75 Right of worker to cease unsafe work

- (1) A worker may cease work if he or she has reasonable grounds to believe that to continue to work would expose him or her to a serious risk to his or her health or safety, emanating from an immediate or imminent exposure to a hazard.
- (2) The worker must as soon as possible inform the person conducting the business or undertaking for whom the worker is carrying out work.

- (3) A reference to a worker ceasing work includes a refusal by an employee to carry out work.

76 health and safety representative may direct that unsafe work cease

- (1) A health and safety representative may give a direction to cease work to a worker in a work group that he or she represents if the health and safety representative believes on reasonable grounds that there exists a serious risk to the health or safety of the worker emanating from an immediate or imminent exposure to a hazard.
- (2) However, the health and safety representative may give a worker a direction to cease work only after:
- (a) consulting with the person conducting the business or undertaking for whom the workers are carrying out work about the issue; and
 - (b) attempting to resolve the issue; and
 - (c) the issue is not resolved.
- (3) The health and safety representative may direct the worker to cease work without carrying out that consultation or attempting to resolve the issue if the risk is so serious and immediate or imminent that it is not reasonable to consult before giving the direction.
- (4) The health and safety representative must carry out the consultation as soon as possible after giving a direction under subsection (3).
- (5) A health and safety representative may not give a direction under this section unless the representative has undertaken the training referred to in section 65.

77 Effect of worker ceasing work

- (1) This section applies if a worker ceases work under this Division.
- (2) The worker must:
 - (a) notify the person conducting the business or undertaking if he or she has ceased work under this Division; and
 - (b) remain available to carry out suitable alternative work.
- (3) 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.

78 Continuity of employment or engagement of worker

- (1) This section applies if a worker ceases work under this Division.
- (2) That action does not affect the continuity of employment or engagement of the worker for prescribed purposes if the worker has not unreasonably failed to comply with a direction to carry out other available work:
 - (a) at the same or another workplace; and
 - (b) that was safe and appropriate for the worker to carry out.

79 Referral to regulator for resolution

The health and safety representative or the person conducting the business or undertaking or the worker may ask the regulator to arrange for 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 4 can also be used to resolve an issue arising in relation to the cessation of work.

Division 6—Provisional improvement notices

80 Provisional improvement notices

- (1) If a health and safety representative believes on reasonable grounds that a person:
 - (a) is contravening a provision of this Act; or
 - (b) has contravened such a provision in circumstances that make it likely that the contravention will continue or be repeated,the health and safety representative may issue to the person a provisional improvement notice requiring the person to remedy the contravention or likely contravention or the matters or activities causing the contravention or likely contravention.
- (2) However, the health and safety representative may only do so after consulting with the person about remedying the contravention or the likely contravention or the matters or activities causing the contravention or likely contravention.
- (3) A health and safety representative may not issue a provisional improvement notice unless the representative has undertaken the training referred to in section 65.
- (4) A health and safety representative must not issue a provisional improvement notice in respect of a matter if an inspector has already issued (or determined not to issue) an improvement notice or prohibition notice in respect of the matter.

81 Provisional improvement notice to be in writing

A provisional improvement notice must be in writing.

82 Contents of provisional improvement notice

A provisional improvement notice must include the following in relation to a contravention of this Act:

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

83 Provisional improvement notice may state measures to remedy contravention

A provisional improvement notice may state measures to be taken to remedy the contravention or likely contravention.

84 Minor changes to provisional improvement notice

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

- (a) to improve clarity; or
- (b) to correct errors or references; or

- (c) to reflect changes of address or other circumstances.

85 Service of provisional improvement notice

A provisional improvement notice must be issued to a person by leaving it for the person at the workplace to which the notice relates with a person who:

- (a) is apparently at least 16 years old; or
- (b) is, or appears to be the person with management or control of the workplace to which the contravention relates.

86 Health and safety representative may cancel notice

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

87 Display of provisional improvement notice

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

Penalty:

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

Penalty:

88 Formal irregularities or defects in notice

A provisional improvement notice is not invalid merely because of:

- (a) a formal defect or irregularity in the notice unless the defect or irregularity causes or is likely to cause substantial injustice; or
- (b) a failure to use the correct name of the person to whom the notice is issued if the notice sufficiently identifies the person and is issued to the person in accordance with section 85.

89 Offence to contravene a provisional improvement notice

- (1) This section applies if a provisional improvement notice has been issued to a person and an inspector has not been required under section 91 to attend at the workplace.
- (2) The person must comply with the provisional improvement notice within the time specified in the notice.

Penalty:

90 Request for review of provisional improvement notice

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

91 Regulator to appoint inspector to review notice

- (1) The regulator must ensure that an inspector attends the workplace as soon as possible after an application is made under this Division.
- (2) An inspector may review a provisional improvement notice even if the period for compliance with the notice has expired.

92 Review of provisional improvement notice

- (1) The inspector appointed to review a provisional improvement notice must, as soon as possible, attend the workplace and inquire into the circumstances that are the subject of the provisional improvement notice.
- (2) After this inquiry, the inspector must:
 - (a) confirm the provisional improvement notice;
or
 - (b) confirm the provisional improvement notice with modifications; or
 - (c) cancel the provisional improvement notice.
- (3) The inspector must give a copy of his or her decision to:
 - (a) the applicant for the review of the provisional improvement notice; and
 - (b) the health and safety representative who issued the notice.
- (4) A provisional improvement notice that is confirmed (with or without modifications) by an inspector is taken to be an improvement notice issued by the inspector under this Act.

Part 5—Discrimination against workers or prospective workers

Division 1—Prohibition on discrimination

93 Prohibition of discriminatory conduct

A person must not engage in *discriminatory conduct* for a prohibited reason.

94 What is discriminatory conduct

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) injures a worker in the employment or engagement of the worker; or
 - (iv) alters the position of a worker to the worker's detriment; or
- (b) the person threatens to do any of those things to a worker; or
- (c) the person:
 - (i) refuses or fails to offer employment or a contract for services to a prospective worker; or
 - (ii) treats a prospective worker less favourably than another prospective worker would be treated in offering terms of employment or engagement.

95 What are prohibited reasons

Conduct referred to in section 94 is engaged in for a *prohibited reason* if it is engaged in because the worker or prospective worker:

- (a) is or has been a health and safety representative or a member of a health and safety committee; or
- (b) exercises or has exercised a power as a health and safety representative or as a member of a health and safety committee; or
- (c) assists or has assisted, or gives or has given any information to, an inspector, an OHS permit holder, a health and safety representative or a member of a health and safety committee; or
- (d) raises or has raised an issue or concern about health and safety to the person conducting the business or undertaking, an inspector, an OHS permit holder, a health and safety representative, a member of a health and safety committee or another worker.

96 Prohibition of authorising or assisting discriminatory conduct

A person must not request, instruct, induce, encourage, authorise or assist another person to engage in discriminatory conduct in contravention of section 93.

Division 2—Criminal proceedings

97 Contravention of section 93 is an offence

- (1) A person who contravenes section 93 is guilty of an offence.

Penalty:

- (2) A person may be guilty of an offence under subsection (1) only if the reason mentioned in section 95 was the dominant reason for the discriminatory conduct.

97A Contravention of section 96 is an offence

A person who contravenes section 96 is guilty of an offence.

Penalty:

98 Defendant to prove reason for conduct not dominant

In proceedings for an offence of contravening section 93 or 96, if all the facts constituting the offence other than the reason for the defendant's conduct are proved, the defendant bears the onus of proving, on the balance of probabilities, that the reason alleged in the charge was not the dominant reason for the conduct.

99 Order for damages or reinstatement

If a person is convicted or found guilty of an offence under section 97 or 97A, the court may (in addition to imposing a penalty) make either or both of the following orders—

- (a) an order that the offender pay (within a specified period) such compensation to the worker or prospective worker who was the subject of the discriminatory conduct as the court considers appropriate;
- (b) in relation to a worker who was or is an employee or prospective employee, an order that—
 - (i) the worker be reinstated or re-employed in his or her former position or, if that

position is not available, in a similar position; or

- (ii) the prospective worker be employed or engaged in the position for which he or she had applied or a similar position.

Division 3—Civil proceedings

100 Civil proceeding in respect of engaging in or inducing discriminatory conduct

- (1) An eligible person may apply to the Tribunal for an order under this section.
- (2) The Tribunal may make one or more of the following orders in relation to person who has contravened section 93 or 96:
 - (a) an injunction;
 - (b) an order that the person pay (within a specified period) such compensation to the worker or prospective worker who was the subject of the discriminatory conduct as the Tribunal considers appropriate;
 - (c) in the case of a contravention of section 93 in relation to a worker who was or is an employee or prospective employee, an order that—
 - (i) the worker be reinstated or re-employed in his or her former position or, if that position is not available, in a similar position; or
 - (ii) the prospective worker be employed or engaged in the position for which he or she had applied or a similar position.

- (d) any other order that the Tribunal considers appropriate.
- (3) 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 mentioned in section 95 was a substantial reason for the conduct.
- (4) For the purposes of this section, each of the following is an *eligible person*—
 - (a) a person affected by the contravention;
 - (b) a person authorised as a representative by a person referred to in paragraph (a).
- (5) Nothing in this section is to be construed as limiting any other power of the Tribunal.

101 Procedure for civil actions for discriminatory conduct

- (1) A proceeding brought under section 100 must be commenced not more than 1 year after the date on which the plaintiff knew or ought to have known that the cause of action accrued.
- (2) In a proceeding under section 100, if all the facts constituting the alleged discriminatory conduct other than the reason for the defendant's conduct are proved, the defendant bears the onus of proving that the reason alleged in the complaint was not a substantial reason for the conduct.
- (3) It is a defence to a proceeding under section 100 if the defendant proves that:
 - (a) the conduct was reasonable in the circumstances; and
 - (b) a substantial reason for the conduct was to comply with the requirements of this Act.

Jurisdictional note: A jurisdiction may include other relevant local laws in paragraph (b).

Division 4—General

102 General provisions relating to orders

- (1) The making of an order in a proceeding under section 100 for a contravention of section 93 or 96 does not prevent the bringing of a proceeding for an offence under section 97 or 97A in respect of the same conduct.
- (2) If the Tribunal makes an order under section 100 in a proceeding for a contravention of section 93 or 96, the court cannot make an order under section 99 in a proceeding for an offence under section 97 or 97A in respect of the same conduct.
- (3) If the court makes an order under section 99 in a proceeding for an offence under section 97 or 97A, the Tribunal cannot make an order under section 100 in a proceeding for a contravention of section 93 or 96 in respect of the same conduct.

102A Prohibition of multiple actions

- (1) A person may not
 - (a) commence a proceeding under Division 3 if the person has commenced a proceeding or made an application or complaint in relation to the same matter under another law and that proceeding, application or complaint has not been withdrawn; or
 - (b) recover any compensation under Division 3 if the person has received compensation for the matter under another law; or
 - (c) commence or continue with an application under Division 3 if the person has failed in a proceeding, application or complaint in

relation to the same matter under another law.

(2) In this section:

another law means:

- (a) another Act; or
- (b) a law of the Commonwealth; or
- (c) a law of another State or Territory.

Part 6—Workplace entry by OHS entry permit holders

Jurisdictional note: A jurisdiction may use *regulator* rather than *authorising authority* in this Part and make any necessary consequential changes.

Division 1—Introductory

103 Definitions

In this Part:

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

relevant union, means the union that an OHS 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

104 Right of entry to inquire into suspected contraventions

- (1) An OHS 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 OHS entry permit holder must reasonably suspect that the contravention has occurred, or is occurring before entering the workplace.
- (3) The burden of proving that the suspicion is reasonable lies on the person asserting that fact.

105 Rights that may be exercised while at workplace

- (1) While at the workplace under this Division, the OHS entry permit holder may do the following in relation to the suspected contravention of this Act:
 - (a) inspect any work system, plant, substance or other thing relevant to the suspected contravention;
 - (b) consult with the relevant workers in relation to the suspected contravention;
 - (c) consult with the person conducting the relevant business or undertaking about the suspected contravention;
 - (d) require the person conducting the relevant business or undertaking to allow the OHS entry permit holder to inspect, and make copies of, any record or document that is directly relevant to the suspected contravention and that:
 - (i) is kept at the workplace; or
 - (ii) is accessible from a computer that is kept at the workplace;
 - (e) warn any person whom the OHS entry permit holder reasonably believes to be exposed to a serious risk to his or health and safety, emanating from an immediate or imminent exposure to a hazard arising from the suspected contravention, of that risk.

- (2) However, the person conducting the business or undertaking is not required under subsection (1)(d) to allow the OHS entry permit holder to inspect a record or document if to do so would contravene a law of the Commonwealth or a law of a State or Territory.
- (3) A person conducting a business or undertaking must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1)(d).

Penalty:

106 Notice of entry

- (1) An OHS entry permit holder must, as soon as is reasonably practicable after entering a workplace under this Division, give notice of the entry and the suspected contravention, in accordance with the regulations, to:
 - (a) the person conducting the relevant business or undertaking; and
 - (b) the person with management or control of the workplace.
- (2) Subsection (1) does not apply if to give the notice would:
 - (a) defeat the purpose of the entry to the workplace; or
 - (b) unreasonably delay the OHS entry permit holder in an urgent case.
- (3) Subsection (1) does not apply to an entry to a workplace under this Division to inspect or take copies of records or documents referred to in section 107.

107 Notice of entry for requests for information

- (1) Before entering a workplace under this Division for the purpose of inspecting, or taking copies of:

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

an OHS entry permit holder must give notice of the proposed entry to the person from whom the records or documents are requested and the person conducting the relevant business or undertaking.

Penalty:

- (2) The notice must comply with the regulations.
- (3) The notice must be given during working hours at least 24 hours, but not more than 14 days, before the entry.

Division 3—Entry to consult and advise workers

108 Entry to consult and advise workers

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

109 Notice of entry

- (1) Before entering a workplace under this Division, an OHS entry permit holder must give notice of

the proposed entry to the person conducting the relevant business or undertaking.

- (2) The notice must comply with the regulations.
- (3) The notice must be given during working hours at least 24 hours, but not more than 14 days, before the entry.

Division 4—Requirements for OHS entry permit holders

110 Contravening OHS entry permit conditions

The OHS entry permit holder must not contravene a condition imposed on the OHS entry permit.

Penalty:

111 OHS entry permit holder must also hold permit under other law

An OHS entry permit holder must not enter a workplace unless he or she also holds an entry permit under the Fair Work Act or [the relevant State or Territory industrial law].

Penalty:

Jurisdictional note: A jurisdiction may insert its relevant industrial law.

112 Producing OHS entry permit

An OHS entry permit holder must, at all times that he or she is at a workplace under a power of entry under Division 2 or 3, have his or her OHS entry permit and photographic identification available for inspection on request.

Penalty:

113 When right may be exercised

An OHS entry permit holder may exercise a right under Division 2 or 3 only during working hours.

Penalty:

113A OHS entry permit holder must not cause disruption

An OHS entry permit holder must ensure that the entry causes no undue disruption to work at the workplace.

Penalty:

114 Where the right may be exercised

An OHS entry permit holder may exercise a right of entry to a workplace only in respect of:

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

115 Conduct of discussions in particular room etc.

- (1) In exercising a right of entry under Division 3, an OHS entry permit holder must comply with any reasonable request by the person conducting the business or undertaking to:
 - (a) hold discussions in a particular room or area of the workplace; or
 - (b) take a particular route to reach a particular room or area of the workplace.
- (2) Without limiting when a request under subsection (1) might otherwise be unreasonable, a request under paragraph (1)(a) is unreasonable if:
 - (a) the room or area is not fit for the purpose of holding the discussions; or
 - (b) the request is made with the intention of:
 - (i) intimidating persons who might participate in the discussions; or
 - (ii) discouraging persons from participating in the discussions; or

- (iii) making it difficult for persons to participate in the discussions because the room or area is not easily accessible.
- (3) However, a request under subsection (1) is not unreasonable only because the room, area or route is not that which the OHS entry permit holder would have chosen.
- (4) The regulations may prescribe circumstances in which a request under subsection (1) is or is not reasonable.

116 Occupational health and safety requirements

An OHS entry permit holder must not exercise a right of entry to a workplace under Division 2 or 3 unless he or she complies with any reasonable request by the person conducting the business or undertaking to comply with an occupational health and safety requirement that applies to the workplace.

Penalty:

117 Residential premises

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

Penalty:

118 OHS entry permit holder not required to disclose names of workers who are union members

An OHS entry permit holder is not required to disclose to the person conducting the business or undertaking the name of any worker who is a member of the relevant union.

Division 5—OHS entry permits

119 Application for OHS entry permit

- (1) A union may apply to the authorising authority for the issue of an OHS entry permit to a person who is an official of the union.
- (2) The application must specify the person who is to hold the OHS entry permit and include a statutory declaration declaring that the person:
 - (a) is an official of the union; and
 - (b) has satisfactorily completed the prescribed training; and
 - (c) is a fit and proper person to be issued an OHS entry permit; and
 - (d) holds, or will hold, an entry permit under:
 - (i) the Fair Work Act; or
 - (ii) [the relevant State or Territory industrial law].

Jurisdictional note: A jurisdiction may insert its relevant industrial law.

120 Consideration of application

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

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

121 Eligibility criteria

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

- (a) is an official of the union; and

- (b) has satisfactorily completed the prescribed training; and
- (c) is a fit and proper person to be issued an OHS entry permit; and
- (d) holds, or will hold, an entry permit under:
 - (i) the Fair Work Act; or
 - (ii) [the relevant State or Territory industrial law].

Jurisdictional note: A jurisdiction may insert its relevant industrial law.

122 Fit and proper person

In deciding whether an official of a union is a fit and proper person for the issue of an OHS entry permit, the authorising authority must take into account the following matters:

- (a) whether the official has received appropriate prescribed training about the rights and responsibilities of an OHS entry permit holder; and
- (b) whether the official has ever been convicted of an offence against an OHS law; and
- (c) whether the official has ever been convicted of an offence against a law of the Commonwealth, a State, a Territory or a foreign country, involving:
 - (i) entry onto premises; or
 - (ii) fraud or dishonesty; or
 - (iii) intentional use of violence against another person or intentional damage or destruction of property; and
- (d) whether the official, or any other person, has ever been ordered to pay a penalty under this

Act or any other OHS law in relation to action taken by the official; and

- (e) whether an OHS entry permit or other entry permit issued to the official under this Division, or under another OHS law, or the Fair Work Act or the Workplace Relations Act 1996 of the Commonwealth or [the relevant State or Territory industrial law] (no matter when in force) has been cancelled or suspended (whether in whole or in part) or made subject to conditions; and

Jurisdictional note: A jurisdiction may insert its relevant industrial law.

- (f) whether a court, or other person or body, under an OHS law or the Fair Work Act or the Workplace Relations Act 1996 of the Commonwealth or the [relevant State or Territory industrial law] has disqualified the official from exercising, or applying for, a right of entry for industrial or occupational health and safety purposes under that law; and

Jurisdictional note: A jurisdiction may insert its relevant industrial law.

- (g) any other matters that the authorising authority considers relevant.

123 Issue of OHS entry permit

The authorising authority may issue an OHS entry permit to a person if the authorising authority has taken into account the matters in section 120 and is satisfied about the matters in section 121.

124 Conditions on OHS entry permit

The authorising authority may impose conditions on an OHS entry permit when it is issued.

125 Term of OHS entry permit

An OHS entry permit is issued for a term of 3 years.

126 Expiry of OHS entry permit

- (1) Unless it is revoked, an OHS entry permit expires at the first of the following to occur:
 - (a) at the end of term of the permit;
 - (b) when the permit holder ceases to be an official of the union that applied for the permit;
 - (c) the organisation that applied for the permit ceases to be a union.
- (2) Before an OHS entry permit expires, an application may be made for the issue of a subsequent OHS entry permit.

127 Application for revocation of OHS entry permit

- (1) The following persons may apply to the authorising authority for an OHS entry permit held by a person to be revoked:
 - (a) the regulator;
 - (b) a person conducting a business or undertaking in relation to which the OHS entry permit holder has exercised powers under this Part;
 - (c) a person with management or control of a workplace in relation to which the OHS entry permit holder has exercised powers under this Part.
- (2) The grounds for an application for revocation of an OHS entry permit are that the permit holder has:
 - (a) ceased to satisfy the requirements for the issue of an OHS entry permit or other entry permit under another OHS law, or the Fair

Work Act or the [relevant State or Territory industrial law];

Jurisdictional note: A jurisdiction may insert its relevant industrial law.

- (b) contravened any conditions of the OHS entry permit;
 - (c) acted or purported to act in an improper manner in the exercise of any power under this Act;
 - (d) in exercising or purporting to exercise a right under this Part, intentionally hindered or obstructed a person conducting the business or undertaking or workers at a workplace during working hours; or
 - (e) ceased to be a fit and proper person to hold an OHS entry permit.
- (3) The applicant must give written notice of the application, setting out the grounds for it, to the person who holds the OHS entry permit and the union concerned.
- (4) The person who holds the OHS entry permit and the union are parties to the application.

128 Authorising authority must permit OHS entry permit holder to show cause

If an application is made for the revocation of an OHS entry permit on the ground set out in section 127(2)(a), the authorising authority, before determining the application, must allow the OHS entry permit holder to show cause why the permit should not be revoked or suspended.

129 Determination of application

- (1) If the authorising authority is satisfied on the balance of probabilities about any of the matters in section 127(2), it may make an order—

- (a) revoking the OHS entry permit; or
 - (b) suspending the OHS entry permit for a specified period; or
 - (c) imposing conditions on the OHS entry permit; or
 - (d) imposing any alternative action the authorising authority considers appropriate.
- (2) In deciding what action to take under subsection (1), in relation to a person, the authorising authority must take into account—
- (a) the seriousness of any findings of the authorising authority having regard to the objects of this Act; and
 - (b) the requirement for the person to continue to meet the criteria for a fit and proper person under section 122; and
 - (c) any other matters the authority considers relevant.

Division 6—Dealing with disputes

130 Authorising authority may deal with a dispute about a right of entry under this Act

- (1) The authorising authority may deal with a dispute about the exercise or purported exercise by an OHS permit holder of a right of entry under this Act (including a dispute about whether a request under section 115 or 116 is reasonable).
- (2) The authorising authority may deal with the dispute in any manner it thinks fit, including by means of mediation, conciliation or arbitration.

- (3) If the authorising authority deals with the dispute by arbitration, it may make one or more of the following orders:
 - (a) an order imposing conditions on an OHS entry permit;
 - (b) an order suspending an OHS entry permit;
 - (c) an order revoking an OHS entry permit;
 - (d) an order about the future issue of OHS entry permits to one or more persons;
 - (e) any other order it considers appropriate.
- (4) The authorising authority may deal with the dispute:
 - (a) on its own initiative; or
 - (b) on application by any of the following to whom the dispute relates:
 - (i) an OHS entry permit holder;
 - (ii) the union that the OHS entry permit holder represents;
 - (iii) the person conducting the business or undertaking;
 - (iv) the person who has management or control of the workplace.
- (5) In dealing with a dispute, the authorising authority must not confer any rights on the OHS entry permit holder that are additional to, or inconsistent with, rights exercisable by the OHS entry permit holder under this Part unless the dispute is about whether a request under section 115 or 116 is reasonable.

131 Contravening order made to deal with dispute

A person must not contravene an order under section 130(3).

Penalty:

Division 7—Prohibitions

132 OHS entry permit holder must not delay, hinder or obstruct

An OHS 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 otherwise act in an improper manner.

Penalty:

133 Person must not refuse or delay entry of OHS entry permit holder

A person must not refuse or unduly delay entry into a workplace by an OHS entry permit holder who is entitled to enter the workplace under this Part.

Penalty:

134 Person must not hinder or obstruct OHS entry permit holder

A person must not hinder or obstruct an OHS entry permit holder in entering a workplace or in exercising any rights at a workplace in accordance with this Part.

Penalty:

135 Misrepresentations about things authorised by this Part

- (1) A person must not take action:
 - (a) with the intention of giving the impression;
 - or

(b) reckless as to whether the impression is given;

that the doing of a thing is authorised by this Part if it is not so authorised.

Penalty:

(2) Subsection (1) does not apply if the person reasonably believes that the doing of the thing is authorised.

136 Unauthorised use or disclosure of information or documents

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

- (a) the person reasonably believes that the use or disclosure is necessary to lessen or prevent:
 - (i) a serious and imminent threat to an individual's life, health or safety; or
 - (ii) a serious threat to public health or public 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 (within the meaning of the *Privacy Act 1988* of the Commonwealth)—the use or disclosure is made with the consent of the individual to whom the information relates.

Penalty:

Division 8—General

137 Return of OHS entry permits

- (1) The person to whom an OHS 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.

Penalty:

- (2) After the end of a suspension period, the authorising authority must return the OHS entry permit to the person to whom it was issued if:
- (a) the person, or the person's union, applies to authority for the return of the permit; and
 - (b) the permit has not expired.

138 Union to provide information to regulator

The union of which an OHS entry permit holder is an official must advise the regulator if:

- (a) the OHS entry permit holder resigns from or otherwise leaves the union; or
- (b) if the OHS entry permit holder has had any entry permit granted under another OHS law, or the Fair Work Act or the [relevant State or Territory industrial law] (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 [relevant State or Territory industrial law].

Jurisdictional note: A jurisdiction can insert its relevant industrial law.

Penalty:

139 Register of OHS entry permit holders

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

Part 7—The Regulator

140 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 occupational health and safety to duty holders under this Act and to the community;
- (d) to collect, analyse and publish statistics relating to occupational 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 occupational health and safety matters;
- (f) to promote and support education and training on matters relating to occupational health and safety;
- (g) to engage in, promote and co-ordinate the sharing of information to achieve the objects of this Act, including the sharing of information with a corresponding regulator;
- (h) any other function conferred on it by this Act.

Jurisdictional note: Jurisdictions may add to this list of functions.

141 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.

142 Power to make guidelines

The regulator may make guidelines about the way in which:

- (a) a provision of this Act would, in the regulator's opinion, apply to a class of persons or to a set of circumstances; or
- (b) a discretion of the regulator under a provision of this Act would be exercised.

Jurisdictional note: A jurisdiction may need to include additional provisions relating to the making and publication of guidelines to meet the requirements of that jurisdiction in relation to legislative instruments.

143 Delegation by regulator

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

Jurisdictional note: A jurisdiction may specify local delegation requirements and the persons to whom a delegation may be made.

- (2) A delegation under this section:
 - (a) may be made subject to such conditions as the regulator thinks fit; and
 - (b) is revocable at will; and
 - (c) does not derogate from the power of the delegator to act.

Part 8—Enforcement powers

Division 1— Appointment of inspectors

144 Appointment of inspectors

- (1) The regulator may, by instrument, appoint any of the following as an inspector:
 - (a) a public servant;
 - (b) an employee of a public authority;
 - (c) the holder of a statutory office;
 - (d) a person who is appointed as an inspector under a corresponding OHS law;
 - (e) a person in a prescribed class of persons.

Jurisdictional note: A jurisdiction will need to include local provisions to ensure that appropriate arrangements are made for the appointment as an inspector of a person who is an inspector under a corresponding OHS law.

Jurisdictional note: A jurisdiction may replace the term *public servant* with the corresponding or appropriate term used in the jurisdiction.

145 Identity cards

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

return the identity card to the regulator as soon as practicable.

146 Accountability of inspectors

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

147 Termination of appointment of inspector

The regulator may terminate the appointment of an inspector.

Division 2—Functions and powers of inspectors

148 Functions and powers of inspectors

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

- (a) to provide information and advice about compliance with this Act;
- (b) to assist in the resolution of occupational health and safety issues at workplaces, including issues relating to the cessation of work due to an imminent risk to health or safety;
- (c) to review disputed provisional improvement notices;

- (d) to secure compliance with this Act through the issuing of notices;
- (e) to investigate contraventions of this Act and assist in the prosecution of offences;
- (f) to attend coronial inquests in respect of the deaths of workers at work and examine witnesses

Jurisdictional note: A jurisdiction may omit paragraph (f).

149 Restrictions on functions and powers of inspectors

The functions and powers (*compliance powers*) conferred on an inspector are subject to any conditions or restrictions specified in his or her instrument of appointment.

150 Inspectors subject to regulator's directions

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

151 Inspector may give advice about compliance

An inspector may give advice to a person about compliance with this Act.

Division 3—Powers relating to entry

Subdivision 1—General powers of entry

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

Note

An inspector may enter residential premises to gain access to a workplace (see section 159(1)(c))

153 Notification of entry

- (1) An inspector may enter a place under section 152 without prior notice to any person.
- (2) An inspector must, as soon as practicable after entry to a workplace or suspected workplace, take all reasonable steps to notify the following persons of the entry and the purpose of the entry:
 - (a) the person who has apparent management or control of the workplace;
 - (b) any person conducting a relevant business or undertaking at the workplace;
 - (c) any health and safety representative for workers carrying out work for that business or undertaking at the workplace.
- (3) However, an inspector is not required to notify any person if to do so would defeat the purpose for which the place was entered or cause unreasonable delay.
- (4) In this section *relevant business or undertaking* means the business or undertaking in relation to

which the inspector is exercising the powers of entry.

154 General powers on entry

- (1) An inspector who enters a workplace under this Division may do any of the following:
 - (a) inspect, examine and make inquiries at the workplace;
 - (b) inspect and examine any thing (including a document) at the workplace;
 - (c) bring to the workplace and use any equipment or materials that may be required;
 - (d) copy or take extracts from a document at the workplace or that is accessible from a computer at the place;
 - (e) take measurements, conduct tests and make sketches or recordings (including photographs, films, audio, video, digital or other recordings);
 - (f) take and remove for analysis a sample of any substance or thing without paying for it;
 - (g) require a person at the place to give the inspector reasonable help to exercise the inspector's powers under paragraphs (a) to (f);
 - (h) exercise any other power conferred on the inspector by this Act or that is reasonably necessary to be exercised by the inspector for the purposes of this Act.

Jurisdictional note: A jurisdiction may omit the words "without paying for it" in subsection (1)(f).

- (2) A person required to give reasonable help under subsection (1)(g) must comply with the requirement, unless the person has a reasonable excuse.

Penalty:

155 Persons assisting inspectors

- (1) A person (the *assistant*), including an interpreter, may accompany the inspector entering a workplace under section 154 to assist the inspector if the inspector considers the assistance is necessary.
- (2) The assistant:
 - (a) may do such things at the place as the inspector requires to assist the inspector to exercise compliance powers; but
 - (b) must not do anything that the inspector does not have power to do, except as permitted under a search warrant.
- (3) Anything done lawfully by the assistant is taken for all purposes to have been done by the inspector.

Subdivision 2—Search warrants

Jurisdictional note: A jurisdiction will need to make appropriate adjustments to the search warrant provisions to enable them to operate in its jurisdiction.

156 Search warrants

- (1) An inspector may apply to a magistrate for a search warrant for a place.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example

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

- (4) The magistrate may issue a search warrant only if the magistrate is satisfied there are reasonable grounds for suspecting:
 - (a) there is a particular thing or activity (the *evidence*) that may provide evidence of an offence against this Act; and
 - (b) the evidence is, or may be within the next 7 days, at the place.
- (5) The search warrant must state:
 - (a) that a stated inspector may, with necessary and reasonable help and force, enter the place and exercise the inspector's powers under this Part; and
 - (b) the offence for which the search warrant is sought; and
 - (c) the evidence that may be seized under the search warrant; and
 - (d) the hours of the day or night when the place may be entered; and
 - (e) the date, within 14 days after the search warrant's issue, the search warrant ends.

157 Announcement before entry on warrant

- (1) Before executing a search warrant, the inspector named in the warrant or an assistant to the inspector must:
 - (a) announce that he or she is authorised by the warrant to enter the place; and
 - (b) give any person at the place an opportunity to allow that entry.

- (2) However, the inspector or an assistant to the inspector need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the place is needed to ensure:
- (a) the safety of any person; or
 - (b) that the effective execution of the warrant is not frustrated.

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

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

- (a) identify himself or herself to that person by producing his or her identity card for inspection; and
- (b) give that person a copy of the execution copy of the warrant.

Subdivision 3—Limitation on entry powers

159 Places used for residential purposes

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

- (a) with the consent of the person with management or control of the place; or
- (b) under the authority conferred by a search warrant; or
- (c) to enter the premises, if reasonably required to do so, for the sole purpose of gaining

access to a place that the inspector is authorised to enter.

Subdivision 4—Specific powers on entry

160 Power to require production of documents and answers to questions.

- (1) An inspector who enters a place under this Division may—
 - (a) require a person to tell the inspector who has custody of, or access to, a record or document; and
 - (b) require a person who has custody of, or access to, a record or document or part of a document to produce that record or document to the inspector while the inspector is at that place or within a specified period; and
 - (c) require a person at the place to answer any questions put by the inspector.
- (2) A requirement under subsection (1)(b) must be made by written notice unless the circumstances require the inspector to have immediate access to the record or document.
- (3) An interview conducted by an inspector under subsection (1)(c) must be conducted in private if:
 - (a) the inspector considers it appropriate; or
 - (b) the person being interviewed so requests.
- (4) Subsection (3) does not limit the operation of section 155.
- (5) Subsection (3) may be invoked during an interview by:

- (a) the inspector; or
 - (b) the person being interviewed,
- in which case the subsection applies to the remainder of the interview.
- (6) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under this section.

Penalty:

161 Powers to copy and retain records and documents

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

162 Power to seize evidence etc.

- (1) An inspector who enters a place under this Division may:
- (a) seize any thing (including a document) at the place if the inspector reasonably believes the thing is evidence of an offence against this Act; or

- (b) take and remove for examination, analysis or testing a sample of any substance or thing without paying for it.
- (2) If an entry is made with consent, a seizure of a thing under subsection (1)(a) must be consistent with the purpose of entry as told to the person with management or control of the place when asking the person's consent.
- (3) An inspector who enters a place with a search warrant may seize the evidence for which the warrant was issued.
- (4) An inspector may also seize anything else at the place if the inspector reasonably believes:
 - (a) the thing is evidence of an offence against this Act; and
 - (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed or used to continue or repeat the offence.

Jurisdictional note: A jurisdiction may omit this provision.

163 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,is defective or hazardous to a degree likely to cause serious injury or a dangerous incident to occur.
- (2) The inspector may seize the place, the workplace or part, the plant, or the substance.

164 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

- 1 Sealing a thing and marking it to show access is restricted.
 - 2 Sealing the entrance to a room where the seized thing is situated and marking it to show access to it is restricted.
- (c) if the thing is plant or a structure—dismantle or cause to be dismantled the plant or structure.
- (2) If an inspector restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing or something restricting access to the thing without an inspector's approval.

Penalty:

- (3) To enable a thing to be seized, an inspector may require the person in control of it:
- (a) to take it to a stated reasonable place by a stated reasonable time; and
 - (b) if necessary, to remain in control of it at the stated place for a reasonable time.
- (4) The requirement:
- (a) must be made by written notice; or
 - (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by written notice as soon as practicable.

- (5) The person must comply with the requirement unless the person has a reasonable excuse for not complying.

Penalty:

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

165 Receipt for seized things

- (1) As soon as practicable after an inspector seizes a thing, the inspector must give a receipt for it to the person from whom it was seized.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt in a conspicuous position and in a reasonably secure way at the place of seizure.
- (3) The receipt must describe generally each thing seized and its condition.
- (4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt required by this section (given the thing's nature, condition and value).

166 Forfeiture of seized things

- (1) A seized thing is forfeited to the State if the inspector who seized the thing:
 - (a) cannot find its owner after making reasonable inquiries; or
 - (b) cannot return it to its owner, after making reasonable efforts; or
 - (c) reasonably believes it is necessary to retain the thing to prevent it being used to commit an offence against this Act.

- (2) Subsection (1)(a) does not require the inspector to make inquiries if it would be unreasonable to make inquiries to find the owner.
- (3) Subsection (1)(b) does not require the inspector to make efforts if it would be unreasonable to make efforts to return the thing to its owner.
- (4) If the inspector decides to forfeit the thing under subsection (1)(c), the inspector must tell the owner of the decision by written notice.
- (5) Subsection (4) does not apply if:
 - (a) the inspector can not find its owner, after making reasonable inquiries; or
 - (b) it is impracticable or would be unreasonable to give the notice.
- (6) The notice must state:
 - (a) the reasons for the decision; and
 - (b) that the owner may apply within 28 days for the decision to be reviewed; and
 - (c) how the owner may apply for the review; and
 - (d) that the owner may apply for a stay of the decision if the owner applies for a review.
- (7) In deciding whether and, if so, what inquiries and efforts are reasonable or whether it would be unreasonable to give notice about a thing, regard must be had to the thing's nature condition and value.

167 Return of seized things

- (1) If a seized thing has not been forfeited, the inspector must return it to its owner at the end of:
 - (a) 6 months; or

- (b) if a proceeding for an offence involving it is started within 6 months—the proceeding and any appeal from the proceeding.
- (2) Despite subsection (1), unless the thing has been forfeited, the inspector must immediately return a thing seized as evidence to its owner if the inspector stops being satisfied its continued retention as evidence is necessary.

168 Access to seized things

- (1) Until a seized thing is forfeited or returned, an inspector must allow its owner to inspect it and, if it is a document, to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow inspection or copying.

169 Damage etc. to be minimised

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

170 Inspector to give notice of damage

- (1) This section applies if an inspector or an assistant to an inspector damages a thing when exercising or purporting to exercise a compliance power.(2) The inspector must, as soon as practicable, give written notice of the damage to the person who the inspector believes on reasonable grounds, is the owner of the thing.
- (3) If the inspector believes the damage was caused by a latent defect in the thing or circumstances beyond the inspector's or assistant's control, the inspector may state it in the notice.

- (4) If, for any reason, it is impracticable to comply with subsection (2), the inspector must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.
- (5) This section does not apply to damage the inspector reasonably believes is trivial.
- (6) In this section *owner* of a thing includes the person in possession or control of it.

171 Compensation

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

Jurisdictional note: A jurisdiction will need replace "State" with "Territory" or "the Commonwealth" as is relevant to the jurisdiction

Division 4—Other matters

172 Power to require name and address

- (1) This section applies if:
 - (a) an inspector finds a person committing an offence against this Act; or
 - (b) an inspector finds a person in circumstances that lead, or has information that leads, the inspector to reasonably suspect the person has committed an offence against this Act.
- (2) The inspector may require the person to provide the person's name and residential address.
- (3) The inspector must tell the person the reason for the requirement to provide their name and residential address.
- (4) When asking a person to provide their name and residential address, the inspector must warn the person that it is an offence to fail to state that name and address, unless the person has a reasonable excuse.
- (5) The inspector may require the person to demonstrate the correctness of the stated name or address if the inspector reasonably suspects the stated name and address is false.
- (6) A person must comply with a requirement under subsection (2) or (5), unless the person has a reasonable excuse.

Penalty:

173 Inspector may take affidavits

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

174 Attendance of inspector at coronial inquests

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

Jurisdictional note: A jurisdiction may omit this provision.

175 Abrogation of privilege against self-incrimination

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

176 Warning to be given

- (1) Before requiring a person to produce a record or document or answer a question under this Part, an inspector must:
 - (a) identify himself or herself to the person as an inspector by producing the inspector's identity card or in some other way; and
 - (b) warn the person that failure to comply with the requirement or to answer the question, without reasonable excuse, would constitute an offence; and
 - (c) warn the person about the effect of section 175.
- (2) It is not an offence for an individual to refuse to answer a question put by an inspector under this Part on the ground that the question might tend to incriminate him or her, unless he or she was first given the warning in subsection (1)(c).

- (3) Nothing in this section prevents an inspector from obtaining and using evidence given to the inspector voluntarily by any person.

Division 5—Offences in relation to inspectors

177 Offence to hinder or obstruct inspector

A person must not intentionally hinder or obstruct an inspector in the performance of his or her functions or exercise of his or her powers under this Act, or induce or attempt to induce any other person to do so.

Penalty:

178 Offence to impersonate inspector

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

Penalty:

179 Offence to alter or deface identity card

A person must not intentionally alter or deface an identity card.

Penalty:

180 Offence to conceal person, document or thing from inspector

A person must not intentionally conceal from an inspector the location or existence of any other person or any document or other thing.

Penalty:

181 Offence to prevent person from assisting inspector

A person must not intentionally prevent or attempt to prevent any other person from assisting an inspector.

Penalty:

182 Offence to assault, threaten or intimidate inspector

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

Penalty:

Part 9—Compliance measures

Division 1—Non-disturbance notices

183 Issue of non-disturbance notice

An inspector who has entered a workplace under this Part may issue a non-disturbance notice to the person with management or control of the workplace if the inspector reasonably believes that it is necessary to do so to facilitate the exercise of his or her compliance powers.

184 Contents of non-disturbance notice

- (1) A non-disturbance notice may require the person to:
 - (a) preserve the site at which a notifiable incident has occurred for a specified period; or
 - (b) prevent the disturbance of a particular site (including the operation of plant) in other circumstances for a specified period that is reasonable in the circumstances.
- (2) A non-disturbance notice must specify the period (of no more than 7 days) for which it applies and set out—
 - (a) the obligations of the person to whom the notice is issued; and
 - (b) the measures to be taken to preserve a site or prevent disturbance of a site; and
 - (c) the penalty for contravening the notice.
- (3) In subsection (1) a reference to a site includes any plant, substance or thing associated with the site.

- (4) A non-disturbance notice does not prevent any action:
- (a) to assist an injured person;
 - (b) to remove a deceased person;
 - (c) that is essential to make the site safe or to prevent a further incident;
 - (d) that is associated with a police investigation;
 - (e) for which an inspector has given permission.

185 Compliance with non-disturbance notice

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

Penalty:

186 Issue of subsequent notices

If an inspector considers it necessary to do so, he or she may issue one or more subsequent non-disturbance notices to a person, whether before or after the expiry of the previous notice, each of which must comply with section 184.

Division 2—Improvement notices

187 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;
- (c) remedy the things or operations causing the contravention or likely contravention.

188 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 before 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 not be before the end of the period for seeking a review of the notice under section 216.

189 Compliance with improvement notice

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

Penalty:

190 Extension of time for compliance with improvement notices

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

compliance period means the period stated in the improvement notice under section 188, and includes that period as extended under this section.

Division 3—Prohibition notices

191 Power to issue prohibition notice

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

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

192 Contents of prohibition notice

- (1) A prohibition notice must state:
 - (a) that the inspector believes that grounds for the issue of the prohibition notice exist and the basis for that belief; and
 - (b) briefly, the activity that the inspector believes involves or will involve the risk and the matters that give or will give rise to the risk; and
 - (c) the provision of this Act that the inspector believes is being, or is likely to be, contravened.
- (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 mentioned in subsection (1)(c).
- (3) Without limiting section 191, a prohibition notice that prohibits the carrying on of an activity in a specified way may do so by specifying one or more of the following—
 - (a) a workplace, or part of a workplace, at which the activity is not to be carried out;
 - (b) any thing that is not to be used in connection with the activity;

- (c) any procedure that is not to be followed in connection with the activity.

193 Compliance with direction and prohibition notice

The person to whom a direction is given or a prohibition notice is issued under this Division must comply with that direction or notice.

Penalty:

Division 4—General requirements applying to notices

194 Application of Division

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

195 Notice to be in writing

A notice must be in writing.

196 Directions in notices

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

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

197 Recommendations in notice

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

198 Minor changes to notice

An inspector may make minor changes to a notice:

- (a) to improve clarity; or
- (b) to correct errors or references; or
- (c) to reflect changes of address or other circumstances.

199 Service and communication of notice

- (1) A notice may be issued to a person by:
 - (a) delivering it personally to the person or sending it by post or facsimile or electronic transmission to the person's usual or last known place of residence or business; or
 - (b) leaving it for the person at the person's usual or last known place of residence or business with a person who is apparently over 16 years and who apparently resides or works there; or
 - (c) leaving it for the person at the workplace to which the notice relates with a person who is apparently over 16 years and who apparently is the person with management or control for the time being of the workplace; or
 - (d) in a prescribed manner.
- (2) The regulations may prescribe:
 - (a) the manner of issuing a notice; and
 - (b) the steps a person to whom a notice is issued must take to bring it to the attention of other persons.

200 Display of notice

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

Penalty:

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

Penalty:

201 Formal irregularities or defects in notice

A notice is not invalid merely because of:

- (a) a formal defect or irregularity in the notice unless the defect or irregularity causes or is likely to cause substantial injustice; or
- (b) a failure to use the correct name of the person to whom the notice is issued if the notice sufficiently identifies the person and is issued to the person in accordance with section 199.

Division 5—Remedial action

202 Workplace, plant or substance that is a serious risk to health and safety

- (1) This section applies if an inspector reasonably believes that a workplace or part of a workplace, plant or a substance is so defective or hazardous that it is likely to cause a serious injury or illness or a dangerous incident.
- (2) The inspector may, by written notice, require the owner or the person with management or control of the workplace to make it safe.
- (3) A person must comply with the notice, unless the person has a reasonable excuse for not complying.

Penalty:

203 When regulator may carry out action

- (1) This section applies if a person to whom a notice is issued under section 202 fails to take reasonable steps to comply with the notice.
- (2) The regulator may take any remedial action it believes reasonable to make the workplace or situation safe after giving written notice to the owner or the person with management or control of the workplace of:
 - (a) the regulator's intention to take that action; and
 - (b) the owner's or person's liability for the costs of that action.
- (3) The regulator may recover the costs of the action from the person to whom the notice is given as a debt due to the regulator.

204 Power of the regulator to take other remedial action

- (1) This section applies if the regulator reasonably believes that:
 - (a) circumstances causing, or likely to cause, a risk of serious injury or illness or a dangerous incident have arisen, or are likely to arise, in relation to a workplace, plant or substance; and
 - (b) a prohibition notice cannot be issued because, after taking reasonable steps, the person with management and control of the workplace cannot be found.
- (2) The regulator may take any remedial action necessary to make the workplace or situation safe.

Division 6—Injunctions

205 Application of Division

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

206 Injunctions for non-compliance with notices

- (1) The regulator may apply to the court for an injunction:
 - (a) compelling a person to comply with a notice;
or
 - (b) restraining a person from contravening a notice.
- (2) The regulator may do so whether or not proceedings have been instituted for an offence against this Act in connection with any matter in respect of which the notice was issued.

Division 7—Powers of regulator to obtain information

207 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, producing documents or giving evidence in relation to a possible contravention of 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, by a competent officer of the body) 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 answer questions:
 - (i) contain a statement about the effect of section 175; and
 - (ii) state that the person may attend with a lawyer.
- (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 subsection (2)(a) and (b) and has been unable to do so.
- (5) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under this section.
- Penalty:
- (6) Section 175 (with any necessary changes) applies to a requirement under this section.

Division 8—Enforceable OHS undertakings

208 Regulator may accept OHS undertakings

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

Note

Section 222(4) requires the regulator to publish guidelines with respect to the acceptance of OHS undertakings.

- (2) An OHS undertaking cannot be accepted for a contravention or alleged contravention that is a Category 1 offence.

209 Notice of decision and reasons for decision

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

210 When an OHS undertaking is enforceable

An OHS 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.

211 Compliance with OHS undertaking

A person must not contravene an OHS undertaking made by that person that is in effect.

Penalty:

212 Contravention of OHS undertaking

- (1) The regulator may apply to the court for an order if a person contravenes an OHS undertaking.

- (2) If the court is satisfied that the person who made the OHS undertaking has contravened the undertaking, the court, in addition to the imposition of any penalty, may make 1 or more of the following orders:
 - (a) an order directing the person to comply with the undertaking; or
 - (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 OHS undertaking in the future.

Jurisdictional note: A jurisdiction will need replace "State" with "Territory" or "the Commonwealth" as is relevant to the jurisdiction

- (4) Nothing in this section prevents proceedings being brought for the contravention or alleged contravention of this Act to which the OHS undertaking relates.

Note

Section 214 specifies circumstances affecting proceedings for a a contravention for which an OHS undertaking has been given.

213 Withdrawal or variation of OHS undertaking

- (1) A person who has made an OHS 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 for the undertaking.

214 Proceeding for alleged contravention

- (1) Subject to this section, no proceedings for a contravention or alleged contravention of this Act may be commenced against a person if an OHS 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 an OHS undertaking in respect of that contravention and has completely discharged the OHS undertaking.
- (3) The regulator may accept an OHS undertaking in respect of a contravention or alleged contravention if proceedings are on foot in respect of that contravention.
- (4) If the regulator accepts an OHS undertaking while proceedings are on foot, the regulator must take all reasonable steps to have the proceedings discontinued as soon as possible.

Part 10—Review of decisions

Division 1—Reviewable decisions

215 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 52(1) (determination following failure of negotiations).	(1) A worker whose interests are affected by the decision. (2) A person conducting a business or undertaking whose interests are affected by the decision. (3) A health and safety representative who represents a worker whose interests are affected by the decision.
2	Section 52(2) (determination of unresolved particulars concerning work groups).	(1) A worker whose interests are affected by the decision. (2) A person conducting a business or undertaking whose interests are affected by the decision. (3) A health and safety representative who represents a worker whose

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Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
3	Section 69(5) (determination of constitution of health and safety committee).	<p>interests are affected by the decision.</p> <p>(1) A worker whose interests are affected by the decision.</p> <p>(2) A person conducting a business or undertaking whose interests are affected by the decision.</p> <p>(3) A health and safety representative who represents a worker whose interests are affected by the decision.</p>
4	Section 92 (determination of review of provisional improvement notice)	<p>(1) The person to whom the provisional improvement notice was issued.</p> <p>(2) The health and safety representative who issued the provisional improvement notice</p> <p>(3) A worker whose interests are affected by the decision.</p> <p>(4) A health and safety representative who represents a worker whose interests are affected by the decision.</p> <p>(5) A person conducting a business or undertaking whose interests are affected by the decision.</p>
5	Section 166 (decision to forfeit a thing)	The owner of the thing
6	Section 183 (issue of a non-disturbance notice)	(1) The person to whom the notice was issued.

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Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
7	Section 186 (issue of subsequent notice)	<p>(2) The person with management or control of the workplace.</p> <p>(3) A person conducting a business or undertaking whose interests are affected by the decision.</p> <p>(4) A worker whose interests are affected by the decision.</p> <p>(5) A health and safety representative who represents a worker whose interests are affected by the decision.</p>
8	Section 187 (issue of improvement notice)	<p>(1) The person to whom the notice was issued.</p> <p>(2) The person with management or control of the workplace.</p> <p>(3) A person conducting a business or undertaking whose interests are affected by the decision.</p> <p>(4) A worker whose interests are affected by the decision.</p> <p>(5) A health and safety representative who represents a worker whose interests are affected by the decision.</p>

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Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
9	Section 190 (extension of time for compliance with improvement notice)	<p>whose interests are affected by the decision.</p> <p>(3) A worker whose interests are affected by the decision.</p> <p>(4) A health and safety representative who represents a worker whose interests are affected by the decision.</p> <p>(1) The person to whom the notice was issued.</p> <p>(2) A person conducting a business or undertaking whose interests are affected by the decision.</p> <p>(3) A worker whose interests are affected by the decision.</p> <p>(4) A health and safety representative who represents a worker whose interests are affected by the decision.</p>
10	Section 191 (issue of prohibition notice)	<p>(1) The person to whom the notice was issued.</p> <p>(2) The person with management or control of the workplace, plant or substance.</p> <p>(3) A person conducting a business or undertaking whose interests are affected by the decision.</p> <p>(4) A worker whose interests are affected by the</p>

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Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
11	Section 202 (issue of notice for remedial action)	<p>decision.</p> <p>(5) A health and safety representative who represents a worker whose interests are affected by the decision.</p> <p>(6) A health and safety representative who gave a direction under section 76 to cease work, that is relevant to the prohibition notice.</p>
11	Section 204 (decision to take other remedial action)	<p>(1) The person to whom the notice was issued.</p> <p>(2) The person with management or control of the workplace or part, plant or substance.</p> <p>(3) The owner of the workplace or part, plant or substance.</p> <p>(4) A person who has an interest in the workplace or part, plant or substance.</p> <p>(5) Any other person whose interests are affected by the decision.</p>
11	Section 204 (decision to take other remedial action)	<p>(1) The person with management or control of the workplace or part, plant or substance.</p> <p>(2) The owner of the workplace or part, plant or substance.</p>

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Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
		(3) Any other person whose interests are affected by the decision.
208	A decision under section 208 to accept or refuse to accept an OHS undertaking	(1) The person giving or proposing to give the undertaking. (2) Any other person whose interests are affected by the decision.
209	A decision under section 213 to agree or to refuse to agree to the withdrawal or variation of an OHS undertaking	(1) The person who gave the undertaking. (2) Any other person whose interests are affected by the decision.

(2) For the purposes of this Part a person makes a decision if the person refuses to make a decision or an instrument, imposes a condition or restriction or does or refuses to do any other thing.

Note

Decisions under the regulations that will be reviewable decision will be set out in the regulations.

Division 2—Internal review

216 Application for internal review

(1) An eligible person in relation to a reviewable decision, other than a decision made by 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 under section 166 to forfeit a thing, 28 days after the notice is given under that section;
 - (b) 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
 - (c) in any other case, 14 days.

217 Internal reviewer

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

218 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) 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.

219 Decision on internal review

As soon as practicable after reviewing the decision, the internal reviewer must give the applicant in writing:

- (a) the decision on the internal review; and
- (b) the reasons for the decision.

Division 3—External review

220 Application for external review

An eligible person may apply to [the external review body] for review (an *external review*) of:

- (a) a reviewable decision made by the regulator;
or
- (b) a decision made or taken to have been made on an internal review (including a decision concerning a stay of the operation of the reviewable decision).

Jurisdictional note: A jurisdiction may amend this section to accommodate local requirements and policy in relation to the appropriate external review body.

Division 4—Stays of reviewable decisions

221 Stays of reviewable decisions

- (1) An application for review of a reviewable decision does not affect the operation of the decision or prevent the taking of any action to implement it unless the reviewer, on its own initiative or on the application of the applicant for review, stays the operation of the decision pending the determination of the review.
- (2) The reviewer must make a decision on an application for a stay within 1 working day after the making of the application.
- (3) If the reviewer has not made a decision in accordance with subsection (2), the reviewer is taken to have made a decision to grant a stay.
- (4) An application for review of a decision to issue an improvement notice stays the operation of the notice until a decision is made on the application.

Part 11—Legal Proceedings

Division 1—General matters

222 Proceedings may be brought by the regulator or inspectors

- (1) Proceedings for an offence against this Act may be brought only by:
 - (a) the regulator; or
 - (b) an inspector with the written authorisation of the regulator (either generally or in a particular case).

Jurisdictional note: A jurisdiction may add other officials who hold a relevant public office or administer the Act to bring proceedings for an offence against this Act.

- (2) An authorisation under subsection (1)(b) is sufficient authority to continue proceedings in any case where the court amends the charge, warrant or summons.
- (3) The regulator must issue, and publish on its website, general guidelines for or with respect to:
 - (a) the prosecution of offences under this Act; and
 - (b) the acceptance of OHS undertakings under this Act.
- (4) Nothing in this section affects the ability of the Director of Public Prosecutions to bring proceedings for an offence against this Act.

Jurisdictional note: A jurisdiction may include a local version of this provision to reflect local requirements.

223 Procedure if prosecution is not brought

- (1) If—

- (a) a person reasonably considers that the occurrence of an act, matter or thing constitutes a Category 1 offence or a Category 2 offence; and
 - (b) no prosecution has been brought in respect of the occurrence of the act, matter or thing within 6 months but not later than 12 months after that occurrence,
- the person may in writing request that the regulator bring a prosecution.
- (2) Within 3 months after the regulator receives a request it must:
 - (a) advise the person (in writing):
 - (i) whether the investigation is complete; and
 - (ii) if the investigation is complete, whether a prosecution has been or will be brought or give reasons why a prosecution will not be brought; and
 - (b) advise the person whom the applicant believes committed the offence of the application and of the matters set out in paragraph (a).
 - (3) If the regulator advises the person that a prosecution for a Category 1 or Category 2 offence will not be brought, the regulator must:
 - (a) advise the person that they may ask the regulator to refer the matter to the Director of Public Prosecutions for consideration; and
 - (b) if the person makes a written request to the regulator to do so, refer the matter to the Director of Public Prosecutions within 1 month of the request;

- (4) The Director of Public Prosecutions must consider the matter and advise (in writing) the regulator within 1 month whether or not the Director considers that a prosecution should be brought.
- (5) The regulator must ensure a copy of the advice is sent to the person who made the request and, if the regulator declines to follow advice from the Director of Public Prosecutions to bring proceedings, the regulator must give the person written reasons for its decision.

Jurisdictional note: A jurisdiction may amend subsections (3), (4) and (5) to reflect the role of the Director of Public Prosecutions in that jurisdiction.

224 Limitation period for prosecutions

Proceedings for an offence against this Act may be brought within the latest of the following periods to occur:

- (a) within 2 years after the offence is committed or the regulator becomes aware that the offence was committed; or
- (b) within 1 year after a finding in a coronial inquiry or an official inquiry that the offence has occurred; or
- (c) if an OHS undertaking has been given under section 208 in relation to the offence, within 6 months after the OHS undertaking is contravened or the regulator becomes aware that the OHS undertaking has been contravened.

Jurisdictional note: A jurisdiction may amend paragraph (b) as appropriate in that jurisdiction.

Jurisdictional note: A jurisdiction may (if necessary) include a local provision allowing proceedings to be brought at any time with the authorisation of the Director of Public Prosecutions.

Division 2—Sentencing for offences

225 Application of this Division

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

226 Orders generally

- (1) One or more orders may be made under this Division against the offender.
- (2) Orders may be made under this Division in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.

227 Adverse publicity orders

- (1) The court may make an order (an *adverse publicity order*) in relation to the offender requiring the offender:
 - (a) to take either or both of the following actions within the period specified in the order:
 - (i) to publicise, in the way specified in the order, the offence, its consequences, the penalty imposed and any other related matter;
 - (ii) to notify a specified person or specified class of persons, in the way specified in the order, of the offence, its consequences, the penalty imposed and any other related matter; and
 - (b) to give the regulator, within 7 days after the end of the period specified in the order, evidence that the action or actions were taken by the offender in accordance with the order.

- (2) The court may make an adverse publicity order on its own initiative or on the application of the prosecutor.
- (3) If the offender fails to give evidence to the regulator in accordance with subsection (1)(b), the regulator, or a person authorised in writing by the regulator, may take the action or actions specified in the order.
- (4) However, if:
 - (a) the offender gives evidence to the regulator in accordance with subsection (1)(b); and
 - (b) despite that evidence, the regulator is not satisfied that the offender has taken the action or actions specified in the order in accordance with the order,the regulator may apply to the court for an order authorising the regulator, or a person authorised in writing by the regulator, to take the action or actions.
- (5) If the regulator or a person authorised in writing by the regulator takes an action or actions in accordance with subsection (3) or an order under subsection (4), the regulator is entitled to recover from the offender, by action in a court of competent jurisdiction, an amount in respect of the reasonable expenses of taking the action or actions as a debt due to the regulator.
- (6) The court must not make an adverse publicity order unless it is satisfied that the costs of complying with the order do not exceed the maximum penalty amount that the court may impose on the offender for the offence concerned.

228 Orders for restoration

- (1) The court may order the offender to take such steps as are specified in the order, within the

period so specified, to remedy any matter caused by the commission of the offence that appears to the court to be within the offender's power to remedy.

- (2) The period in which an order under this section must be complied with may be extended, or further extended, by order of the court but only if an application for the extension is made before the end of that period.

229 Community service orders

- (1) The court may make an order requiring the offender to undertake a specified project for the general improvement of occupational health, safety and welfare within the period specified in the order.
- (2) The order may specify conditions that must be complied with in undertaking the specified project.
- (3) The court must not make an order under this section unless it is satisfied that the costs of complying with the order do not exceed the maximum penalty amount that the court may impose on the offender for the offence concerned.

230 Release on the giving of a court-ordered OHS undertaking

- (1) The court may (with or without recording a conviction) adjourn the proceeding for a period of up to 2 years and make an order for the release of the offender on the offender giving an undertaking with specified conditions (a *court-ordered OHS undertaking*).
- (2) A court-ordered OHS undertaking must specify the following conditions:
 - (a) that the offender appears before the court if called on to do so during the period of the

- adjournment and, if the court so specifies, at the time to which the further hearing is adjourned;
- (b) that the offender does not commit, during the period of the adjournment, any offence against this Act;
 - (c) that the offender observes any special conditions imposed by the court.
- (3) An offender who has given a court-ordered OHS undertaking under this section may be called on to appear before the court by order of the court.
- (4) An order or notice under subsection (3) must be served on the offender not less than 4 days before the time specified in it for the appearance.
- (5) If the court is satisfied at the time to which a further hearing of a proceeding is adjourned that the offender has observed the conditions of the undertaking, it must discharge the offender without any further hearing of the proceeding.

231 Injunctions

If a court finds a person guilty of an offence against this Act, the court may issue an injunction requiring the person to cease contravening this Act.

Note

An injunction may also be obtained under section 206 for non-compliance with a non-disturbance notice, improvement notice or prohibition notice.

232 Training orders

The court may make an order requiring the person to undertake a specified course of training.

233 Compensation orders

The court may make an order requiring the person to pay compensation to a person who suffered loss

or damage arising from the commission of the offence.

234 Offence to fail to comply with order

- (1) A person who, without reasonable excuse, fails to comply with an order under this Division is guilty of an offence.

Penalty:

- (2) This section does not apply to an order under section 230 or 231.

Division 3—Infringement notices

Jurisdictional note: jurisdictions may include local provisions to:

- enable an infringement scheme to be established in relation to this Act.
- prescribe the offences for which infringement notices may be issued.

Division 4—Proceedings against bodies

235 Responsibility for acts or omissions of representatives

- (1) This section applies in a proceeding for an offence against this Act.
- (2) If it is necessary to establish the state of mind of a person that is a body corporate, partnership, unincorporated body or association in relation to a particular act or omission, it is sufficient to show:
- (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and

- (b) the representative had the state of mind.
- (3) An act done or omitted to be done for a person that is a body corporate, partnership, unincorporated body or association by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person.
- (4) In this section:
 - representative* of a body corporate, partnership, unincorporated body or association, means an officer, employee or agent of the body corporate, partnership, unincorporated body or association.
 - state of mind* of a person includes:
 - (a) the person's knowledge, intention, opinion, belief or purpose; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.

Division 5—Proceedings against the Crown

236 Responsible agency for the Crown

- (1) If the Crown is to be served with an infringement notice, or proceedings are brought against the Crown, for an offence against this Act the responsible agency in respect of the offence may be specified in the infringement notice or any document initiating, or relating to, the proceedings.
- (2) In this section, the *responsible agency* in respect of an offence is the agency of the Crown—

- (a) whose acts or omissions are alleged to constitute the offence; or
 - (b) if that agency has ceased to exist, that is the successor of that agency; or
 - (c) if that agency has ceased to exist and there is no clear successor, that the court declares to be the responsible agency.
- (3) The responsible agency in respect of an offence is entitled to act in proceedings against the Crown for the offence and, subject to any relevant rules of court, the procedural rights and obligations of the Crown as the accused in the proceedings are conferred or imposed on the responsible agency.
- (4) The person prosecuting the offence may change the responsible agency during the proceedings with the court's leave.

237 Infringement notices may be issued to the Crown

The Crown in any capacity may be issued with an infringement notice for an offence against this Act.

238 Proceedings against successors to public authorities

- (1) Proceedings for an offence against this Act that were instituted against a public authority before its dissolution, or that could have been instituted against a public authority if not for its dissolution, may be continued or instituted against its successor if the successor is a public authority.
- (2) An infringement notice served on a public authority for an offence against this Act is taken to be an infringement notice served on its successor if the successor is a public authority.
- (3) Similarly, any penalty paid by a public authority in respect of an infringement notice is taken to be

a penalty paid by its successor if the successor is a public authority.

Part 12—General

Division 1—General provisions

239 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 to be false or misleading in a material particular.

Penalty:

- (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
 - (b) if practicable, providing correct information.

Penalty:

240 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.

241 Immunity from liability

- (1) An inspector, or other person engaged in the administration of this Act, incurs no civil or criminal liability for an act or omission, done or omitted to be done in good faith and in the execution or purported execution of powers and functions under this Act.
- (2) A civil liability that would, but for subsection (1), attach to a person, attaches instead to the State.

Jurisdictional note: A jurisdiction may replace this provision with a local provision to reflect local requirements or omit it.

Jurisdictional note: A jurisdiction will need replace "State" with "Territory" or "the Commonwealth" as is relevant to the jurisdiction.

242 Confidentiality of information

- (1) This section applies if:
 - (a) a person is exercising any power or function under this Act; and
 - (b) the person obtains information about the affairs of someone else or has gained access to a document about someone else.
- (2) The person must not do any of the following:
 - (a) disclose to anyone else:
 - (i) the information; or
 - (ii) the contents of or information contained in the document;
 - (b) give access to the document to anyone else.
- (3) Subsection (2) does not apply to the disclosure of information, or the giving of access to a document, about a person:
 - (a) with the person's consent;
 - (b) that is necessary for the exercise of a power or function under this Act; or
 - (c) that is necessary for administering, or monitoring or enforcing compliance with, this Act;
 - (d) that is necessary for the administration or enforcement of another Act prescribed by regulation; or

- (e) that is necessary for the administration or enforcement of another Act or law, if the disclosure or access is in the interests of public safety; or
- (f) that is necessary for the recognition of authorisations under a corresponding OHS law;
- (g) that is required for the exercise of a power or function under a corresponding OHS law;
- (h) that is required by any court, tribunal, authority or person having lawful authority to require the production of documents or the answering of questions;
- (i) that is required or authorised under a law;
- (j) to a Minister.

Penalty:

- (4) A person must not intentionally disclose to a person the name of an individual who has made a complaint in relation to that person unless:
 - (a) the disclosure is made with the consent of the complainant; or
 - (b) the disclosure is required under a law.

Penalty:

243 No contracting out

A term of any agreement or contract that purports to exclude, limit or modify the operation of this Act or any duty owed under this Act is void.

244 Person not to levy employees

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, to ensure safety at work.

Division 2—Codes of practice

245 Codes of practice

- (1) The Minister may approve a code of practice for the purposes of this Act.
- (2) A code of practice may apply, adopt or incorporate any matter contained in a document formulated, issued or published by a person or body whether—
 - (a) with or without modification; or
 - (b) as in force at a particular time or from time to time.
- (3) The Minister may make an order approving the variation of a code of practice or revoking the approval of a code of practice.
- (4) An order approving a code of practice, or a variation or revocation order, takes effect when notice of it is published in the Government Gazette or on such later date as is specified in the order.
- (5) As soon as practicable after making an order approving a code of practice, or a variation or revocation order, the Minister must ensure that notice of the making of the order is published in the Government Gazette and a newspaper circulating generally throughout the State.
- (6) The regulator must ensure that a copy of:
 - (a) each code of practice that is currently approved; and
 - (b) each document applied, adopted or incorporated (to any extent) by a code of practice,

is available for inspection by members of the public without charge at the office of the regulator during normal business hours.

246 Use of codes of practice in proceedings

- (1) This section applies in a proceeding for an offence against this Act.
- (2) The court may:
 - (a) have regard to an approved code of practice as evidence of what is known about a particular hazard or risk or risk control to which the code relates; and
 - (b) may rely on that code, in conjunction with other evidence, in determining what is reasonably practicable in the circumstances to which the code relates.
- (3) Nothing in this section prevents a person from introducing evidence of compliance with this Act in a manner different from the code of practice.
- (4) A failure to comply with a code of practice does not of itself give rise to any civil or criminal liability.

Division 3—Regulation-making powers

247 Regulation-making powers

- (1) The Governor in Council may make regulations for or with respect to a matter or thing required or permitted by this Act to be prescribed or that is necessary to be prescribed to give effect to this Act.

- (2) Without limiting subsection (1), the regulations may make provision for or with respect to matters set out in Schedule 2.
- (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 from time to time.
 - (e) prescribe exemptions of specified persons or specified classes of persons from complying with any of the regulations on the terms and conditions (if any) prescribed;
 - (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;
 - (o) prescribe fees for doing any act or providing any service for the purposes of this Act and prescribing the circumstances and way in which fees are to be refunded;
 - (p) prescribe a penalty for any contravention of the regulations not exceeding [to be advised]

Model Occupational Health and Safety Provisions

Jurisdictional note: A jurisdiction jurisdiction may replace Governor jurisdiction in Council with the appropriate term in that jurisdiction.

Model Occupational Health and Safety Provisions

Schedules

Schedule 1

The Regulator

Schedule 2

Regulation powers

1 Duties

- 1.1 Matters relating to the way in which duties imposed by this Act are to be performed.
- 1.2 Matters relating to the regulation or prohibition of specified activities or a specified class of activities:
 - (a) at workplaces or a specified class of workplaces; or
 - (b) by a specified class of persons on whom duties or obligations are imposed by this Act,to eliminate or reduce risks to health or safety.

2 Incidents

- 2.1 Matters relating to 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.
- 2.2 Matters relating to regulating, requiring or prohibiting the taking of any action in the event of an incident at a workplace or in the course of conducting a business or undertaking.

3 Plant, substances or structures

Matters relating to regulating or requiring:

- (a) the examination, testing, maintenance or repair of plant and structures; or
- (b) the examination, testing, analysis or labelling of any substance.

4 Protection and welfare of workers

- 4.1 Matters relating to regulating or requiring the provision and use of protective clothing or

equipment, or rescue equipment, in specified circumstances.

4.2 Matters relating to regulating or requiring the provision of prescribed facilities for the welfare of workers at the workplace.

4.3 Matters relating to health and safety in relation to accommodation provided to workers.

5 Hazards

Matters relating to prescribing standards relating to the use of or exposure to any physical, biological, chemical or psychological hazard.

6. Records and notices

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

6.2 The keeping of records in relation to incidents.

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

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

7 Authorisations

7.1 Matters with respect to authorisations (including licences, registrations and permits) and qualifications, and experience for the purposes of Part 3 including providing for:

- (a) applications for, issue, renewal, variation, suspension and cancellation of authorisations;
- (b) exemptions;
- (c) authorisation of persons as trainers;
- (d) examination of applicants for authorisations;

- (e) conditions of authorisations;
 - (f) fees for applications for, issue, renewal and variation of authorisations;
- 7.2 The circumstances and way in which a decision made under the regulations with respect to an authorisation or qualifications or experience referred to in Part 3 may be reviewed, including conferring jurisdiction on the Tribunal to conduct that review.
- 7.3 The recognition of authorisations under corresponding OHS laws and exceptions to recognition.
- 7.4 The sharing of information with corresponding regulators relating to the issue, renewal, variation, suspension or cancellation of authorisations.

8 Health and safety committees

Matters relating to health and safety committees.

9 Issue resolution

- 9.1 The minimum requirements for an agreed procedure for resolving an issue.
- 9.2 The requirements for an issue resolution procedure where there is no agreed procedure.

10 OHS entry permits

Matters with respect to OHS entry permits, including providing for:

- (a) eligibility for OHS entry permits;
- (b) procedures for applications for OHS entry permits and objections to applications for OHS entry permits;
- (c) conditions of OHS entry permits;
- (d) the form of OHS entry permits;
- (e) requirements for training;

(f) records of OHS entry permits.

11 Identity cards

Matters relating to identity cards.

12 Forfeiture

12.1 Costs of forfeiture and disposal of forfeited things.

12.2 Disposal of seized things and forfeited things.

13 Review of decisions

Matters relating to the review of decisions under the regulations including prescribing decisions as reviewable decisions for the purposes of Part 10 and conferring jurisdiction on the Tribunal to conduct reviews.

ENDNOTES